

REPORT OF THE DISTRICT PLAN HEARINGS COMMITTEE

SUBJECT: PROPOSED DISTRICT PLAN CHANGE No. 43: HERITAGE PROVISIONS.

COMMITTEE MEMBERS: COUNCILLOR SHAW (CHAIR)
COUNCILLOR ARMSTRONG
COUNCILLOR WADE-BROWN

DATE OF HEARING: 16 – 30 May 2007

1. INTRODUCTION

Proposed District Plan Change 43 (DPC 43) was publicly notified on 1 May 2006. It introduced a revised set of heritage provisions, except for the rules relating to listed trees and Maori sites.

The purpose of the change was to ensure that the District Plan deals with heritage issues more effectively. The Council has initiated a programme for the rolling review of the District Plan and DPC 43 is part of this process. A full review of the Plan is due in 2010.

Plan Change 43 was heard in conjunction with Plan Change 48 (Central Area Review). This was primarily because of the interrelationship between the rules for heritage areas under plan Change 43 and the new heritage areas and related provisions included in District Plan Change 48.

It is also noted that DPC 43 is amended by District Plan Variation 4 which changes the definition of “Identified Contributing Buildings or Structures” to “Identified Non-Heritage Buildings or Structures”. This was done to reflect the wording in the heritage area provisions under Plan Change 48. As no submissions were received, Variation 4 will be approved under Schedule 1 of the Resource Management Act 1991. For completeness, the amendments proposed under Variation 4 have been included in the annotated copy of DPC 43 attached as Appendix 1.

1. RECOMMENDATION

It is recommended that the Council:

1. *Receive the information.*
2. *Approve District Plan Change 43 with the following additions, amendments and deletions resulting from the consideration of submissions:*

APPENDIX 1

Chapter 3.2 – Information to be Submitted with an Application for Resource Consent

- 2.1 *That in the second line of Rule 3.2.2.14 after the word ‘following’ the word ‘additional’ be included.*
- 2.2 *That in Rule 3.2.2.14, in the second line of the first bullet point after the word ‘building’, the following words be included:
‘if available’.*
- 2.3 *That bullet point 2 be deleted.*
- 2.4 *That the third bullet point be amended to read:
‘where relevant, plans of the existing and proposed works shall include cross-sections.’*
- 2.5 *That in the fourth bullet point the words ‘outline of values for which the item was listed’ be deleted.*
- 2.6 *That in the fourth bullet point after the word ‘samples’ the following words be included:
‘where practicable’.*
- 2.7 *That in the last three bullet points the words ‘(this is recommended)’ be deleted.*

Chapter 3.10 – Definitions

- 2.8 *That a definition for ‘Heritage Area’ be included in Chapter 3.10 as follows:*

‘HERITAGE AREA *means a defined area, listed in the schedule of heritage areas, that is characterised by a concentration and continuity of sites, buildings, structures, objects and/or landscape characteristics that are united in their reflection of historic, cultural, social, industrial, spiritual, architectural, archaeological, political or other values that should be protected from inappropriate subdivision, use and development.*

A heritage area may include individually listed heritage buildings and objects, as well as buildings and objects that have not been individually listed but have heritage values that contribute to the overall values of the area.’

Additions to Area-Based Rules

- 2.9 *That under the heading ‘Additions to Area-Based Rules the first bullet point be amended by the addition of the words:*
(except for individual sites on which listed heritage buildings or objects are located that are also separate heritage areas).
- 2.10 *That under the heading ‘Additions to Area-Based Rules’, after the third bullet point, a further bullet point be included as follows:*
- *The subdivision rules in Chapter 21B apply for any subdivision of a site in a listed Heritage Area.’*
- 2.11 *That under the heading ‘Additions to Area-Based Rules’, the provisions be amended as follows:*
- *In the first bullet point before the word ‘heritage’ include the word ‘listed’*
 - *Delete the last bullet point and the preceding words ‘and in the central area/suburban centres add the following to the above bullet points’.*

Chapter 20 - Introduction

- 2.12 *That the last sentence in first paragraph of 20.1, Introduction, be reworded as follows:*
‘The protection of historic heritage from inappropriate subdivision, use and development and the use of these places plays a core role in promoting the sustainable management of Wellington’s natural and physical resources.’
- 2.13 *That the first sentence under 20.1.1 be amended to read:*
‘The evidence of Wellington’s heritage is seen in buildings, structures, objects, archaeological sites and areas’
- 2.14 *That under the heading ‘Building, Object, Areas’ the second sentence in the second paragraph be deleted and replaced with the following:*
‘The criteria for identifying buildings, objects and areas in the District Plan may include places with archaeological, architectural, cultural, historic, scientific or technological qualities and whether the place is rare or unique, representative of a particular style or era, authentic and/or contributes to a group of places’.
- 2.15 *That under the heading ‘Surroundings’ the last two sentences be replaced with the following:*

APPENDIX 1

'Any new development, which by its character or location might adversely impact on the setting of a listed heritage item, will require careful consideration in terms of any area based rules that might apply.'

- 2.16 That the second paragraph of provision 20.1.4.1 be reworded to read:

'There are other international charters such as the Burra Charter, the Xian Declaration on the Conservation of the Setting of Heritage Structure, Sites and Areas 2005 and guidelines such as the Policy for Government Departments' Management of Historic Heritage 2004.'

- 2.17 That in provision 20.1.4.2 the first sentence be reworded as follows:

'Where a heritage item is registered by the New Zealand Historic Places Trust, the Council will inform the Trust in respect of any resource consent or District Plan Change.'

- 2.18 That in provision 20.1.5 'Courtenay Place' be spelt correctly.

- 2.19 That in provision 20.1.6 after the second paragraph, an additional paragraph be included as follows:

'The purpose of a Conservation Plan is to ensure that the significance of a heritage place is identified in detail, to ensure that when changes occur the heritage values are not removed or lost. Conservation Plans are to control physical intervention and specify the degree and nature of intervention acceptable for non-conservation purposes.'

Objective 20.2.1

- 2.20 That objective 20.2.1 be reworded as follows:

'To recognise the City's historic heritage and protect it from inappropriate subdivision, use and development.'

Chapter 20 - Policies

- 2.21 That statements identifying anticipated environmental results be included at the end of each italicised explanatory statement to the policies as follows:

APPENDIX 1

- 20.2.1.2 *The environmental result will be the retention of listed items that constitute a significant portion of Wellington's heritage.*
- 20.2.1.3 *The environmental result will be the retention of listed items that maintain their heritage values.*
- 20.2.1.4 *The environmental result will be the retention of listed items on a site within an appropriate setting.*
- 20.2.1.5-8 *The environmental result will be heritage areas that retain their character, coherence and heritage values.*
- 20.1.2.9 *The environmental result will be heritage buildings, objects or areas that are not cluttered with signs.*
- 20.1.2.10 *The environmental result will be the retention of listed trees.*
- 20.1.2.11 *The environmental result will be the protection of, or the appropriate excavation of archaeological sites.*
- 2.22 *That in Policy 20.2.1.1 under 'Methods' the third bullet point be deleted and that a new bullet point be included as follows:*
- *'Maintaining and updating the Council's Heritage Inventory.'*
- 2.23 *That the italicised explanatory statement to Policy 20.2.1.1 be reworded as follows:*
- 'The listing of buildings, objects and areas of heritage value in the District Plan provides the primary means of identifying places of heritage value. Council is undertaking work on identifying significant archaeological sites. Council maintains the Built Heritage Inventory, which provides information on the heritage significance of buildings, objects and areas that are listed in the District Plan. The Built Heritage Policy 2005 includes a range of incentives to property owners to encourage listing in the District Plan.'*
- 2.24 *That the italicised explanatory statement to Policy 20.2.1.2 be deleted and worded and expanded as follows:*
- 'The Council's overriding desire is to retain listed buildings or objects in the entirety, but accepts that to ensure ongoing use that some demolition or destruction of the existing structure may be required to allow modifications. Resulting modifications will be determined with reference to Policy 20.2.1.3.'*

APPENDIX 1

Where the total demolition, destruction or relocation of a listed building or object is proposed, the Council will need to be convinced that there is no reasonable alternative option to losing the listed item.

The demolition, destruction or relocation of listed buildings or objects (in whole or in part) therefore requires a resource consent to ensure that the heritage effects of an application can be assessed and considered against the objectives and policies of the Plan and Part 2 of the Act.

As the purpose of the rules giving effect to Policy 20.2.1.2 is to assess the effects of historic heritage, the discretionary (restricted) activity classification has been used. This is consistent with the structure of the District Plan in that the Heritage chapter is focused on the assessment of effects on historic heritage and the other Area based chapters of the Plan still apply to all other elements of land use. .

In order to avoid the argument that the activity classification of discretionary (restricted) creates a perception or signal that the Plan has created a 'lesser hurdle' for applications than might have otherwise applied if a fully discretionary activity classification were used, it is specifically recorded that this is not the case. The classification has been selected to limit the Council's discretion to heritage matters only, but in no way to diminish the significance of the assessment of heritage issues. Each application must meet the requirements of the RMA to obtain a resource consent.

The discretionary (restricted) activity classification enables the use of a non-notification clause. Such a clause has been used for modifications under rule 21A.2.1 and 21A.2.3 due to the scale of the proposals provided for under that rule. For all other applications, no such clause is provided and the statutory test for notification will apply.'

2.25 *That in the third line of Policy 20.2.1.2 the word 'irrefutably' be deleted and replaced with the words 'on reasonable grounds'.*

2.26 *That the following additional text be included at the end of the italicised explanatory statement to policy 20.2.1.3:*

As the purpose of the rules giving effect to Policy 20.2.1.3 is to assess the effects of historic heritage, the discretionary (restricted) activity classification has been used. This is consistent with the structure of the District Plan in that the Heritage chapter is focused on the assessment of effects on historic heritage and the other Area based chapters of the Plan still apply to all other elements of land use.

APPENDIX 1

In order to avoid the argument that the activity classification of discretionary (restricted) creates a perception or signal that the Plan has created a 'lesser hurdle' for applications than might have otherwise applied if a fully discretionary activity classification were used, it is specifically recorded that this is not the case. The classification has been selected to limit the Council's discretion to heritage matters only, but in no way to diminish the significance of the assessment of heritage issues. Each application must meet the requirements of the RMA to obtain a resource consent.

The discretionary (restricted) activity classification enables the use of a non-notification clause. Such a clause has been used for modifications under rule 21A.2.1 and 21A.2.3 due to the scale of the proposals provided for under that rule. For all other applications, no such clause is provided and the statutory test for notification will apply.'

2.27 That Policy 20.2.1.6 be amended to read:

'Protect buildings, structures, spaces and other features integral to the significance of a heritage area and allow demolition, destruction or relocation where there are no significant effects on heritage values'.

2.28 That the following additional text be included at the end of the italicised explanatory statement to Policies 20.2.1.5-8:

'As the purpose of the rules giving effect to Policies 20.2.1.6-8 is to assess the effects of historic heritage, the discretionary (restricted) activity classification has been used. This is consistent with the structure of the District Plan in that the Heritage chapter is focused on the assessment of effects on historic heritage and the other Area based chapters of the Plan still apply to all other elements of land use.

In order to avoid the argument that the activity classification of discretionary (restricted) creates a perception or signal that the Plan has created a 'lesser hurdle' for applications than might have otherwise applied if a fully discretionary activity classification were used, it is specifically recorded that this is not the case. The classification has been selected to limit the Council's discretion to heritage matters only, but in no way to diminish the significance of the assessment of heritage issues. Each application must meet the requirements of the RMA to obtain a resource consent.

APPENDIX 1

The discretionary (restricted) activity classification enables the use of a non-notification clause. Such a clause has been used for works under rule 21B.2.1 due to the scale of the proposals provided for under that rule. For all other applications, no such clause is provided and the statutory test for notification will apply.'

2.29 *That after the second paragraph to the italicised explanatory statement to Policies 20.2.1.5-8 the following be included:*

'Heritage areas also contain buildings or structures that have been identified as having no heritage value. Identified non-heritage buildings or structures will be controlled to ensure that any future modifications enhance the values of the heritage area but their demolition or relocation will be permitted.'

2.30 *That under the heading of 'Methods' in Policy 20.2.1.9 a further bullet point be added as follows:*

- *'Design Guide for Signs.'*

Chapter 21 – Rules

Rules – General

2.31 *That Rules 21A.3.1, 21B.3.1 and 21B.3.2 be reclassified as Discretionary Activities (Unrestricted), with all consequential amendments and with no presumption for the non-notification of applications.*

2.32 *That Rules 21A.2.1.2 – 21A.2.4 be deleted and replaced with the following:*

'21A2.1.2 Height, coverage, bulk and massing of buildings (to the extent that these affect Historic Heritage).'
(with consequential amendments to the associated non-notification provision)

2.33 *That Rules 21A.2.3.2 – 21A.2.3.4 (as renumbered) be deleted and replaced with the following:*

'21A2.3.2 Height, coverage, design, external appearance and siting and the bulk and massing of buildings (to the extent that these affect Historic Heritage).'

APPENDIX 1

(with consequential amendments to the associated non-notification provision)

2.34 *That Rules 21B.2.1.2 – 21B.2.1.4 be deleted and replaced with the following:*

*‘21B.2.1.2 Design, height, siting and coverage and the bulk and massing of buildings (to the extent that these affect Historic Heritage).’
(with consequential amendments to the associated non-notification provision)*

2.35 *That as a result of proposed Rules 21A.3.1, 21B.3.1 and 21B.3.2 being recommended to become Discretionary Activities (Restricted) the following matters over which the Council has reserved discretion be added to the renumbered Rules 21A.2.2 and 21B.2.2 as follows:*

‘Effects on Historic Heritage

Height, coverage, bulk and massing of buildings (to the extent that these affect Historic Heritage).’

And that in respect of renumbered Rule 21B.2.3 the following be added:

‘Effects on Historic Heritage’

21A – Buildings and Objects

2.36 *That in Rule 21A.2.1.9 the words ‘or object’ be included after the word ‘building’ in the two places where this occurs.*

2.37 *That in the first line of Rule 21A.3.1 after the word ‘building’ the words ‘or object’ be included.*

APPENDIX 1

21B – Heritage Areas

2.38 That in the introductory statements after the second paragraph an additional paragraph be included as follows:

‘Non-listed buildings or structures within a heritage area are subject to the rules in this chapter except that identified non-heritage buildings or structures may be demolished or relocated.’

2.39 That in Rule 21B2.1 the Assessment Criteria 21B.2.1.7 be amended to read:

‘The extent to which proposals meet the provisions of any relevant design guide and particularly in respect of Heritage Areas within the Central Area, the provisions of the Central Area Urban Design Guide.’

21D - Signs

2.40 That in the introduction to Rule 21D, the first bullet point be amended by the addition of the words:

(except for individual sites on which listed heritage buildings or objects are located that are also separate heritage areas).

2.41 That in the introduction to the Rule 21D the second bullet point be deleted

2.42 That in Rule 21D.1.1 the second bullet point be deleted

2.43 That Rule 21D.3.1 be amended as follows:

- *In the introductory paragraph the words ‘or within a heritage area located in the Central Area or Suburban Centre’ be deleted.*
- *The deletion of the second bullet point in the rule which reads, ‘within a listed heritage area in the Central Area or Suburban Centre’.*
- *Amend the words ‘object or area’ at the end of Rule 21D.3.1.5 and replace with ‘or object’.*
- *Amend the words ‘object or area’ at the end of Rule 21D.3.1.8 and replace with ‘or object’.*

APPENDIX 1

- *In the italicised explanatory statement to Rule 21D.3.1 delete the words ‘Signs have the potential to compromise the heritage values of heritage areas’ in the second and third lines and delete the words ‘area or’ in the fourth line.*

2.44 *That the first bullet point to Rule 21D.3.1 be amended as follows:*

- *‘listed heritage buildings or objects, or sites on which a listed building or object is located; or’*

2.45 *That in Rule 21D.3.1 under ‘Assessment Criteria’ a new provision be included as follows:*

‘21D3.1.11 The extent to which signs comply with the Design Guide for Signs.’

3. *That all submissions and further submissions be accepted or rejected to the extent that they accord with the above recommendations.*

Recommendation for further work

That as a matter of priority, it is requested that further heritage assessments be undertaken in respect of listed heritage items on large sites with the view to identifying appropriate ‘site’ boundaries. It is intended that these be recorded as part of the heritage listings in Chapter 21 of the District Plan to ensure that new building development and/or subdivision beyond those boundaries will not be subject to the provisions of Rules 21A.2.3 or 21A.3.1 (as renumbered).

2. SUBMISSIONS

A total of 85 main submissions and 14 further submissions were received on proposed District Plan Change 43.

The list below identifies the main submitters, the further submitters by name and submission number.

A total of 14 main submitters (of which 9 were also further submitters) and 5 other further submitters appeared before the hearing committee, either in person or represented by their consultants or counsel. Those who appeared at the hearing are highlighted on the list.

APPENDIX 1

Submitters – Heritage Provisions

1 J. S. Wylie
2 W.R. & J. Williams
3 Jessie Munro
4 Ernest Roy Savage
5 Mrs. TB Farrance
6 Anne McKinnon
7 Timothy John Hawley
8 Chris Maclean
9 Redmer Jan Yska
10 Keith Taylor Matthews
11 Thomas Mark Pulford
12 Moira A Wright
13 Christopher Rabey
14 Judith Irene Edmonds
15 Margaret Grace Stothart
16 Arco House Limited
17 Foodstuffs (Wellington) Co-Operative Society Ltd
18 J.A.W. & N.D. Moore
19 Dr. Peter & Mrs. Pauline Russell
20 Gary Richard Black
21 Judith L Berryman
22 Bridget Elenor Hodgkinson
23 Laurence Murray Greig
24 Jackie Tutt
25 Judith Merrell Nathan
26 AF & ES Ferguson
27 Dale Mary McTavish
28 Janice Calder
29 Catherine Anne Mary Lythe
30 Margaret H & William H Alington
31 Beverley Gail Andrews
32 Glen S Robertson
33 Graham Wilson Salmond
34 The Architectural Centre Inc
35 Ralph & Margaret Pannett
36 Jean M Cartmell
37 Jane Meares & Denis Clifford
38 Kathryn Rachel Fortune
39 Flagstaff Hill Area Resident's Association
40 Maryan & Kathryn Street
41 William Martin Bond
42 Diana Mary Beaglehole
43 Jennifer Sylvia Bryant
44 Deborah Burns
45 Peter Cooke
46 Ontrack(New Zealand Railways Corporation)
47 Capital Properties New Zealand Ltd
48 Huddart Parker Building Ltd
49 McAuley Trust INC
50 Yvonne Legarth
51 Save Erskine College Trust
52 New Zealand Anglican Church Pension Board and the Anglican Missions Board
53 Mt. Victoria Residents Association Inc
54 Barbara Fill
55 AMP NZ Property Commercial Ltd
56 New Zealand Institute of Surveyors Inc
57 Onslow Historical Society Inc
58 Gwendoline Callaghan

59 Richard Fendlay
60 Michael Horsby
61 Christopher John Gollins
62 Peter Wilkin
63 Gary Brown
64 Linda Brown
65 Pauline Brown
66 John Nicholas Wyatt
67 David Anthony Chan
68 Peter Dowell
69 Heritage Property Management Ltd
70 Richard Waugh
71 Dawn McDermott
72 Michael McDermott
73 Barry Lyver
74 Alan Rigby
75 Deborah Stewart
76 New Zealand Historic Places Trust
77 Bruce Gordon McFadgen
78 Sarah Anne Bergquist
79 Wellington Civic Trust
80 Thorndon Society Inc
81 ING (NZ) Ltd
82 St. Johns In the City Council
83 Newtown Residents Association
84 Ian Bowman
85 Wharenui Apartments Ltd

Further Submitters

1F Dale Mary McTavish
2F McAuley Trust Inc
3F Huddart Parker Building Ltd
4F Capital Properties New Zealand Ltd
5F AMP NZ Property Commercial Ltd
6F Save Erskine College Trust
7F St Johns Inner City Council
8F Wesley Wellington Parish
9F ING(NZ) Ltd
10F Foodstuffs (Wellington) Co-operative Society Ltd
11F Victoria University of Wellington
12F Greater Wellington Regional Council
13F Tim Bollinger
14F New Zealand Historic Places Trust

GENERAL SUBMISSIONS

Submissions in Support of the Plan Change

The Committee heard that in addition to submitters who expressed support for specific aspects of the DPC 43, submissions 24, 26, 29, 39 and 53 had supported the whole plan change.

Consideration:

None of the submitters appeared at the hearing in support of the submissions but as the submissions were in favour of the proposals the Committee agreed that they should be accepted.

Decision:

It is recommended that submissions 24, 26, 29, 39 and 53 supporting the DPC 43 be accepted.

Submissions commenting that the Plan Change Fails to Provide Adequately for the Protection of Historic Heritage

Submissions 22, 50, 51, 54, 76 and 84 expressed general opposition to DPC 43. The submitters argued that the proposals fail to provide adequately for the protection of historic heritage. Submitters 50, 51 and 54 specifically requested that the Plan Change be withdrawn and replaced with new provisions.

The key points raised by the submitters were that the Plan Change:

- does not fully reflect the Council's commitment to built heritage.
- fails to take account of the full intent of the Council's Built Heritage Policy of June 2005.
- fails to take account of national and international guidelines for the identification, protection and sustainable use of historic heritage.
- fails to protect whole heritage buildings, places and items.
- fails to adequately control potential demolition.
- fails to control interiors.
- fails to control the cumulative effects of use and development.

Consideration:

In response to the above submissions, the Committee first wished to highlight the Council's longstanding commitment to the protection of Wellington's heritage. Over the past two decades or so, significant resources have been committed in the form of property acquisition, financial incentives, policy development, education and regulation. The combined effect of these measures has been to retain a substantial heritage component in the city's building stock.

The Committee accepted that regulatory controls in the form of District Plan rules are one, but nevertheless important mechanism for promoting the protection of heritage. The Committee heard that since the inception of planning controls in the late 1960s, the

APPENDIX 1

heritage provisions have been extended and refined on an ongoing basis. They have evolved from a six-line rule statement for six listed items, to the current provisions that regulate over 500 items.

With regard to the level of regulatory intervention the Committee agreed that there would always be a spectrum of opinion from those who advocate light-handed intervention on one hand, to those advocating to more stringent control on the other. In this case, the submitters were requesting that the plan change provisions be pitched at the more stringent end of the spectrum.

The Committee was advised that the preparation of DPC 43 did involve consideration of many of the issues raised by the submitters but it was determined that the change should focus on addressing matters of more immediate concern. These were:

- The need for strengthened objectives and policies;
- The removal of controlled activities;
- Better control of demolition;
- Protecting the setting of listed items;
- Appropriate rules for heritage areas.

The Committee was of the view that the extent to which these matters have been addressed, provides a significant advance in the regulatory protection of heritage in the City, provides an adequate response to the requirements of the Resource Management Act and adequately reflects the intent of the Council's Built Heritage Policy of June 2005.

The Committee conceded that the Plan Change does not deal fully with a number of issues of concern to the submitters such as the whole protection of buildings and the control of interiors. The Committee did not regard these matters as unimportant but it was acknowledged that they would require further intensive work and support if regulatory intervention was to be taken to a higher level.

With regard to the specific requests from Submitters 50, 51 and 54 to withdraw the Plan Change, this is not supported by the Committee. A withdrawal of DPC 43 at this stage would mean that the existing heritage provisions would continue to apply for some considerable time resulting in development outcomes that the Plan Change 43 proposals are endeavouring to counter.

Decisions:

It is recommended that Submissions 22, 50, 51, 54, 76 and 84 in general opposition to the Plan Change, not be accepted.

It is recommended that Submitters 50, 51 and 54 requesting that Plan Change 43 be withdrawn, not be accepted.

Submissions Opposing the Entire Plan Change

Submissions 1, 16, 17, 47, 48, 49, 81 and 82 opposed the entire plan change and all but Submission 81 requested that the change be rejected or withdrawn.

APPENDIX 1

The submitters raised the following key concerns:

- The change is contrary to the purposes and principles of the Resource Management Act in that it promotes a protectionist approach at the expense of other resource management issues.
- The change is too narrowly focussed on heritage protection.
- The Resource Management Act does not require protection – the plan change sets a higher objective.
- Undue weight is given to Section 6(f) of the Act.
- The change is inconsistent with Section 85 because it would render interests in land incapable of reasonable use.
- The controls are excessive and too restrictive.
- The change undermines land holders' ability to provide for economic wellbeing.
- The change requires excessive cost for compiling information and seeking consents.
- The rules are onerous and there is no justification for using the discretionary (unrestricted) or non-complying class of activity status. All activities should either be Permitted or Discretionary (Restricted).

Submitters 47, 48, 49 and 82 were represented at the hearing by legal counsel and presented detailed submissions on the Plan Change proposals. Submitters 16, 17, 81 and 85 also appeared at the hearing and generally expressed concern about the unreasonable and restrictive nature of the proposals.

Consideration:

With regard to the legal submissions presented two key themes were stressed.

The first was that the provisions of Plan Change 43 as a whole should be consistent with the provision of the Resource Management Act 1991.

The second was that District Plan rules should impose restrictions only to the extent required to address an effect in respect of protecting historic heritage from inappropriate use. They should go no further than that and not potentially raise issues which are not directly relevant to historic heritage. This provided the basis for the submitter's request that the heritage rules be Discretionary Activities (Restricted) rather than Discretionary (Unrestricted) to avoid situations where matters other than heritage might be raised in the consideration of resource consents.

The Committee was inclined, in large measure, to accept these submissions.

In terms of addressing the submissions through amendments to the proposed provisions the Committee was of the view that focus should first be on applying the wording of section 6(f) of the Act which requires the *'The protection of historic heritage from inappropriate subdivision, use and development'*. The submitters had requested that this wording form the basis of the overriding objective for the heritage provisions to maintain consistency with the Resource Management Act.

APPENDIX 1

Secondly, the Committee considered that the key activity rules should be Discretionary Activities (Restricted). On this matter very careful consideration was given to the various arguments for and against applying the Discretionary (Restricted) status.

The Committee accepted that it was common practice to apply rules under the various activity classes in a hierarchical way, i.e. from Permitted, Controlled, Discretionary (Restricted), Discretionary (Unrestricted) to Non-Complying. Activities were usually given one classification or another depending on the level of regulatory control that the Council wished to exercise. This was on the understanding that more regulatory 'teeth' could be applied the higher the activity classification.

However, the Committee did not accept that in respect of discretionary activities there was any marked difference in the power of regulatory control. The key distinguishing features between Discretionary (Restricted) and Discretionary (Unrestricted) activities were seen as the matters over which discretion could be exercised and the ability to provide for the non-notification of Discretionary (Restricted) proposals.

The Committee first agreed that given the specific focus of the heritage chapters in the Plan that it would be appropriate to apply the Discretionary (Restricted) classification to heritage activities with the matters for discretion directed solely to historic heritage. As a consequence the Discretionary (Unrestricted) heritage rules would not act as a 'backstop' - i.e. enabling the consideration of wider issues not 'triggered' by other land use rules in the District Plan. It was acknowledged that while there was no real evidence that Discretionary (Unrestricted) rules have been used in this way it was nevertheless accepted as a possibility and the Committee was firmly of the view that the consideration of extraneous matters should be avoided.

Further to the above, the Committee accepted that a Discretionary (Restricted) approach would still allow other land use effects to be dealt with under other area-based provisions which have specific objectives, policies and rules to guide the identification and consideration of them.

Regarding the notification or non-notification of applications the Committee was also firmly of the view that rules transferred from Discretionary (Unrestricted) to a Discretionary (Restricted) classification should not include a presumption for non-notification. In this respect the situation would remain unaltered. The presumption for notification would continue, subject to the usual tests for non-notification prescribed in the Act.

The Committee did note that a change in the activity classification might impact on notification decisions for applications requiring consent under both the heritage chapter and other area based rules. This is, when a consent for a heritage matter is required along with other matters requiring consent under the area based rules. The 'bundling' principle often means that the proposal as a whole will be considered under the Discretionary (Unrestricted) category meaning that a proposal will often lose the benefit of the non-notification clauses normally available under the Discretionary (Restricted) rules in the area based rules.

Finally the Committee noted that there could be a perception that the reclassification of activities might be seen as a 'watering down' of the heritage controls. As 'one step' up

APPENDIX 1

from a Controlled Activity, the resource consent process as a Discretionary Activity (Restricted) would simply be a matter for working out what conditions will be imposed in respect of resource consent applications. (This perception was acknowledged as existing from the historical application of the District Plan). However, the Committee was of the view that such perceptions would not be real. The deletion of Controlled Activities for managing heritage continued to be strongly supported and the elevation of controls to Discretionary (Restricted) would enable unsatisfactory development proposals to be declined. To assist in avoiding arguments that the activity classification of Discretionary (Restricted) might signal that the Plan has created a 'lesser consent hurdle' for applicants, clear explanations have been included in the policies to dispel such notions. It is specifically stated that the Discretionary (Restricted) status has been selected to limit the Councils discretion to heritage matters only, but in no way diminish the significance of the assessment of heritage issues. Each application must meet the requirements of the Resource Management Act to obtain a resource consent.

In light of the above the Committee was satisfied that amendments to Plan Change 43 focusing on the rewording of the objective using the phrasing from section 6(f) of the Act and changing the activity classification of various rules, would address the primary concerns of the submitters. The provisions would be more consistent with the requirements of the Act, and minimise the objections made on the grounds that the provisions render land affected by heritage listings incapable of reasonable use.

The specific changes or amendments to the Plan Change addressing the matters commented on above have been dealt with in recommendations under the relevant chapter headings which follow. The recommendations below relate to the re-classification of various rules from the Discretionary (Unrestricted) to Discretionary (Restricted).

Decision:

It is recommended that Submissions 1, 16, 17, 47, 48, 49, 81 and 82 opposing the entire Plan Change be accepted to the extent that Rules 21A.3.1, 21B.3.1 and 21B.3.2 be reclassified as Discretionary Activities (Restricted), with all consequential amendments but with no presumption for the non-notification of applications.

Submissions Requesting that provisions of the Plan Change be amended so the Plan is easier to read

A total of 27 submissions (2-15, 20-22, 28, 31-33, 37, 38, 41-43), commented that the proposed new policies and rules need to be more concise and easier to understand and that the plan be amended accordingly.

Consideration:

The Committee was advised that when the District Plan was prepared, one of the Council's overriding objectives was to create a document that was clear and easy to understand and read. An endeavour was made at that time to write rules in plain English.

However, the Committee acknowledged that over time, as society as a whole has become more litigious, owners and developers have continued to push the boundaries

APPENDIX 1

and to find 'loopholes' in the rules. Also, the Council has had to deal with increasingly more complex issues and as a consequence the provisions of the Plan have had to be drawn with an ever increasing degree of precision.

The Committee also acknowledged that District Plans are quasi-legal documents and the rules within plans have the force and effect of regulations under the Resource Management Act. As the Plan has legislative effect, the Committee accepted that provisions should not be vague, ambiguous or otherwise unintelligible. In this regard it was noted that the legal drafting task of achieving a balance between simplicity and precision was not easy. It was also noted that the complexities of the Resource Management Act created difficulties in terms of the terminology and processes that must be followed.

Nevertheless, the Committee was satisfied that in general the provisions of Plan Change 43 were acceptable and that the submissions requesting re-drafting not be accepted.

Decision:

It is recommended that submissions 2-15, 20-22, 28, 31-33, 37, 38, 41-43 requesting amendments to the Plan Change so that it is easier to read, not be accepted.

Submissions Requesting Notification of Resource Consent Applications

Submissions 10, 45, 50 and 51 raised concerns about the public notification of resource consent applications. Submitter 51 appeared at the hearing and among other things expressed concern about the rewording of the notification statements in Rules 21A.3 and 21B.3.

Consideration:

The Committee was advised that under the proposed rules, only the Discretionary (Restricted) Rules 21A.2, 21B.2 and 21D.3 include statements providing for the non-notification of applications. The Committee was further advised that a decision on whether or not a resource consent application will be notified for a Discretionary (Unrestricted) consent will, in all cases, be made in accordance with the provisions on notification in the Resource Management Act.

Submitters 10 and 45 requested that all applications should be publicly notified. The Committee agreed that as the provisions regarding notification in respect of Plan Change 43 are governed by the requirements of the Resource Management Act, it is not legally possible to require all applications to be notified. Accordingly it was decided that the submissions could not be accepted.

Submissions 50 and 51 commented that it is not sufficient just to advise NZHPT and heritage protection authorities of applications made as discretionary activities. It was argued that the legislation requires that notice be served and the Plan should reflect this.

The Committee did not agree. It was accepted that the notification provisions in Plan Change 43 had been drafted to accord with the Act. Under Section 36A the Council has no duty to consult about resource consent applications and there are no specific

APPENDIX 1

requirements in the Act regarding the notification of the NZHPT or heritage protection authorities.

For Discretionary Activities (Unrestricted) Activities the Committee was of the view that the proposed rule statements regarding notification were appropriate. These provisions require relevant authorities to be advised of applications affecting buildings or objects subject to heritage orders or NZHPT registrations. It was not considered that the altered wording in DPC 43 changed the intent of the provisions or would adversely affect the submitters.

With specific regard to the matters raised by submitter 51 at the hearing, the Committee was aware that the settlement between the Council and SECT in respect of Plan Change 28 related to the Trust being notified of proposed developments around the site of Erskine College, the object of the Heritage Order. The Memorandum of Understanding that was to be drafted on this matter remains in the hands of SECT's lawyers and is still to be progressed. The Committee accepted that this is a separate issue and not one that can be addressed through the District Plan.

The District Plan provisions will continue to require SECT to be advised of any proposals directly affecting property subject to the Erskine College Heritage Order.

Decision:

It is recommended that submissions 10, 45, 50 and 51 requesting alterations to the public notification provisions, not be accepted.

Submissions Beyond the Scope of the Plan Change

The Committee received advice through the hearing report that submissions 1, 30, 34, 45, 50 and 79 raise matters beyond the scope of Plan Change 43.

Submitters 30, 45, 50 and 79 requested that additional buildings be listed and included in the heritage schedule. No specific buildings were mentioned.

Submission 1, 34 and 79 made comment or requests on a wide range of matters including:

- Undertaking an interiors survey;
- Establishing new heritage areas;
- Making the inventory available on the website;
- Adopting a strategy to address buildings not currently listed;
- Recognising excellent contemporary architecture as heritage;
- Considering heritage precincts for excellent contemporary architecture;
- Providing regular seminars or lectures;
- Strategies to develop the appreciation of Wellington's architecture and built environment;
- Ensuring public access and ownership of Futuna Chapel in Karori;
- Increasing funding to assist owners;
- Providing monetary compensation to offset the losses from heritage controls.

APPENDIX 1

Consideration:

The Committee agreed that the above matters were beyond the scope of Plan Change 43. It was noted that majority of these items would be covered in one form or another through future District Plan changes, Plan reviews or through the implementation of the Council's Built Heritage Policy (June 2005).

Decision:

It is recommended that submissions 1, 30, 34, 45, 50 and 79 seeking the consideration of matters beyond the scope of Plan Change 43, not be accepted.

Other Submissions

Under the 'General' heading a further three submissions were considered involving a variety of issues.

Submission 52 commented that where the Plan provisions refer to Maori precincts, the Tenth Trust should be the only group consulted as the Tangata Whenua (particularly in respect of the Pipitea Precinct) and no 'other Maori'. It was requested that references to 'other Maori' be removed. Submitter 52 owns Anglican House within the Pipitea Maori Precinct and they expressed concern that they should not have to consult with any group other than the Tenth Trust, should development be contemplated.

Submission 53 made various comments about the painting of heritage buildings, cross referencing the Built Heritage Policy and assessing the listing of buildings once they reach the age of 50 years. No specific relief was requested.

Submission 56 commented that the rewrite of the heritage rules did not match the format of the Central Area review under Plan Change 48, particularly with regard to the application of assessment criteria. This submitter appeared at the hearing and spoke on the issue.

Consideration:

With regard to Submission 52 the Committee noted that matters relating to Maori sites were not subject to the Plan change and to this extent the submission could not be supported. Nevertheless, the Committee considered that in any event, the pre-determination of consultation with particular Iwi groups should not be codified in the District Plan. The involvement of Tangata Whenua or other Maori would be determined as part of consultation process as prescribed under the Resource Management Act.

As the matters under Submission 53 were in the form of comments and did not seek any relief the Committee noted the points raised.

With regard to Submission 56 the Committee was aware that Plan Change 48 (Central Area Review) had established a new structure for the District Plan and that this would likely be followed for other full chapter reviews in future. However, it was noted that as Plan Change 43 preceded Plan Change 48, a similar structure was not adopted. The Committee also noted that Plan Change 43 was not intended to be a complete rewrite of the heritage chapters as the provisions for listed trees and Maori sites were specifically

excluded. To avoid a mixed format within Chapter 21 the Committee was satisfied that the original format be maintained for Plan Change 43.

Decision:

For the reasons indicated it is recommended that submissions 52, 53 and 56 relating to the above matters, not be accepted.

6.2 SUBMISSIONS RELATING TO CHAPTER 3.2 – INFORMATION TO BE SUBMITTED WITH APPLICATIONS (Rule 3.2.2.14)

The Committee considered a range of submissions relating to the information to be submitted with applications for proposals under the heritage provisions (proposed Rule 3.2.2.14).

Submitter 27 supported the provisions but requested no specific relief.

Submitters 47, 48, 49 and 82 requested that the information requirements for heritage be rejected but nevertheless sought various amendments to the provisions.

Consideration:

The Committee considered that submissions 47, 48, 49 and 82 made some valid points as the proposed heritage provisions in 3.2.2.14 do overlap with other information requirements. The Committee received advice that Section 3.2 of the District Plan currently includes information requirements for resource consent applications in respect of land uses, subdivision and developments involving design guide assessment which to some extent duplicate the proposed heritage requirements.

In respect of the first bullet point in 3.2.2.14, it was agreed that in all cases copies of original plans or elevations may not be available from the city archives and that an appropriate qualification should be included.

In respect of bullet point 2 it was agreed that this point is covered by the existing land use information requirements and the bullet point could therefore be deleted.

The Committee also accepted that as the third bullet point covers matters that are already required under Rule 3.2.2 for land use consents this bullet point should be deleted. However, it was agreed that the requirement for cross sections is not presently covered and should be retained as an amended bullet point.

With regard to the fourth bullet point the Committee was of the view that this contains necessary additional information requirements. However, it was considered that two amendments could reasonably be made. It was agreed that the applicant should not be required to outline the values for which the heritage item was listed as it was accepted that the values should have been established at the time of listing and recorded in the Council's inventory. While it was also accepted that some of the older listings do not have fully documented inventories it was considered that applicants should not have to justify any particular listing.

APPENDIX 1

Also in respect of the fourth bullet point it was agreed that providing samples of materials may cause difficulties in some instances and that the provision should be qualified by including the words ‘where practicable’ after the word ‘samples’.

With regard to the sixth, seventh and eighth bullet points, the Committee agreed that the rules purport to contain recommendations. To avoid any misunderstandings the Committee determined that under the three bullet points the bracketed words ‘(this is recommended)’ be deleted.

It was noted that through legal submissions at the hearing, Submitters 47, 48, 49 and 82 supported the recommended changes and amendments to Rule 3.2.2.14. Support was also received from Further Submitter 12.

Decisions:

It is recommended that Submissions 47, 48, 49 and 82 relating to Rule 3.2.2.14 be accepted to the extent that the following changes and amendments be made to Rule 3.2.2.14:

That in the second line of the first bullet point after the word ‘building’, the following words be included ‘if available’.

That the second bullet point be deleted.

That the third bullet point be amended to read ‘where relevant, plans of the existing and proposed works shall include cross sections’.

That in the fourth bullet point the words ‘outline of values for which the item was listed’ be deleted.

That in the fourth bullet point after the word ‘samples’ the following words be included ‘where practicable’

That in the sixth, seventh and eighth bullet points the bracketed words ‘(this is recommended)’ be deleted.

Also, in respect of Rule 3.2.2.14, Submitter 76 requested the inclusion of another bullet point requiring plans and elevations to show buildings on adjacent sites to put the heritage item in context.

Consideration:

The Committee considered that a further bullet point as requested by the submitter was not needed as the requirement is already covered by Rules 3.2.2.7.1 and 3.2.2.8. However, it was accepted that it needed to be made clear that the proposed information requirements for heritage proposals are additional to the existing land use requirements.

Decision:

It is recommended that Submission 76 relating to Rule 3.2.2.14 be accepted to the following extent:

That: in the second line of Rule 3.2.2.14 after the word ‘following’ the word ‘additional’ be included.

6.3 SUBMISSIONS RELATING TO CHAPTER 3.10 – DEFINITIONS

A total of six submitters requested definitions for words or phrases in the Plan Change or commented generally on the issue.

Submitters 35, 39 and 54 requested the inclusion of key definitions but made no specific references.

Submitter 50 requested the inclusion of definitions for ‘Conservation’, ‘Maintenance’, ‘Minor’, ‘Preservation’, ‘Restoration’, ‘Reconstruction’, and ‘Repair’.

Submitter 76 requested amendments to the definition for ‘Repair and Maintenance’.

Submitter 76 also requested a definition for ‘Heritage Area’ and this was supported by Further Submitter 12. It was argued that the Plan Change proposes a definition for ‘Listed Heritage Building’ and for consistency a definition for Heritage Areas should be included as well.

Submission 81 expressed concern that the definition for ‘Repair and Maintenance’ relates to the date that the Proposed District Plan was publicly notified i.e. 27 July 1994. It was commented that in applying the definition it would be difficult to determine how a building looked at this particular time.

Consideration:

Firstly, the Committee was of the view that the proposed heritage provisions would work satisfactorily without the need to include numerous new definitions. Submissions 35, 39, 50 and 54 were not therefore supported.

With regard to the request to amend the definition for ‘Repair and Maintenance’ the Committee noted that this definition had been carried over from the existing provisions and accepted that it had stood the test of time. It was not considered necessary to change the definition.

With regard to Submission 81 the Committee was of the view that the trigger date was appropriate. Any work affecting the structural appearance of a listed item, post 27 July 1994 (the date on which the Proposed District Plan was publicly notified), would have been subject to an application for resource consent. The consent process would therefore provide an appropriate record of new work and assist in determining the appearance of the item for the purpose of the definition.

Concerning the request for a definition for ‘Heritage Area’ the Committee accepted that notwithstanding the descriptive material in the Plan Change it would be helpful to define heritage areas. The new areas proposed for the central city under Plan Change 48 have greatly extended the scope of heritage areas and have raised the potential for misunderstandings as they include individually listed buildings or objects, ‘contributing buildings’ that contribute to the character and coherence of the heritage area and buildings that have been specifically identified as non-heritage buildings. The Committee considered that it would be particularly useful to make it clear that heritage

APPENDIX 1

areas have been established for their assessed heritage values but may still include individually listed buildings or objects. Other ‘contributing buildings’ that are not individually listed are ‘listed’ to the extent that they form part of an approved heritage area included in the schedule appended to the heritage rules.

Decisions:

In respect of submissions 35, 39, 50, 54, 76, 81 and Further Submission 12 concerning definitions it is recommended that no additions, changes or amendments be made.

It is recommended that Submission 76 and Further Submission 12 concerning heritage areas be accepted and a definition be included in Chapter 3.10 as follows:

***‘HERITAGE AREA** means a defined area, listed in the schedule of heritage areas, that is characterised by a concentration and continuity of sites, buildings, structures, objects and/or landscape characteristics that are united in their reflection of historic, cultural, social, industrial, spiritual, architectural, archaeological, political or other values that should be protected from inappropriate subdivision, use and development.
A heritage area may include individually listed heritage buildings and objects, as well as buildings and objects that have not been individually listed but have heritage values that contribute to the overall values of the area.’*

6.4 SUBMISSIONS RELATING TO CHAPTER 20 – HERITAGE INTRODUCTION

Eleven submitters commented on various aspects of the introductory chapter to the Heritage Provisions. These were considered under the various sub-headings in the text. From the issues raised the Committee agreed that some amendments and additions be made.

20.1 Introduction

Submissions 47, 48, 49 and 82 expressed concern at the wording of paragraph 1 which states, ‘ the identification, protection and use of these places is fundamental to the sustainable management of Wellington’s natural and physical resources’. It was argued that the sentence was an overstatement, and did not accord with section 6(f) of the Resource Management Act. It was requested that the provision be amended to be consistent with the Resource Management Act, including Part 2 and Section 85 including the replacement of the word ‘protection’ with the words of Section 6(f) and additional wording stating that heritage provisions must not render an interest in land incapable of reasonable use.

Consideration:

In light of the comments on related submissions in the general Section under the heading ‘Submissions opposing the entire plan change’ the Committee agreed that it would be appropriate to amend the wording of the first paragraph of the Introduction, (Provision 20.1).

APPENDIX 1

Decision:

It is recommended that Submissions 47, 48, 49 and 82 be accepted to the extent that the last sentence in first paragraph of 20.1, Introduction, be reworded as follows:

‘The protection of historic heritage from inappropriate subdivision, use and development and the use of these places plays a core role in promoting the sustainable management of Wellington’s natural and physical resources.’

20.1.1 Built Heritage - Listing Buildings, Objects, Areas and Archaeological Sites and their Settings

Submitter 76 commented that in the first sentence of 20.1.1, a narrow view has been taken of heritage by limiting evidence solely to places settled by Europeans since the 1800’s. It was requested that the sentence be amended to read, ‘The evidence of Wellington’s heritage is seen in buildings, structures, objects, archaeological sites and areas’. This was supported by Further Submitter 12.

Consideration:

The Committee accepted that a wider view of heritage should be taken as other ethnic or immigrant groups had contributed to Wellington’s heritage.

Decision:

It is recommended that Submission 76 and Further Submission 12 in respect of provision 20.1.1 (Built Heritage - Listing Buildings, Objects, Areas and Archaeological Sites and their Settings) be accepted and the first sentence be amended to read:

‘The evidence of Wellington’s heritage is seen in buildings, structures, objects, archaeological sites and areas’

20.1.1 - Buildings, Objects, Areas

Submissions 47, 48, 49 and 82 challenged the first sentence which states, ‘Council strongly supports the protection of the city’s built heritage and in June 2005 adopted a Built Heritage Policy’. It was argued that the Resource Management Act does not require the ‘protection’ of heritage and it was requested that the sentence be deleted.

Submitter 76 requested that in the second paragraph the reference to the criteria for identifying heritage items should be amended to better reflect the RMA.

Consideration:

In respect of submissions 47, 48, 49 and 82 the Committee considered the wording a statement of fact as under the Built Heritage Policy the Council does state a commitment to protecting the city’s heritage. It is not recommended that the wording be deleted.

APPENDIX 1

With regard to Submission 76 the Committee agreed that the definition of Historic Heritage' in the Act does cover a wider range of matters than intimated by the sentence as drafted and should therefore be amended.

Decisions:

It is recommended that submissions 47, 48, 49 and 82 concerning the wording of the first paragraph in 20.1.1 – Building, Objects and Areas, not be accepted.

It is recommended that Submission 76 in respect of provision 20.1 (Buildings, Objects, Areas) be accepted and the second sentence in the second paragraph be deleted and replaced with the following:

'The criteria for identifying buildings, objects and areas in the District Plan may include places with archaeological, architectural, cultural, historic, scientific or technological qualities and whether the place is rare or unique, representative of a particular style or era, authentic and/or contributes to a group of places'.

20.1.1 - Archaeological Sites

Submitter 76 requested an explanation of archaeological sites to follow the definition in The Historic Places Act 1993. Submitter 53 requested a specific rule to control development on archaeological sites, but provided no further details.

Consideration:

With regard to Submission 76 the Committee was of the view that as the text comments that the definition will be the same as that used in the Historic Places Act 1993, it is not considered necessary therefore to repeat the definition in the District Plan.

With regard to the control of development in respect of archaeological sites the Committee noted that proposed Policy 20.2.1.11 explains the Council's current position with regard to archaeological sites and that further work will be undertaken in future.

Decision:

It is recommended that Submissions 76 and 53 in respect of Provision 20.1 (Archaeological Sites), not be accepted.

Surroundings

Submitter 47, 48, 49 and 82 requested the deletion of the statement on surroundings in Chapter 20 on the grounds that the provision is excessive and that the Plan should identify explicitly any building which is affected by the heritage provisions.

Consideration:

The Committee did not support these submissions because it was considered that the surrounding or setting of listed items has become an increasingly important consideration in respect of historic heritage. It was noted that Plan Change 43 contains specific rules relating to surroundings, new heritage areas have been proposed under Plan Change 48 and Design Guides refer to the siting of buildings in context,

APPENDIX 1

particularly where heritage buildings are involved. It was considered desirable therefore, that reference to heritage buildings in their surroundings be retained.

It was acknowledged however, that the last two sentences in the statement were not ideally worded and that the last sentence perhaps gives the wrong impression that any existing development around a heritage item will be subject to regulatory assessment. It was therefore agreed that the last two sentences be replaced. It was noted that at the hearing the submitters supported the proposed amendment.

Decision:

That Submissions 47, 48, 49 and 82 in respect of Provision 20.1 (Surroundings) be accepted and the last two sentences be replaced with the following:

‘Any new development, which by its character or location might adversely impact on the setting of a listed heritage item, will require careful consideration in terms of any area - based rules that might apply.’

Listing Places of Cultural Heritage Value

The Committee was advised that the section in the operative Plan on the listing of items had been deleted under DPC 43. Submissions 35 and 39 questioned why the section has been removed. Submitter 84 supported the retention of criteria and appeared at the hearing in support of this position.

Consideration:

The Committee accepted that it was not strictly necessary to include criteria or information on listings in Chapter 20 of the District Plan as this was part of the section 32 analysis that underpinned any particular listing. While such analysis would be guided by the established criteria they would not in all cases provide the only determinants. It was considered that such information would relate more appropriately to the Council’s Heritage Inventory which details the listing of items resulting from the assessment work that is undertaken. However, it was noted that the criteria for assessing heritage items is currently under review and will be reported to the Council in the near future. Further consideration will be given through this process to determine the desirability of including criteria in the District Plan.

Decision:

It is recommended that Submissions 35, 39 and 84 in respect of Provision 20.1 (Listing Places of Cultural Heritage Value), not be accepted.

Provision 20.1.4.1- Icomos NZ Charter and Other Policy Documents and Guidelines

Submission 76 requested that, in addition to the documents currently listed, reference should be made to the Burra Charter and the United States Secretary of the Interiors Standards. The submission also commented that as there are no national policy statements on heritage matters, this should not be referenced.

Consideration:

APPENDIX 1

The Committee heard that the Council's Heritage Advisor supported making reference to the Burra Charter, an Australian document that is well respected and recognised. It was also agreed that as there are no national policy statements on heritage the reference should be deleted.

Decision:

It is recommended that Submission 76 in respect of Provision 20.1.4.1 (Icomos NZ Charter and Other Policy Documents and Guidelines) be accepted and that the second paragraph of Provision 20.1.4.1 be reworded to read:

'There are other international charters such as the Burra Charter, the Xian Declaration on the Conservation of the Setting of Heritage Structures, Sites and Areas 2005 and guidelines such as the Policy for Government Departments' Management of Historic Heritage 2004.'

Provision 20.1.4.2 - New Zealand Historic Places Trust

Submission 76 commented that this provision does not specify what the Council will inform the NZHPT about.

Consideration:

The Committee concurred with the submitter and agreed that an appropriate amendment be made.

Decision:

It is recommended that Submission 76 in respect of Provision 20.1.4.2 (New Zealand Historic Places Trust) be accepted and that the first sentence be reworded as follows:

'Where a heritage item is registered by the New Zealand Historic Places Trust, the Council will inform the Trust in respect of any resource consent or District Plan change.'

Provision 20.1.5 - Heritage Orders

Submissions 50, 51 and 54 were concerned that this provision fails to state what the effect of a heritage order is and detailed explanations were requested.

Submitter 51 appeared at the hearing to request that the RMA text on heritage orders be included in Provision 20.1.5.

In addition, Submitter 51 also commented that where the notification statements in respect of heritage orders have been reworded in Rules 21A.3 and 21B.3 the original wording be re-instated.

Submission 76 identified the misspelling of 'Courtenay Place' in item 2 of the Buildings that are currently subject to heritage orders.

APPENDIX 1

Consideration:

The Committee heard that all matters relating to heritage orders are appropriately covered under Part 8 of the Resource Management Act 1991. Accordingly, the Committee did not consider it necessary to repeat this material in the District Plan. The Committee was aware that since the District Plan was first prepared, the Council had sought to avoid the duplication of RMA provisions in the District Plan. This was to prevent possible misinterpretations or the need to change the District Plan, should the Act be amended. It was agreed therefore that the RMA text on heritage orders not be included.

Concerning the notification clauses in Rules 21A.3 and 21B.3 the Committee was satisfied that the modified wording made no difference to the fact that SECT would be advised of any resource consent application affecting the existing heritage order for Erskine College. Accordingly, no amendment was considered necessary.

Decisions:

It is recommended that Submissions 50, 51 and 54 in respect of Provision 20.1.5 (Heritage Orders), not be accepted

It is recommended that submission 76 identifying the misspelling of Courtenay Place be accepted and that in Provision 20.1.5 under the heading 'Buildings' item 2 be amended to read '*Courtenay Place*'.

Provision 20.1.6 Conservation Plans

Submissions 50, 51 and 54 requested that in Provision 20.1.6 the purpose of conservation plans be spelt out in more detail.

Submission 76 requested that Provision 20.1.6 include requirements for conservation plans. It was also commented that the Council should consider a fees waiver programme for non-notified consents or an accelerated approval process for projects consistent with a satisfactory conservation plan.

Submission 84 requested that conservation plans be prepared by qualified professional persons and that such plans be mandatory where a resource consent application is required. This submitter appeared at the hearing and stressed the desirability of requiring the preparation of conservation plans as part of the consent process.

Consideration:

With regard to Submissions 50, 51 and 54 the Committee agreed that this would be helpful to clarify the purpose of conservation plans and it was agreed that after the second paragraph in Provision 20.1.6 a further paragraph be included for this purpose.

Concerning Submission 76 the Committee was of the view that as the second paragraph of Provision 20.1.6 identifies the documents relevant to the preparation of conservation plans additional requirements need not be included. As for other incentives for promoting conservation plans the Committee agreed that these would have to be considered outside the District Plan processes. However, the Committee noted that the current criteria for the payment of financial grants under the Built Heritage Incentive

APPENDIX 1

Fund, provides for the reimbursement of resource consent fees for approved conservation work.

With regard to Submission 84 the Committee agreed that ideally all listed items should have a conservation plan prepared for them and they should be in place before consent applications are made. Resource consent assessments should be informed by a conservation plan rather than conservation plans being developed to facilitate a resource consent application, as would be the case if a mandatory requirement was imposed.

The Committee was aware that at the present time there are few listed buildings with completed conservation plans and it would be a significant task, both for the Council and the owners to prepare plans for all items. The Committee accepted that for some time to come the emphasis in respect of conservation plans will remain on education and encouragement rather than regulation.

Decisions:

It is recommended that Submissions 50, 51 and 54 in respect of Provision 20.1.6 (Conservation Plans) be accepted and that after the second paragraph in a further paragraph be included as follows:

‘The purpose of a Conservation Plan is to ensure that the significance of a heritage place is identified in detail, to ensure that when changes occur the heritage values are not removed or lost. Conservation Plans are to control physical intervention and specify the degree and nature of intervention acceptable for non-conservation purposes.’

It is recommended that Submissions 76 and 84 in respect of Provision 20.1.6 (Conservation Plans) not be accepted

6.5 HERITAGE OBJECTIVES – CHAPTER 20.2

A total of seven submitters commented on the key heritage objective which is ‘to recognise and protect the city’s historic heritage.’

Submission 76 suggested that the objective be aligned with the goals under the Council’s Built Heritage Policy - namely, to recognise, protect, conserve and provide for the sustainable economic use of built heritage.

Submissions 46, 47, 48, 49 and 82 all argued that the proposed objective is inconsistent with the Resource Management Act and should more properly reflect Section 6(f) of the Act. Submitters 47, 48, 49 and 82 specifically requested that the objective be reworded as follows:

‘To recognise and protect the City’s historic heritage from inappropriate subdivision, use and development’ and in a manner consistent with promotion of sustainable management of resources’.

In addition to the proposed objective under 20.2.1, Submission 50 requested a new objective as follows:

APPENDIX 1

‘Places and items of heritage significance are safeguarded and not put at risk or left in a vulnerable state’.

Consideration:

With regard to Submission 76 the Committee considered that a concise heritage objective referencing the City’s historic heritage (which is defined in the RMA) would be preferable to making a direct link to the goals under the Council’s Built Heritage Policy. In the Committee’s view the goals of the Built Heritage Policy are more narrowly defined and therefore not appropriate for transposing into the District Plan.

In response to Submissions 46, 47, 48, 49 and 82 the Committee was of the view that to achieve better alignment with the Resource Management Act it would be appropriate to reflect the wording of section 6(f) of the Act in the objective. However, it was not believed necessary to include the additional wording suggested by the submitters. The Committee considered that it was implicit in all plan provisions that they were being applied in a manner consistent with promoting the sustainable management of resources, the overriding purpose of the Act set out in section 5, and did not warrant a specific reference to this effect in the heritage objective.

The Committee was of the opinion that in respect of Submission 50 the suggested new objective adds nothing to proposed objective 20.2.1 and is not necessary.

Decisions:

It is recommended that Submissions 76 and 50 in respect of Objective 20.2.1 not be accepted

It is recommended that Submissions 46, 47, 48, 49 and 82 concerning the heritage objective be accepted to the extent that the objective be reworded as follows:

‘To recognise the City’s historic heritage and protect it from inappropriate subdivision, use and development.’

6.6 POLICIES – CHAPTER 20.2

General Submissions

Submission 76 commented that the policies are too numerous, too complex, and should be simplified and strengthened to emphasise the protection of historic heritage. Another 18 submitters, (58-75) requested that the policies be amended so that they are more concise and straightforward. No specific changes were requested.

Submitter 50 requested the inclusion of two new policies. The first was to ensure the protection of the City’s heritage from any adverse effects of use and development. The second request was for the Council to take a precautionary approach when making decisions about the use, development and protection of heritage where effects are uncertain or where potential risks to the environment are considered to be unacceptable.

APPENDIX 1

Submissions 50, 51 and 54 identified that Anticipated Environmental Results (AER's) were no longer included at the end of each of the new or revised policy provisions. It was requested that the AER's be reinstated.

Consideration:

With regard to Submissions 76 and 58-75 the Committee was advised that policies are an essential component of the District Plan in that they detail how the objectives are to be implemented. In more recent times, greater emphasis is being placed on the policies as the primary focus of assessment. As originally drafted, the provisions of the Plan included policy material in both the general assessment criteria and the explanatory statements to the rules. As part of the rolling review of the plan, an effort has been made with each chapter review to extract the key policies and to include these as specific policy statements to guide the assessment of applications under the rules.

As a consequence, it has been found that the policies must be more comprehensive and explicit in terms of what they are endeavouring to achieve. The composition of the policies requires a balance with regard to their length and content and, in this respect it is considered that the redrafted heritage policies are reasonable and understandable. No general change is recommended.

In response to the first request from Submitter 50 the Committee was of the view that the matters were already covered by the 'package' of proposed policies and that no change was necessary.

Regarding the second request from Submitter 50, the Committee was unclear whether the submission was concerned about listed heritage items or other development considered to be of heritage value. If it was the former, the Committee considered that the proposed heritage provisions dealt appropriately with heritage issues and would afford reasonable protection. If it was the latter, then it was considered that such policies could not apply as the heritage provisions could only be enforced in respect of listed items. Accordingly, the inclusion of the suggested new policies was not supported.

Concerning Submissions 50, 51 and 54 the Committee accepted that AER's are important for the ongoing monitoring of the plan and it was agreed that they should be retained.

Decisions:

It is recommended that Submissions 76, 50 and 58-75 in respect of general policy matters, not be accepted

It is recommended that Submissions 50, 51 and 54 requesting that Anticipated Environmental Results be included at the end of each italicised explanatory statement to the relevant policies, as follows:

20.2.1.2 *The environmental result will be the retention of listed items that constitute a significant portion of Wellington's heritage.*

20.2.1.3 *The environmental result will be the retention of listed items that maintain their heritage values.*

APPENDIX 1

- 20.2.1.4 *The environmental result will be the retention of listed items on a site within an appropriate setting.*
- 20.2.1.5-8 *The environmental result will be heritage areas that retain their character, coherence and heritage values.*
- 20.2.1.9 *The environmental result will be heritage buildings, objects or areas that are not cluttered with signs.*
- 20.2.1.10 *The environmental result will be the retention of listed trees.*
- 20.2.1.11 *The environmental result will be the protection of, or the appropriate excavation of archaeological sites.*

Policy 20.2.1.1 – Identify, Record and List Historic Heritage

Submission 76 generally supported Policy 20.2.1.1 but requested that the third bullet point identifying rules as a method be deleted. It was also requested that reference to the Council's Heritage Inventory be included as a method.

Submitter 76 also sought a rewording of the explanatory statement as the proposed statement includes comment on methods not directly relevant to recording or listing heritage. This concern was also echoed by Submitters 50 and 51.

Consideration:

In response to the first matter raised by Submitter 76 the Committee agreed that the application of rules is not directly relevant to the policy and that as a consequence the third bullet point 'Rules' be deleted.

In response to the second matter it was also agreed that maintaining and updating the Heritage Inventory is relevant to the policy and that a further bullet point should be included in support of this.

The Committee also accepted that the explanatory statement was not as focussed as it should be and it was agreed that listing alone would not protect heritage. The Committee was satisfied that the concerns of Submitters 50 and 51 would be met by the rewording of the explanatory statement in response to Submission 76.

Decisions:

It is recommended that Submission 76 in respect of policy 20.2.1.1 be accepted and the Policy be amended as follows:

That the third bullet point 'Rules' be deleted

That a new bullet point be included as follows:

- *'Maintaining and updating the Council's Heritage Inventory.'*

That the italicised explanatory statement be reworded as follows:

APPENDIX 1

‘The listing of buildings, objects and areas of heritage value in the District Plan provides the primary means of identifying places of heritage value. Council is undertaking work on identifying significant archaeological sites. Council maintains the Built Heritage Inventory, which provides information on the heritage significance of buildings, objects and areas that are listed in the District Plan. The Built Heritage Policy 2005 includes a range of incentives to property owners to encourage listing in the District Plan.’

Policy 20.2.1.2 – Protection from Demolition or Relocation etc.

Submissions 47, 48, 49 and 82 opposed Policy 20.2.1.2 on the grounds that it is inconsistent with section 6(f) of the Act. It was requested that the policy be amended to read, ‘Protect historic buildings and objects from inappropriate subdivision, use and development and have regard to wider aspects of sustainable management, including the interests of owners and occupiers’.

Submission 76 requested that the policy be simplified and that demolition and relocation controls be made a Non-Complying Activity (It was noted that other submitters in respect of Rule 21A.3 have also requested Non-Complying status for demolition or relocation).

Submission 81 argued that the policy be amended to reflect Discretionary (Restricted) status for resource consent applications (It was also noted that other submitters, in respect of Rule 21A.3 have also requested Discretionary (Restricted) status for demolition or relocation).

Other submissions to Policy 20.2.1.2, Submissions 35, 39, 46, 47, 48, 49, 50 and 82, concerned the use of the words ‘irrefutably’ and ‘no sustainable use’.

Consideration:

The Committee heard that Policy 20.2.1.2 was based on the premise that heritage buildings should be protected from demolition or relocation, but there would inevitably be instances (hopefully rare) where full demolition or relocation might be necessary. The Discretionary consent process would enable any proposal for demolition or relocation to be fully assessed in accordance with the provisions of the Plan and the requirements of Part 2 of the Act.

With regard to Submissions 47, 48, 49 and 82 the Committee did not consider that the suggested redrafting of the policy would be helpful. The proposal would largely restate the wording of the objective (as recommended to be amended) and would therefore not give effect to the objective. The intent of the policy is to detail how the objective is to be implemented and the Committee was of the view that this would not be expressed through the suggested wording.

APPENDIX 1

In response to Submission 76 the Committee considered that if the policy direction for demolition or relocation was to be clear then Policy 20.2.1.2 should be retained as proposed. Concerning the non-complying status for activities under the policy this has been addressed in the consideration of Rule 21A.3.1.

With regard to Submission 81 the Committee accepted that in light of other decisions recommending that activities under Policy 20.2.1.2 be a Discretionary (Restricted) Activity then the policy required some amendment to reflect this. Within the ambit of the submission it was also agreed that additional text be added to the italicised explanatory statement to clarify that the Discretionary (Restricted) status for demolition or relocation would not create a 'lesser hurdle' in respect of the processing of resource consent applications.

Concerning Submissions 35, 39, 46, 47, 48, 49, 50 and 82 the Committee acknowledged that the use of the word 'irrefutably' establishes a stringent 'test'. The intent was to signal that the Council seeks to ensure that demolition or relocation should only be considered when there is absolutely no possibility of a building being used for any reasonable purpose. However, the Committee agreed that the word was perhaps too strong and should be mollified. No change was recommended to the words 'no sustainable use'.

Decisions:

It is recommended that Submissions 47, 48, 49 and 82 seeking a redrafting of Policy 20.2.1.2, not be accepted.

It is recommended that Submission 76 requesting amendments to the policy, not be accepted.

It is recommended that Submission 81 be accepted and within the ambit of the submission the italicised explanatory text to Policy 20.2.1.2 be worded and expanded as follows:

'The Council's overriding desire is to retain listed buildings or objects in the entirety, but accepts that to ensure ongoing use that some demolition or destruction of the existing structure may be required to allow modifications. Resulting modifications will be determined with reference to Policy 20.2.1.3.

Where the total demolition, destruction or relocation of a listed building or object is proposed, the Council will need to be convinced that there is no reasonable alternative option to losing the listed item.

The demolition, destruction or relocation of listed buildings or objects (in whole or in part) therefore requires a resource consent to ensure that the heritage effects of an application can be assessed and considered against the objectives and policies of the Plan and Part 2 of the Act.

As the purpose of the rules giving effect to Policy 20.2.1.2 is to assess the effects of historic heritage, the discretionary (restricted) activity classification has been used. This is consistent with the structure of the District Plan in that the Heritage chapter is focused on the assessment of effects on historic heritage and

APPENDIX 1

the other Area based chapters of the Plan still apply to all other elements of land use.

In order to avoid the argument that the activity classification of discretionary (restricted) creates a perception or signal that the Plan has created a 'lesser hurdle' for applications than might have otherwise applied if a fully discretionary activity classification were used, it is specifically recorded that this is not the case. The classification has been selected to limit the Council's discretion to heritage matters only, but in no way to diminish the significance of the assessment of heritage issues. Each application must meet the requirements of the RMA to obtain a resource consent.

The discretionary (restricted) activity classification enables the use of a non-notification clause. Such a clause has been used for modifications under rule 21A.2.1 and 21A.2.3 due to the scale of the proposals provided for under that rule. For all other applications, no such clause is provided and the statutory test for notification will apply.'

It is recommended that Submissions 35, 39, 46, 47, 48, 49, 50 and 82 be accepted and that in the third line of Policy 20.2.1.2 the word 'irrefutably' be deleted and replaced with the words 'on reasonable grounds'.

Policy 20.2.1.3 – Modifications to Buildings or Objects

Submissions 47, 48, 49 and 82 opposed Policy 20.2.1.3 on the grounds that it fails to recognise the need to avoid restrictions which render land incapable of reasonable use and which may cause hardship to property owners. It was also argued that the policy is inconsistent with Section 6(f). It was requested that the policy be amended to read, 'promote the conservation and sustainable use of listed buildings in a way which protects them from inappropriate subdivision, use and development'.

Submission 76 generally supported the intent of the policy but was concerned that it is too wordy and requested a more simplified statement. It was also requested that the methods for implementing the policy should include reference to financial incentives and advice.

Submission 81 was concerned that the Policy elevates works to a Discretionary (Unrestricted) status and would result in the 'freezing' of main building elevations.

Submission 85 commented in regard to the first bullet point under the Policy that the word 'unaltered' in reference to main elevations should be defined.

Consideration:

The Committee heard that Policy 20.2.1.3 focuses on modifications to listed buildings or objects (i.e. work that is more than repairs and maintenance) that, under the District Plan as originally notified, were Controlled Activities. Modifications have been made a Discretionary Activity to enable unsatisfactory proposals to be declined. The policy identifies the key aspects of concern to the Council where modifications to listed buildings are proposed, including the protection of main elevations.

APPENDIX 1

With regard to Submissions 47, 48, 49 and 82 the Committee was of the view that if the suggested rewording was adopted this would largely repeat the wording of the main heritage objective (as recommended to be amended) and would not provide the necessary guidance for the assessment of future development proposals. It was accepted that the Policy was helpful in identifying the Council's key concerns where modifications to listed buildings might be proposed and accordingly the provision should remain without change.

However, within the ambit of the above submission, and related submissions made by the same parties, the Committee agreed that it would be helpful to clarify that the Discretionary (Restricted) status for more significant modifications would not create a 'lesser hurdle' in respect of the processing of resource consent applications. Similar wording has been recommended for Policy 20.2.1.2.

In response to Submission 76 the Committee noted that greater weight was now being placed on the policies in the Plan as the primary source of guidance for assessment of applications under the rules. Under the operative Plan, policies were in some instances 'muddled' by being included within assessment criteria or explanatory statements. As a consequence, the proposed heritage policies were expanded to more clearly express Council's intentions. The Committee did not consider therefore that a simplified statement would be appropriate and the submission was not supported.

Concerning the request of Submitter 76 that the methods for implementing the policy should include reference to financial incentives and advice the Committee also noted that this is already covered by the third bullet point under 'Methods' which reads: 'Other mechanisms (promotion, grants and advice)'.

In respect of Submission 81 the Committee wished to point out that while Policy 20.2.1.3 highlights the protection of main elevations which is often the main heritage feature of a building, the Policy has been carefully worded to recognise that some modifications might be acceptable. To this extent the main elevations will not necessarily be 'frozen'.

With regard to Submission 85 that requested that the word 'unaltered' be defined in reference to main elevations, the Committee was of the view that the intent regarding elevations was clear. It was considered that the definition of the word was not required. The Committee noted that the aim of the provision is to retain elevations generally in their original state but modifications are not precluded.

Decisions:

It is recommended that Submissions 76, 81 and 85 in respect of Policy 20.2.1.3, not be accepted.

It is recommended that Submissions 47, 48, 49 76, 81, 82 and 85 requesting the rewording of Policy 20.2.1.3 not be accepted, but that within the ambit of the submission and related submissions, an addition be included at the end of the italicised explanatory statement as follows:

APPENDIX 1

As the purpose of the rules giving effect to Policy 20.2.1.3 is to assess the effects of historic heritage, the discretionary (restricted) activity classification has been used. This is consistent with the structure of the District Plan in that the Heritage chapter is focused on the assessment of effects on historic heritage and the other Area based chapters of the Plan still apply to all other elements of land use.

In order to avoid the argument that the activity classification of discretionary (restricted) creates a perception or signal that the Plan has created a 'lesser hurdle' for applications than might have otherwise applied if a fully discretionary activity classification were used, it is specifically recorded that this is not the case. The classification has been selected to limit the Council's discretion to heritage matters only, but in no way to diminish the significance of the assessment of heritage issues. Each application must meet the requirements of the RMA to obtain a resource consent.

The discretionary (restricted) activity classification enables the use of a non-notification clause. Such a clause has been used for modifications under rule 21A.2.1 and 21A.2.3 due to the scale of the proposals provided for under that rule. For all other applications, no such clause is provided and the statutory test for notification will apply.'

Policy 20.2.1.4 – Subdivision and Development on the Site of Listed Buildings or Objects

Submission 46 expressed concern that the policy is extending the scope of the Resource Management Act by not including the words 'from inappropriate subdivision, use and development'.

Submission 76 commented that the policy should make provision for Heritage Areas.

Submission 85 asked what the word 'site' means within the context of the Policy.

Consideration:

Concerning Submission 46 the Committee was satisfied that the wording of Policy 20.2.1.4 was not extending the scope of the RMA. It has been recommended that the wording from Section 6(f) of the Act be included in the main heritage objective which provides the overriding intention of the heritage provisions in line with the purpose of the Act. Policy 20.2.1.4 has been drafted to implement the objective and the Committee accepted that the policy did not have to repeat the wording of the objective.

With regard to Submission 76 the Committee noted that Policy 20.2.1.4 was purposely directed towards buildings and objects. Policies 20.2.1.5-8 address Heritage Areas and Policy 20.2.1.7 specifically deals with new buildings or subdivision within a heritage area. No change to the Policy has been recommended.

With regard to Submission 85 the Committee noted that in the definitions chapter of the Plan, 'site' is defined as 'any area of land comprised wholly in one Certificate of Title or any allotments as defined by the Act, or any allotments linked pursuant to the

APPENDIX 1

provisions of Section 37 of the Building Act 1991'. The Committee accepted that this definition would apply to the wording of Policy 20.2.1.4.

Decision:

It is recommended that Submissions 46, 76, and 85 in respect of Policy 20.2.1.4, not be accepted.

Policy 20.2.1.6 – Heritage Areas -Protection from Demolition or Relocation

Submissions 47, 48, 49 and 82 commented that Policy 20.2.1.6 is inconsistent with Section 6(f) of the Act, fails to take into account Section 5 and 85 and should only apply to identified buildings, not areas. It was requested that the Policy be deleted.

Submission 81 expressed concern that non-heritage buildings within heritage areas affected by rules under the policy will be an imposition on private property rights. It was also requested that the Policy be deleted.

Consideration:

Firstly, the Committee heard that heritage areas had been a feature of the District Plan for over 20 years and Policy 20.2.1.6 was not therefore signalling the introduction of new provisions. For this reason, it was considered important that a policy provision be included.

However, the Committee recognised (particularly with the introduction of new Central Area heritage areas under Plan Charge 48) that a wider range of non-individually listed buildings will be subject to control under the policy.

Proposed Variation 4 makes it clear that identified non-heritage buildings within heritage areas can be demolished or relocated, but control is maintained on additions or alterations to ensure that any upgrading work will still be done in a way that compliments the heritage area.

All other buildings within heritage areas, including those specifically listed, are considered to be important to the make-up of the heritage area and will be subject to control. This is considered necessary to maintain the heritage values of the areas. The Committee acknowledged therefore that the heritage area controls will affect the development rights of a greater number of owners.

However, so long as heritage areas remain part of the Plan the Committee considered it important that Policy 20.2.1.6 be retained. Nevertheless, the Committee was of the view that the Policy should be qualified by making reference to demolition, destruction or relocation, but only in situations where there will not be significant effects on heritage values. This would reflect the wording of Policy 20.2.1.2.

The Committee also considered that it would be helpful to include a similar explanation to the policy to clarify that the Discretionary (Restricted) status for proposed development in heritage areas would not create a 'lesser hurdle' in respect of the processing of resource consent applications. Similar wording has been recommended

APPENDIX 1

for Policy 20.2.1.2 and 20.2.1.3. It is believed that this would be within the ambit of the submissions.

Decision:

It is recommended that Submissions 47, 48, 49, 81 and 82 requesting the deletion of Policy 20.2.1.6 not be accepted but within the ambit of the submissions the policy be amended to read as identified in (A) below and that additional text be included at the end of the italicised explanatory statement as detailed in item (B) as follows:

(A) 'Protect buildings, structures, spaces and other features integral to the significance of a heritage area and allow demolition, destruction or relocation where there are no significant effects on heritage values'.

(B) As the purpose of the rules giving effect to Policies 20.2.1.6-8 is to assess the effects of historic heritage, the discretionary (restricted) activity classification has been used. This is consistent with the structure of the District Plan in that the Heritage chapter is focused on the assessment of effects on historic heritage and the other Area based chapters of the Plan still apply to all other elements of land use.

In order to avoid the argument that the activity classification of discretionary (restricted) creates a perception or signal that the Plan has created a 'lesser hurdle' for applications than might have otherwise applied if a fully discretionary activity classification were used, it is specifically recorded that this is not the case. The classification has been selected to limit the Council's discretion to heritage matters only, but in no way to diminish the significance of the assessment of heritage issues. Each application must meet the requirements of the RMA to obtain a resource consent.

The discretionary (restricted) activity classification enables the use of a non-notification clause. Such a clause has been used for works under rule 21B.2.1 due to the scale of the proposals provided for under that rule. For all other applications, no such clause is provided and the statutory test for notification will apply.'

Policy 20.2.1.7 – Additions and Alterations to Buildings and Subdivision

Submissions 47, 48, 49 and 82 commented that controls under Policy 20.2.1.7 should not be imposed on non-heritage buildings and should be deleted.

Consideration:

Further to the consideration in respect of Policy 20.2.1.6 above it was the view of the Committee that Policy 20.2.1.7 is necessary to identify how the Council will give effect to the heritage objective and should be retained.

Decision:

It is recommended that Submissions 47, 48, 49, and 82 in respect of Policy 20.2.1.7, not be accepted.

APPENDIX 1

Policy 20.2.1.8 – Maintain and Enhance Heritage Values

Submissions 47, 48, 49 and 82 opposed Policy 20.2.1.8 on the grounds that appropriate proposals may not maintain and enhance heritage values but result in the diminution of them or the loss of the heritage item. The deletion of the policy was requested.

Consideration:

The Committee heard that the rationale for creating heritage areas was to maintain the integrity of development within the areas defined. The assessment of all development under the rules would ensure the heritage values are not diminished or lost. It is intended that identified non-heritage buildings within heritage areas may be demolished or relocated but it will be expected that replacement buildings respect the heritage character and qualities of the area. As the Committee was of the view that new development should not challenge the integrity of heritage areas and that Policy 20.2.1.8 should therefore be retained.

Decision:

It is recommended that Submissions 47, 48, 49 and 82 in respect of Policy 20.2.1.8, not be accepted.

Policy 20.2.1.9 – Signs

Submission 53 commented that the methods under the Policy for signs within Heritage Areas should make reference to additions (presumably signs) being congruent with the whole building, structure or object.

Submission 76 made reference to the Central Area Sign Design Guide that has been introduced as part of Proposed District Plan Change 48. This design guide includes provisions relating to signs on heritage buildings, signs on buildings adjacent to heritage buildings and signs in heritage areas. The submission requested that Sign Design Guide be included under the Policy as a method for implementation.

Consideration:

In response to Submission 53 the Committee was of the view that the suggested reference would not be a method for implementing the Policy and the submission was not supported.

With regard to Submission 76 the Committee considered that it would be appropriate to make reference to the Sign Design Guide as a method for implementation and that an addition to this effect be made to the Policy.

Decision:

It is recommended that in respect of Policy 20.2.1.9, Submission 53 not be accepted but Submission 76 be accepted and that under the heading of ‘Methods’ a further bullet point be added as follows:

- *Design Guide for Signs*.

APPENDIX 1

Policy 20.2.1.11 – Archaeological Sites

The Committee heard that his Policy 20.2.1.11 had been generally supported but that several points had been raised by the submitters.

Submission 76 requested that the Council undertake a separate plan change to address matters relating to the protection of archaeological sites.

Submission 77 requested the strengthening of the policy by the inclusion of a sub-policy to require an application to be made under the Historic Places Act 1993 for any activity that disturbs or modifies the ground or alters a pre-1900 building or structure.

Submissions 35 and 39 commented that in the absence of in-house knowledge and expertise, the Council should accept the findings of the NZHPT and the Archaeological Association. No specific relief was sought.

Consideration:

In response to Submission 76 the Committee noted that in the explanation to the Policy it is mentioned that further work is to be undertaken on the issue of protecting archaeological sites under the District Plan. The implication of this explanation is that a separate District Plan change would have to be initiated to introduce any new provisions.

With regard to Submission 77 the Committee noted that the Archaeological processes under the Historic Places Act 1993 is referenced as a method under the Policy. The Committee was of the view that as these processes cover the matter raised in the submission, a separate sub-policy was not necessary.

It was also noted that a separate sub-policy would need a rule in the plan for implementation purposes and there is no such rule at the present time. As no rule exists, it would not be appropriate to include a policy as proposed by the submitter.

Concerning Submissions 35 and 39 the Committee noted that the NZHPT will be advised if resources consent applications affect known archaeological sites or if new sites are discovered. In such situations, advice is most likely to be forthcoming from appropriately qualified persons from various organisations that would inform the Council's actions.

Decision:

It is recommended that Submissions 35, 39, 76, and 77 in respect of Policy 20.2.1.11, not be accepted.

Policy 20.2.2.1 – Maori Sites

Submitter 53 commented that reference to Maori sites could easily be made applicable to all of Wellington's natural and cultural landscapes. No specific relief was requested

Consideration:

APPENDIX 1

The Committee noted that Policy 20.2.2.1 did not form part of the Plan Change but that in any event, the submitter sought no specific relief.

Decision:

It is recommended that Submissions 53 in respect of Policy 20.2.2.1, not be accepted.

20.2 HERITAGE RULES – CHAPTER 21

HERITAGE RULES - BUILDINGS AND OBJECTS – RULE 21A

Permitted Activities – Rule 21A.1

The Committee was advised that a total of seven submissions addressed the permitted activity provisions for buildings and objects. Submitters 47, 48, 49, 76, 81 and 82 generally supported the rules.

Submission 85 commented in respect of Rule 21A.1.1 (Repairs and maintenance) that the term ‘repairs and maintenance’ was not sufficiently defined.

Although generally supporting the permitted activities, Submitter 81 expressed concern that Rule 21A.1.2 (Internal Additions and Alterations to Listed Buildings) might be applied to parts of a building that are not specifically listed.

Consideration:

With regard to Submission 85 the Committee was aware that the definition of ‘Repairs and Maintenance’ had been applied since the District Plan was first notified and it was considered that the definition was satisfactory.

Concerning Submission 81 the Committee heard that Rule 21A.1.2 had not been formulated with the intent of attempting to control all work on the interiors of buildings. The Committee was aware that the protection of interiors involves issues that the Council has still not yet dealt with to any significant extent. The proposed rule attempts to catch only structural strengthening and new floor levels visible through windows that can impact adversely on the heritage values of buildings. The Committee accepted that the rule would be implemented in accordance with this intent.

Decisions:

It is recommended that Submitters 47, 48, 49, 76, 81 and 82 generally supporting Rule 21A.1 be accepted.

It is recommended that Submissions 81 and 85 in respect of Rules 21A.1.1 and 21A.1.2 respectively not be accepted.

Discretionary Activities (Restricted) – Status of Rule 21A.2

A substantial number of submissions commented on the status of rules for works affecting heritage items. Submitter 85 requested the continuation of the Controlled Activity status. A total of 31 submitters, (2-9, 11, 12, 14, 15, 18-23, 25, 27, 28, 32, 33,

APPENDIX 1

36-38 and 40-44) supported modifications remaining a Discretionary Activity (presumably Discretionary (Restricted)). Submitters 45, 50, 54, 57, 80 and 84 requested that the activity be made Discretionary (Unrestricted).

Submission 83 from the Newtown Residents' Association supported the discretionary status of the rules but requested that a bulk & location and design guide 'advantage' be applied to pre-1996 buildings. The Committee understood that this relates to submissions made in respect of the Newtown/Mt Cook/Berhampore Character Controls (District Plan Change 39) seeking more liberal controls to facilitate sympathetic additions to older buildings in the inner city suburbs.

Consideration:

The Committee was advised that additions and alterations were included as Controlled Activities in the Operative District Plan. They were given this status with good intent at the time to facilitate the administration of the rules. However, over time the Controlled Activity status did not provide the necessary regulatory 'teeth' to achieve good heritage outcomes. For this reason it was proposed under Plan Change 43 to make modifications to listed buildings or objects a Discretionary Activity (Restricted) with a presumption for the non-notification of applications. The key advantage to the Council in elevating proposals to the status of a Discretionary Activity (Restricted) was that unsatisfactory proposals could be declined.

With regard to the above, the Committee adopted the considerations on this issue covered under the heading '*Submissions opposing the entire Plan change*'. It was agreed that the Discretionary (Restricted) provisions are appropriate and will work more effectively to manage the modification of listed buildings in Wellington City. The submissions supporting the rules were therefore supported while those seeking either Controlled or Discretionary (Unrestricted) status are not supported.

Concerning Submission 83 the Committee noted that the matter raised has been addressed in the proposed new plan change for Residential Infill (District Plan Change 56). The Committee agreed that the concerns of the submitter are not a heritage matter per se and would best be dealt with under proposed Plan Change 56. It was known that the submitter has made a submission to this Plan Change.

Decisions:

It is recommended that Submission 85 supporting Rule 21A.2 being a Controlled Activity, not be accepted.

It is recommended that Submissions 2-9, 11, 12, 14, 15, 18-23, 25, 27, 28, 32, 33, 36-38 and 40-44 supporting Rule 21A.2 remaining a Discretionary Activity (Restricted), be accepted.

It is recommended that Submissions 45, 50, 54, 75, 80 and 84 supporting Rule 21A.2 being a Discretionary Activity (Unrestricted), not be accepted.

It is recommended that Submission 83 in respect of Rule 21A.2, not be accepted.

APPENDIX 1

Rule 21A.2.1 – Modifications to Listed Buildings or Objects

Submissions 47, 48, 49 and 82 commented that all work affecting a heritage item that is not a Permitted Activity should be a Discretionary Activity (Restricted). Specifically in respect of Rule 21A.2.1 it was requested that the three bullet points under the rule be deleted. It was argued that the Council should reserve discretion only in respect of the effects of a proposal on historic heritage. It was requested that 21A.2.1.1, 21A.2.1.2 and 21A.2.1.3 be deleted.

Consideration:

The Committee did not agree that the three bullet points under Rule 21A.2.1 should be deleted. The specific exceptions are necessary to retain a division between more minor work and more major work affecting heritage buildings or objects, irrespective of whether the more major work is to be a Discretionary Activity (Restricted) as recommended, or remain as a Discretionary Activity (Unrestricted).

The Committee therefore considered that it was appropriate to retain the matters over which the Council has retained discretion but modified to make it clear that the exercise of discretion would be limited to the consideration of historic heritage. The Committee also considered that for the sake of consistency Rules 21A.2.2 and 21B.2.1 be similarly worded.

Decisions:

It is recommended that Submissions 47, 48, 49 and 82 requesting the deletion of the three bullet points under Rule 21A.2.1, not be accepted.

It is recommended that Submissions 47, 48, 49 and 82 requesting the deletion of Rules 21A.2.1.1, 21A.2.1.2 and 21A.2.1.3 not be accepted but that the submissions be accepted to the extent that the provisions under Rule 21A.2.1 and also Rules 21A.2.3 (as renumbered) and 21B.2.1 be reworded as follows:

That 21A.2.1.2 – 21A.2.4 be and replaced with the following:

*‘21A.2.1.2 Height, coverage, bulk and massing of buildings (to the extent that these affect historic heritage).’
(with consequential amendments to the associated non-notification provision)*

That 21A.2.2.2 – 21A.2.2.4 be replaced with the following:

*‘21A.2.2.2 Height, coverage, design, external appearance and siting and the bulk and massing of buildings (to the extent that these affect historic heritage).’
(with consequential amendments to the associated non-notification provision)*

That 21B.2.1.2 – 21B.2.1.4 be replaced with the following:

APPENDIX 1

*‘21B.2.1.2 Design, height, siting and coverage and the bulk and massing of buildings (to the extent that these affect historic heritage).’
(with consequential amendments to the associated non-notification provision)*

Also as a result of proposed Rules 21A.3.1, 21B.3.1 and 21B.3.2 being recommended to become Discretionary Activities (Restricted) the following matter over which the Council has reserved discretion be added to the renumbered Rules 21A.2.2 and 21B.2.2 as follows:

‘Effects on historic heritage

Height, coverage, bulk and massing of buildings (to the extent that these affect historic heritage).’

And that in respect of renumbered Rule 21B.2.3 the following be added:

‘Effects on historic heritage’

In addition to the above, a number of other submissions were considered in respect of Rule 21A.2.1.

Submission 85 commented that in Rule 21A.2.1 the word ‘modifications’ is not sufficiently defined.

Submission 13 commented that buildings should be preserved in their original state and modifications should only be permitted if they are in keeping with the original design. No specific changes or amendments were suggested.

Submitter 17 stated that making additions and alterations discretionary rather than controlled is unnecessary and will add to compliance costs, time delays and uncertainty for owners and developers. It was submitted that the Rules be deleted.

Submitter 81 sought numerous modifications to the wording of Rule 21A.2.1 but, in essence, the submission was concerned that the rule would restrict and protect parts of buildings which make no contribution to heritage values. Amendments were sought to focus on the protection of heritage values.

Consideration:

In respect of Submission 85 the Committee heard that problems had been experienced with the current definition for ‘additions and alterations’, and there was uncertainty about the distinction between additions and alterations and demolition. An approach has been proposed under Plan Change 43 where work is either, repairs or maintenance, a modification or demolition. The Committee noted that the rule refers to ‘any’ modifications which means that any work on a listed building that is not repairs and maintenance, will be subject to Rule 21A.2.1. Prefacing the word ‘modifications’ with the word ‘any’ is believed to make it clear that all work is covered and, for this reason, it is not necessary to include a specific definition.

APPENDIX 1

In response to Submission 13 the Committee considered that Plan Change 43, as a whole, will work to address the submitters' concerns.

With regard to Submission 17 the Committee acknowledged that while adding some additional cost in the form of application fees and causing some uncertainty by the fact that resource consents may be refused, it was nevertheless considered that these factors are outweighed by the need to achieve good heritage outcomes. The Committee accepted that the consideration of heritage proposals as Controlled Activities did not promote good outcomes in all cases and the discretionary rule approach was therefore supported.

In considering Submission 81 the Committee was of the view that the proposed rule 'package' provides a reasonable balance between what is protected and what is not. The permitted activity rules make it clear that, in general, interiors are not subject to control. With regard to maintaining the exterior heritage, it is most appropriate that all work affecting the facades and roof be assessed. In this regard, the assessment process will enable the determination of what is, or is not important for the protection of heritage values. For these reasons, the suggested amendments are not supported.

Decision:

It is recommended that Submissions 13, 17, 81 and 85 in respect of Rule 21A.2., not be accepted.

Rule 21A.2.1 - Non-Notification

Submission 53 requests that applications be notified and Submission 76 states that there should not be a presumption for non-notification.

Consideration:

The Committee was advised that Rule 21A.2.1 had been formulated on the basis of enabling the consideration of more minor works without third party involvement. The approach of providing a presumption for the non-notification of more minor aspects of developments has been included under many rules and works to facilitate the administration of the Plan without compromising environmental outcomes. In the case of Rule 21A.2.1, the modifications that are likely to be more sensitive (i.e. modifications to the main elevation or substantial rooftop additions) will not have a presumption for non-notification. The Committee was satisfied that the non-notification provision under the rule struck a reasonable balance and should be retained without change.

Decision:

It is recommended that Submissions 53 and 76 in respect of the non-notification provisions under Rule 21A.2.1, not be accepted.

Rule 21A.2.1 - Assessment Criteria

Submissions 47, 48, 49 and 82 stated that the assessment criteria under Rule 21A.2.1 are unbalanced and should have regard to other matters, including other aspects of Part 2 of the Act, Section 85 and the interest of owners and occupiers.

APPENDIX 1

Submission 85 also commented that the assessment criteria are too numerous, unduly broad and subjective and include an unlawful presumption against modification.

Submission 76 expressed concerns about the emphasis on facades in the criteria and notes that Item 9 does not refer to objects. Deletions and amendments were sought to six of the statements.

Consideration:

Concerning the above submissions the Committee was advised that assessment criteria have been included in the Plan for many years and provide a general guide to the matters that might be considered when a resource consent application is made. Assessment criteria are not specifically mandated by the RMA but have nevertheless been accepted as helpful aids to consent processing. An important consideration is that when determining applications, either as a Discretionary Activity (Restricted) for which the Council has restricted its discretion to certain matters, or as a Discretionary Activity (Unrestricted) anything that is relevant to the application may be considered. In this respect the list of assessment criteria is never full or complete. With regard to Rule 21A.2.1 the Committee was of the view that the assessment criteria reasonably addressed the key development issues and were sufficient.

Decisions:

It is recommended that Submissions 47, 48, 49, 82 and 85 relating to assessment criteria for Rule 21A.2.1, not be accepted.

It is recommended that Submission 76 be accepted to the extent that in provision 21A.2.1.9 the words '*or object*' be included after the word 'building' in the two places where these words occur.

Rule 21A.2.2 The Modification of Non-Heritage Buildings and the Construction of New Buildings on the Site of Listed Buildings or Objects

Submissions 47, 48, 49, 81 and 82 opposed the rule and requested its deletion.

Submission 17 expressed concern that the rule is unnecessary and will add compliance costs, time delay and uncertainties. It was also requested that the rule be deleted.

Submission 85 commented that the activities, including the assessment criteria, are ill-defined, are unnecessarily broad, and should be dealt with as Controlled Activities.

Submission 53 commented that Rule 21A.2.2 should contain reference to the topography of the site and its impact on views. No specific relief was sought.

Submissions 47, 48, 49, 82 and also 46 (in respect of the Wellington Railway Station Site covering over five hectares) made the point that the rule is inappropriate for large sites. In the case of the Wellington Railway Station, it was requested that the site be defined by the inclusion of a diagram. This submission was supported by Further Submitter 11 who expressed concern about the application of the rule to developments within the Victoria University Campus in Kelburn.

APPENDIX 1

Consideration:

The Committee heard that Rule 21A.2.2 was a new rule that had been introduced to manage the effects of new (non-heritage) development on the site of a listed building or object. The intent was to address, to some extent, the concerns about heritage items being hemmed-in or dominated by adjacent development on the same site.

The Committee agreed that it was important to protect listed items from the adverse effects of development on the same site. It was also agreed that the proposed rule would provide appropriately for the assessment of resource consent proposals. While imposing additional obligations on owners or developers to seek consent, it was believed that the costs involved would be more than outweighed by the likely improvement in heritage outcomes. For the above reasons the Committee did not support the submissions opposing the rule.

With regard to Submission 53 the Committee noted that matters relating to the topography of the site or the impact on views might be a relevant consideration in any future resource consent application.

Concerning Submissions 46, 47, 48, 49, 82 and Further Submission 11 the Committee accepted that there is a problem with applying Rule 21A.2.2 to large sites. On large sites, proposed new works might be located a considerable distance from the listed heritage item and have very little or no affect on heritage values. In such circumstances, the Committee agreed that it would not be reasonable to require the application of the rule.

An examination of the Plan had revealed that in addition to the Railway Station and Victoria University, other large sites such as Massey University, The Wellington Waterfront, The Basin Reserve, St Mary's School in Hill Street and The Prime Minister's residence on Tinakori Road would also be affected. However, no submissions had been received from the owners of these sites.

The Committee fully considered the various options for dealing with the issue which were:

- Doing nothing and requiring a resource consent in all cases in accordance with the rules as drafted.
- Defining the area of the sites to which the rule would apply by way of a map or diagram.
- Amending the proposed rule to provide a general exemption for 'large' sites through the establishment of threshold boundaries around the listed item.

The Committee noted that the officer's report had recommended the third option and had suggested proposed rule amendments. However, at the hearing the Institute of Surveyors had identified the need to include a further rule for subdivisions and the New Zealand Historic Places Trust had commented that it would be preferable to prescribe the area of interest for heritage items on large sites through appropriate identifications in the heritage schedule. Given the arbitrary nature of the suggested rule proposal and the

APPENDIX 1

complications arising from the need to include additional provisions the Committee accepted that the best course would be to define the 'site' of heritage items on large titles in the heritage schedule. This would require heritage evaluations to determine sensible 'site' boundaries and a further plan change to introduce the new proposals.

It was therefore agreed that the necessary work should be undertaken as a matter of priority and an appropriate recommendation included to this effect. It was noted that it might be possible to include the definitions as part of a general 'tidy-up' Plan change later in the year.

Decisions:

It is recommended that Submissions 17, 47, 48, 49, 53, 81,82 and 85 opposing all or part of Rule 21A.2.2, not be accepted.

It is recommended that Submissions 46, 47, 48, 49, and 82 relating to the application of Rule 21A.2.2 on large sites be accepted to the extent that the following recommendation for further work is adopted:

Recommendation for further work

That as a matter of priority, it is requested that further heritage assessments be undertaken in respect of listed heritage items on large sites with the view to identifying appropriate 'site' boundaries. It is intended that these be recorded as part of the heritage listings in Chapter 21 of the District Plan to ensure that new building development and/or subdivision beyond those boundaries will not be subject to the provisions of Rules 21A.2.3 or 21A.3.1 (as renumbered).

Discretionary Activities (Unrestricted) – Rule 21A.3

Rule 21A.3 as notified, provided for the assessment of more significant works affecting listed heritage buildings or objects including demolition or relocation as a Discretionary Activity (Unrestricted). This class of activity provided the step between the assessment of more minor works as a Discretionary Activity (Restricted) and other works that might result in being a Non-Complying Activity. Under 21A.3 there was no presumption for the non-notification of applications under this rule.

Submissions 47, 48, 49 and 82 requested the deletion of Rules 21A.3.1 and 21A.3.2. This was consistent with the submitter's request to make all activities under Plan Change 43 either a Permitted Activity or Discretionary Activity (Restricted).

The submitters were concerned that with the Discretionary (Unrestricted) classification, matters irrelevant to heritage effects may be taken into account when they should not be.

Submitter 81 also requested Discretionary (Restricted) status for all work affecting buildings or objects.

Submission 85 commented that activities under the rule are best dealt with as a Controlled Activity.

Consideration:

APPENDIX 1

This matter has been addressed above in the consideration of general submissions under the heading '*Submissions Opposing the Entire Plan Change*'. For the reasons detailed in the above consideration it has been recommended that all Discretionary (Unrestricted) provisions apart from the control of subdivision be reclassified as Discretionary Activities (Restricted). Accordingly the Committee was of the view that Submissions 47, 48, 49, 81 and 82 be accepted.

As Submission 85 was seeking the reinstatement of a classification that Plan Change 43 had been introduced to replace, the Committee did not support this submission. The Committee accepted that Controlled Activities that could not be declined, did not work appropriately to achieve good heritage outcomes.

Decisions:

It is recommended that Submissions 47, 48, 49, 81 and 82 be accepted and that a Discretionary (Restricted) status apply to existing Discretionary (Unrestricted) Rules (except for subdivision controls) as detailed in the recommendation under the heading '*Submissions Opposing the Entire Plan Change*' in the consideration of general submissions above.

It is recommended that Submission 85 requesting the reinstatement of Controlled Activities, not be accepted.

Rule 21A.3.1 – Modifications to Listed Heritage Items that are not Permitted or Discretionary (Restricted) and the Demolition or Relocation of Items

A total of 23 submissions to Rule 21A.3.1 (Submissions 22, 50, 51, 53, 54, 58-76) requested that the rule be made Non-Complying, particularly with regard to demolition or relocation, to reflect the commitment made in the Council's Built Heritage Policy. Submitters 51, 54 and 76 appeared at the hearing in support of their submissions.

Consideration:

The Committee was reminded that notwithstanding the statements in the Built Heritage Policy, the Council had carefully considered the implications of creating a non-complying rule prior to the notification of Plan Change 43. It was accepted that if the rule was to be made a Non-Complying Activity, the objectives and policies would need to be amended to provide for the situations where applications may be made for demolition or relocation. It was considered that without amendments, the Non-Complying Activity status would, in effect, be a Prohibited Activity because the Council's ability to grant a consent is restricted by Section 104D of the Resource Management Act (Particular restrictions for non-complying activities).

Section 104D provides that the Council may grant a resource consent for a non-complying activity only if it is satisfied that either –

- (a) the adverse effects of the activity on the environment...will be minor; or
- (b) the application is for an activity that will not be contrary to the objectives and policies of the plan.

APPENDIX 1

Provision (a) would be unlikely to apply for significant building modifications, or the demolition of heritage items and (b) would not apply if the objectives and policies did not provide for situations where consent for significant modifications or demolition and relocation might be acceptable.

It was agreed that it would be a more difficult task to attempt to prescribe and codify, through objectives and policies, the situations where applications for major modifications, demolition or relocation could receive a favourable resource consent decision. Without such prescriptions the presumption would be that all proposals for significant modifications, demolition or relocation would be contrary to the objectives and policies of the Plan and therefore incapable of consent.

In the view of the Committee, the preferred approach was to provide for all work that was not a permitted activity to be dealt with as a discretionary activity. It was accepted that the protection of heritage would never be absolute and that there would always be proposals for works affecting heritage items. Under the discretionary consent processes, owners or developers would be required to justify any proposed works, demolition or relocation in light of the objectives and policies of the Plan and the requirements of Part 2 of the Resource Management Act. For major works, demolition or relocation there would be no presumption for the non-notification of applications and it would be likely therefore that most would be tested through notified consent processes.

In considering the submissions it had been noted that the first limb of the rule only referred to the modification of listed buildings and that the reference to objects had been omitted. The Committee considered that it was within the ambit of the submissions to include reference to objects and that this addition would bring the rule into line with the second limb relating to demolition and relocation that does refer to objects.

Decisions:

It is recommended Submissions 22, 50, 51, 53, 54, 58-76 seeking non-complying status for the matters covered by Rule 21A.3.1, not be accepted.

It is recommended that in first line of Rule 21A.3.1 after the word 'building' the words 'or object' be included.

Rule 21A.3.1 - Assessment Criteria

Submissions 47, 48, 49 and 82 stated that if Rule 21A.3.1 was not deleted as the result of other submissions, then the assessment criteria be amended to have regard to matters other than heritage, including other aspects of Part 2 of the Act and section 85 and the interests of owners and occupiers. Four replacement criteria were suggested.

Submission 76 also requests various amendments to the criteria. Firstly in respect of Criteria 21A.3.1.2 it was requested that the words 'or other human generated disaster' be removed.

Secondly, in respect of Criteria 21A.3.1.3, there was concern that undue weight had been given to economic considerations by reference to sustainable use. It was suggested that

APPENDIX 1

the criteria be reworded to say ‘whether it can be demonstrated irrefutably that the building or object is a safety hazard and the hazards cannot be practically rectified’.

Thirdly, with regard to Criteria 21A.3.1.5 it was argued that matters of relocation and related development potential are not consistent with the Plan or the Built Heritage Policy. It is requested that the criteria be deleted.

Fourthly, with regard to Criteria 21A.3.1.6 it was argued that this provision relates closely to Criteria 21A.3.1.7 and Criteria 6 should therefore be deleted.

Consideration:

In response to Submissions 47, 48, 49 and 82 the Committee accepted that while the assessment criteria focused more on heritage issues it was noted that as a Discretionary Activity, anything that is relevant may be considered when a resource consent application is assessed. Matters are not limited to the specified criteria which are included as a guide to decision making. With regard to Rule 21A.3.1 the Committee was of the view that the assessment criteria reasonably addressed the key development issues and were sufficient.

Concerning provision 21A3.1.2 that requested that the words ‘or other human generated disaster’ be removed it considered that in some cases buildings will be lost or damaged by a range of human actions, whether wilful or not, and accordingly the words should be retained.

With regard to Criteria 21A3.1.2 the Committee was of the opinion that issues of safety are implicit in the provision and that no change need therefore be made.

With regard to the suggested deletion of Criteria 21A.3.1.5 the Committee considered, that such matters identified in the statement will inevitably arise and the criteria should remain.

The suggested deletion of Criteria 21A.3.1.6 was also not supported. The Committee agreed that the provision is about returning heritage items in the vicinity of the original site whereas Criteria 7 is about the appropriateness of a site to accommodate the relocated item. It was agreed that item 6 be retained.

Decision:

It is recommended that that Submissions 47, 48, 49, 76 and 82 in respect of the assessment criteria for Rule 21A.3.1, not be accepted.

Rule 21A.3.2 – Subdivision

Submissions 17, 47, 48, 49 and 82 opposed Rule 21A.3 2. It was argued that there is inadequate justification of such a rule, the rule is too blunt an instrument, the existing subdivision provisions are adequate and it is inappropriate for large sites. It was requested that the rule be deleted.

Consideration:

APPENDIX 1

The Committee considered that Rule 21A.3.2 is appropriate to deal with the issue of protecting heritage items within their setting. It was acknowledged that the subdivision of land that would potentially lead to new building development could significantly affect the values of listed items and that such proposals should be assessed from a heritage perspective.

As commented in respect of Rule 21A.2.2, the Committee accepted that there would be a problem with subdivisions on large sites where the proposed subdivision or future new development was well separated from the heritage item on the site. Subdivisions far removed from the heritage item could require resource consent which would be unreasonable and generate unnecessary processing.

The officers report on submissions had suggested amendments to the rule to deal with the matter but on reflection the Committee was of the view that a resolution should be sought through defining the 'site' of heritage items on large titles in the heritage schedule. This would require heritage evaluations to determine sensible 'site' boundaries and a further plan change to introduce the new proposals.

It was therefore agreed that the necessary work should be undertaken as a matter of priority and an appropriate recommendation included to this effect. It was noted that it might be possible to include the definitions as part of a general 'tidy-up' Plan change later in the year.

Decisions:

It is recommended that Submissions 17, 47, 48, 49, and 82 requesting the deletion of Rule 21A.2.2, not be accepted.

It is recommended that in response to the issue of subdivision on large sites that the following recommendation for further work be adopted:

Recommendation for further work

That as a matter of priority, it is requested that further heritage assessments be undertaken in respect of listed heritage items on large sites with the view to identifying appropriate 'site' boundaries. It is intended that these be recorded as part of the heritage listings in Chapter 21 of the District Plan to ensure that new building development and/or subdivision beyond those boundaries will not be subject to the provisions of Rules 21A.2.3 or 21A.3.1 (as renumbered).

The above reflects the recommendation in respect of Rule 21A.2.2

Rule 21A.3.2 - Assessment Criteria

Submission 81 expressed concern that the assessment criteria 21A.3.2.1 establishes 'tests' about intended future development or possible future development that would be difficult to meet. The submission also raised concerns about the possible overlapping of the area-based subdivision provisions and the heritage provisions.

Submission 76 supported the rule but suggested the amalgamation and rewording of Assessment Criteria 21A3.2.1 and 21A3.2.3.

APPENDIX 1

Consideration:

Concerning Submission 81 the Committee was of the view that Criteria 21A.3.2.1 identifies matters that are likely to arise from subdivision and would be expected to be canvassed in respect of any resource consent application. It was agreed that the provision be retained.

Concerning the issue of overlap between the area-based subdivision provisions and the heritage provisions the Committee noted that Plan Change 43 also proposes specific additions to the area-based provisions to make it clear that, unless otherwise specified, the heritage provisions prevail over the area-based rules This is covered under the heading 'Additions to Area-Based Rules' in the Plan Change document.

With regard to Submission 76 the Committee was of the view that as Criteria 21A.3.2.1 is about the likely future development on the site and 21A.3.2.3 is about controls to avoid, remedy or mitigate possible adverse effects both should be retained.

Decision:

It is recommended that Submissions 76 and 81 relating to the assessment criteria for Rule 21A.3.2, not be accepted.

20.3 HERITAGE RULES – HERITAGE AREAS – RULE 21B

Heritage Areas - General Issues

Submission 76 expressed concern that the introduction to the rules is confusing and argued that listed buildings or objects within heritage areas should be assessed under the rules for both the individual listing and the heritage areas.

Submission 76 was also concerned that heritage areas contain buildings that do not have heritage value and it is not clear that they will be dealt with differently. It is requested that a suitable explanation be included in the introductory section.

Submission 81 commented that non-heritage buildings within heritage areas will be given heritage status and this is seen as an unwarranted restriction on development rights. It is requested that the rule be deleted and that new provisions be included applying design guides with specified heritage outcomes for each area.

Submission 28 argued that the heritage area provisions are unreasonable and onerous, particularly on residential property owners. It is requested that they remain as controlled activities.

Consideration:

Concerning Submission 76 and the introduction to Heritage Area provisions the Committee was satisfied that the introduction makes it clear that the rules for individually listed buildings prevail over the general rules for heritage areas. The Committee considered this to be sound and appropriate. The Committee noted that consideration will still be given to the heritage area and its values which is also believed to be appropriate. No changes to the introductory paragraphs have been recommended.

APPENDIX 1

Regarding the second point raised in submission 76 the Committee noted that in heritage areas, non-listed buildings or structures that contribute to the character and qualities of the heritage area will be subject to the rules. Identified non-heritage buildings or structures may however be demolished or relocated. The modification of non-heritage buildings and structures are also controlled to ensure that any new work enhances the character or qualities of the relevant heritage area. The Committee accepted that this had not been made clear and it was agreed that appropriate comment be included in the introductory statement to the rules.

With regard to Submission 81 the Committee heard that since Plan Change 43 was notified, more comprehensive heritage area provisions for the Central Area had been introduced under Plan Change 48. These provisions include more targeted urban design requirements. In addition, non-heritage buildings within the new heritage areas have been identified and these buildings may be demolished or relocated. It is acknowledged that work still has to be completed on the identification of non-heritage buildings within existing heritage areas in suburban areas, but the Committee was satisfied that this affected relatively few private properties. The Committee considered that the heritage area approach signalled in Plan Change 48 and backed by the provisions of Plan Change 43 (as modified by the decisions on District Plan Change 48) are appropriate and should be retained.

On the issue of Controlled Activities covered in Submission 28 the Committee reiterated that the Controlled Activity class had not worked satisfactorily to achieve the heritage outcomes desired by the Council. To strengthen the provisions, and to provide the option of declining consent, District Plan Change 43 had deliberately deleted Controlled Activities and elevated the provisions to either Discretionary (Restricted) or (Unrestricted). However, the Committee was advised that under the proposed rules, most work in a heritage area would be a Discretionary Activity (Restricted). Provision has been made for the consideration of such applications on a non-notified basis which would facilitate the consent process and where appropriate, application fees may also be reimbursed under the Council's Built Heritage Incentive Fund. The Committee acknowledged that these measures would assist in minimising the impacts of elevating the control of development to a discretionary status. For these reasons the Committee did not support reinstating Controlled Activities.

Decision:

It is recommended that Submissions 28, 76 and 81 on general matters relating to Heritage Area controls not be accepted but that Submission 76 in respect of non-heritage buildings in Heritage Areas be accepted by the inclusion of a new paragraph after the second paragraph in the introduction as follows:

'Non-listed buildings or structures within a heritage area are subject to the rules in this chapter except that identified non-heritage buildings or structures may be demolished or relocated.'

As a consequence of the above, it is also recommended that after the second paragraph to the italicised explanatory statement to Policies 20.2.1.5-8 the following be included:

APPENDIX 1

‘Heritage areas also contain buildings or structures that have been identified as having no heritage value. Identified non-heritage buildings or structures will be controlled to ensure that any future modifications enhance the values of the heritage area but their demolition or relocation will be permitted.’

Rule 21B.1.1 – Permitted Activities - Repairs and Maintenance

Submission 76 expressed concern about the use of the term ‘maintenance of land’ and requested that term be explained or removed.

Consideration:

The Committee was advised that because heritage areas cover areas of land in addition to buildings, structures or objects it is necessary to provide for general work on land as a Permitted Activity. It was noted that similar provisions are included in the plan for the maintenance of open space on the waterfront (Rule 13.4.8) and for the maintenance of all formed legal roads in the city. Under these rules ‘maintenance’ is not defined and the application of the provisions is left to the common understanding of what constitutes maintenance. It was accepted that because of the variables involved the term would be difficult to define but as the Committee was satisfied that all similar existing provisions work satisfactorily it was not considered necessary to attempt a definition for Rule 21B.1.1.

Decision:

It is recommended that Submission 76 requesting a definition of the term ‘maintenance’ in Rule 21B.1.1, not be accepted.

Rule 21B.1.2 – Permitted Activities - Internal Alterations and the Construction of New Buildings in a Heritage Area in Residential Areas

Submission 76 requested that all work under Rule 21B.1.2 be a Discretionary Activity (Unrestricted).

Consideration:

The Committee was satisfied that Rule 21B.1.2 that provides for internal alterations (where not specified in the listing of an item) and minor buildings in residential areas such as sheds is sensible and reasonable and will assist the efficient administration of the Plan.

Decision:

It is recommended that Submission 76 in respect of Rule 21B.1.2, not be accepted.

Rule 21B.1.3 – Permitted Activities - Earthworks

Submission 53 sought clarification of Rule 21B.1.3 but requested no specific decision.

APPENDIX 1

Submission 78 argued that the extraction limit of 10 cubic metres and the limit 10 square metres for the disturbance of surface area are too restrictive. The Submitter requested that the limits be substantially increased or removed.

Consideration:

The Committee was advised that as earthworks could potentially have a significant affect on a heritage area by damaging or eliminating features of heritage value. It was therefore accepted that the rule was generally satisfactory and should be retained.

The Committee was also advised that a comprehensive review is currently underway on the earthworks provisions in the District Plan. This was initiated in response to a decision of the Council to include new provisions in the Plan to replace the current earthworks bylaw that expires at the end of June 2008. This review will need to address the overlap between the proposed general rules and the earthworks controls in heritage areas. If it is decided that there should only be one earthworks provision in the District Plan then it is likely that Rule 21B.1.3 would be superseded, thus requiring a further change or variation to the Plan. The Committee was of the view that this work should not be pre-empted by amendments to Rule 21B.1.3 at this stage.

Decision:

It is recommended that Submissions 53 and 78 in respect of Rule 21B.1.3, not be accepted.

Rule 21B.2.1 – Discretionary Activities (Restricted) -New Buildings or Modifications

Submissions 47, 48, 49 and 82 address Rule 21B.2.1. Consistent with submissions made by the same submitters in respect of Rule 21A.3 it was requested that all works in heritage areas, including the demolition and relocation of buildings, be a Discretionary Activity (Restricted). Accordingly the submission sought the deletion of the Discretionary (Unrestricted) Rules 21B.3.1, 21B.3.2 and 21B.3.3.

Submissions 47, 48, 49 and 82 also requested that the matters in respect of which the Council retains discretion under Rule 21B.2.1 be limited to historic heritage and that the assessment criteria, whether under Discretionary (Restricted) or (Unrestricted) be amended to be more balanced and have due regard to matters other than heritage.

In respect of Rule 21B.3.3 the above submissions also requested that Assessment Criteria 21B.3.3.1 be amended to read, ‘the effect of the proposal on heritage’.

Submission 80 requested that work under this Rule be made a Discretionary Activity (Unrestricted).

Submitter 78 was concerned about the possible onerous implications of assessment criteria 21B.2.1.9 under the rule. This provision provides for consideration of whether professional heritage or conservation advice has been obtained from the NZHPT or other professionally recognised expert in heritage conservation. It was requested that this provision be deleted.

Consideration:

APPENDIX 1

With regard to making all activities Discretionary (Restricted) the Committee accepted that a similar situation applied as under Rule 21A.3 and it was agreed that the consideration of the submissions under the above heading '*Discretionary Activities (Unrestricted) – Rule 21A.3*' should also apply to Rule 21B.2.1.

Concerning the request of Submissions 47, 48, 49 and 82 to have the assessment criteria amended the Committee reiterated the comments in respect of the similar submissions to Rule 21A.2.1 the Committee was advised that assessment criteria have been included in the Plan for many years and provide a general guide to the matters that might be considered when a resource consent application is made. Assessment criteria are not specifically mandated by the RMA but have nevertheless been accepted as helpful aids to consent processing. An important consideration is that when determining applications, any matter that is relevant (having regard to the type of application) may be considered. In this respect the list of assessment criteria is never full or complete. With regard to Rule 21B.2.1 (and the assessment criteria to Rules 21B.3.1 and 21B.3.2 which are recommended to become Discretionary Activities (Restricted)) the Committee was of the view that the assessment criteria reasonably addressed the key development issues and were sufficient.

However, within the ambit of the submissions, the Committee recommended that amendments be made to the assessment criteria to provide an appropriate link with the heritage area provisions in proposed District Plan Change 48 (Central Area Review). Plan Change 48 which introduced new heritage areas within the Central Area was publicly notified subsequent to the notification of Plan Change 43. Consequently the heritage area provisions in Plan Change 43 had to anticipate the future linkages with Plan Change 48 the Committee noted that it has since been revealed that the Central Area heritage area provisions and the heritage area rules in Plan Change 43 are largely compatible. Rule 21B.2.1 will address matters relating to heritage values whereas the Central Area rules will deal with building height and related urban design issues. However, with regard to the administration of the Plan, the Committee considered it important that the assessment criteria under Rule 21B.2.1 contain an appropriate cross reference to the relevant Central Area Design Guides.

The Committee was advised that Assessment Criteria 21B.2.1.7 already provides a link but the criteria includes a qualification limiting consideration of design guides to the relationship of heritage character of buildings or structures to their surroundings. On reflection, the Committee believed that this qualification was not helpful because in respect of the Central Area heritage areas the relevant design guides should be applied in their entirety. The Committee therefore recommended that Assessment Criteria 21B.2.1.7 be amended appropriately.

Concerning the control of subdivision under Rule 21B.3.3 the committee was of the view that this should remain a Discretionary Activity (Unrestricted). In all zones the control of subdivision has remained a Discretionary Activity (Unrestricted) since the District Plan was first notified in 1994. This is primarily because of the difficulty of identifying the matters over which discretion would be exercised were the activity to be a Discretionary Activity (Restricted). To avoid excluding a relevant matter that might be necessary to prevent an inappropriate subdivision from proceeding (which is often difficult to predict with subdivisions) the Discretionary (Unrestricted) status has been

APPENDIX 1

maintained. The Committee was therefore of the opinion that the Discretionary (Unrestricted) status should be retained for subdivisions under the heritage provisions.

On the related issue of assessment criteria 21B.3.3.1 the Committee was not inclined to accept any amendment. It was believed that the current wording better signalled the need to consider proposed or possible development arising from subdivision near heritage items.

With regard to Submission 80 requesting that work under this Rule 21B.2.1 be made a Discretionary Activity (Unrestricted) this was not supported by the Committee in light of the above comments agreeing with Submissions 47, 48, 49 and 82 that the proposed 21B.3 provisions, except for the control of subdivisions, be made Discretionary (Restricted) Activity.

In response to Submission 78 is concerning the possible onerous implications of Assessment Criteria 21B.2.1.9 the Committee noted that assessment criteria are not standards or terms or requirements. They identify matters to be considered when a resource consent application is made. The extent to which they are relevant will depend on the nature of the particular application. The Committee agreed that while in many cases it would be prudent to obtain appropriate advice in respect of work on a heritage building this would not necessarily be required in all cases. The deletion of Assessment Criteria 21B.2.1.9 was not supported.

Decisions:

It is recommended that Submissions 47, 48, 49 and 82 be accepted and that a Discretionary (Restricted) status apply to existing Discretionary (Unrestricted) Rules (except for subdivision controls) as detailed in the recommendation under the heading '*Submissions Opposing the Entire Plan Change*' in the consideration of general submissions above.

It is recommended that within the ambit of Submissions 47, 48, 49 and 82 Assessment Criteria 21B.2.1.7 be amended to read:

'The extent to which proposals meet the provisions of any relevant design guide and particularly in respect of Heritage Areas within the Central Area, the provisions of the Central Area Urban Design Guide.'

It is recommended that Submissions 47, 48, 49 and 82 in respect of Assessment Criteria 21B.3.3.1, not be accepted.

It is recommended that Submission 78 concerning Assessment Criteria 21B.2.1.9, not be accepted.

It is recommended that Submission 80 requesting that work under this Rule 21B.2.1 be made a Discretionary Activity (Unrestricted), not be accepted.

Rule 21B.3.1 – Discretionary Activities (Unrestricted) - Demolition or Relocation of Buildings or Structures

APPENDIX 1

Submission 55 commented that the Rule 21B.3.1 should not apply to the demolition of non-heritage buildings within heritage areas.

Submission 76 sought the amalgamation of Assessment Criteria 21B.3.1.2 and 21B.3.1.3 to remove the reference to 'other human generated disasters' and by referencing 'natural disasters' only.

Submission 76 also requested the deletion of Assessment Criteria 21B.3.1.6 on the grounds that demolition and relocation controls should be strengthened by being made non-complying activities.

Submission 56 comments that the subdivision rules should not overlap with the existing area-based rules

Consideration:

Concerning Submission 55 the Committee noted that in heritage areas, any buildings or structures specifically listed and other buildings or structures that contribute to the character or values of the heritage area will be subject to Rule 21B.3.1. Under the wording introduced through Variation 4, any identified non-heritage buildings or structures will not be subject to the rule. The Committee was of the view that the amendment under Variation 4 would meet the submitter's concerns at least in part. It was noted that Variation 4 had not been subject to submissions and would be adopted.

In respect of Submission 76 the Committee was of the view that for the reasons outlined in the similar submission to Assessment Criteria 21A.3.1.2, the two provisions which address different issues should be retained. The committee also considered that as buildings will be lost or damaged by a range of human actions, whether wilful or not, it is appropriate to retain this reference.

In respect of Submission 76 and Assessment Criteria 21B.3.1.6 the Committee agreed that this is not a provision that can be made a Non-Complying Activity. With regard to the rule in general, the Committee is of the view that demolition or relocation should best be dealt with as a Discretionary Activity.

With regard to Submission 56 the Committee agreed that reference to heritage areas had been inadvertently omitted in the exceptions to the area-based rules in the Plan Change (referenced on page 7 of the Plan Change document). The Committee also agreed that an appropriate exception should be made.

Decisions:

It is recommended that that Submission 55 be accepted to the extent that identified non-heritage buildings or structures will not be subject to the Rule 21B.3.1 as provided under Variation 4.

It is recommended that Submission 76 in respect of the Assessment criteria, not be accepted.

It is recommended that Submission 56 be accepted and that under the additions to area-based rules, after the third bullet point, a further bullet point be included as follows:

APPENDIX 1

- *‘The subdivision rules in Chapter 21B apply for any subdivision of a site in a listed Heritage Area.’*

HERITAGE RULES - SIGNS – RULE 21D

General Submissions

Submission 53 commented that signs must be visible but no specific relief was requested.

Submission 76 requested that an explanation be included regarding the fixing of signs to buildings.

Consideration:

Submission 53 was noted but with regard to Submission 76 the Committee was advised that for all applications, Assessment Criteria 21D3.1.9 addresses the means of fixing signs to listed buildings or objects. The Committee believed that this provision was sufficient and further explanation is not required.

Decision:

It is recommended that Submissions 53 and 76 on general signs issues, not be accepted.

Permitted Activities – Rule 21D.1

Submissions 35 and 39 commented that only signs related to the historical context of the building or object should be allowed, otherwise they should be a Discretionary Activity (Restricted).

Submissions 76 and 81 expressed concern about the provision for signs in the Central Area and Suburban Centres.

Submission 76 asked why, under the second bullet point, the rule only applies to signs in the Central Area or Suburban Centres in Rules 21D1.1 and also 21D.3.1.

Submission 81 commented that the rules are too restrictive and that a new rule should be included to permit more extensive signage in the Central Area or Suburban Centres. This submitter appeared at the hearing and argued for more liberal provisions in commercial areas

At the hearing, Counsel for Submitter 82 also appeared and supported less restrictive sign provisions for heritage areas within the Central Area. Although Submitter 82 had not dealt with the sign provisions originally, the Committee accepted that a submission on signs was within the ambit of the original submission which sought the deletion of all of District Plan Change 43.

APPENDIX 1

Consideration:

With regard to Submissions 35 and 39 the Committee considered that it would be difficult to frame permitted activity rules on the basis of a subjective matter such as historical context. For permitted activities, sign control is usually based on quantitative measures such as sign area or height to provide certainty. While it was accepted that prescriptive measures were not necessarily ideal, no change was recommended.

Concerning the matters raised in Submissions 76, 81 and 82 the Committee first noted that Rule 21D.1.1 does impose very restrictive control over signs in heritage areas within the Central Area. As originally drafted only one small sign was permitted within each heritage area, which the Committee acknowledged was never the intention. The officers had recommended amending the rule to permit one small sign on each site within a heritage area but in the view of the Committee even this would be extremely limiting. Most of the heritage areas in the Central Area have retail uses or other commercial activities that rely on signs to direct customers or otherwise advertise the nature of business undertaken on sites or individual premises. While the Committee accepted that it was a desirable objective to improve the visual amenities of heritage areas by encouraging an improved sign environment, this would not be achieved by a very strict limitation on sign numbers. There are already many existing signs that would have existing use rights and it was believed impractical to attempt to maintain signage generally to the existing level through enforcement action. Very stringent ongoing compliance monitoring would be required over a long period to achieve any discernable improvement.

As the question of signage in heritage areas had also been raised under Plan Change 48 (Central Area Review) and recommendations made to address the issues the Committee was of the view that these recommendations would provide the basis for resolving matters under Plan Change 43.

In short, it was recommended under Plan Change 48 that the Central Area sign rules apply to heritage areas with the following provisos:

- That the current standards for sign size and placement be retained
- That signage be restricted to signs that denote the name and/or logo of the owner or occupier of the site; and
- That Central Area Policy 12.2.10.5 be amended to clarify that special consideration will be given to any other signage within these areas to ensure that they do not detract from the special character and/or heritage values of the area.

To implement the Central Area proposals, several amendments would be required to the sign Rules in Plan Change 43, including:

- The deletion of the second bullet point under Rule 21D.1.1; and
- Consequential amendments to the provisions under the heading, 'Additions to Area-Based Rules' on page 7 of the rule document.
- Consequential amendments to Rule 21D.3.1

Through these amendments the Committee considered that reasonable control would be retained on signage within Central Area heritage areas. Listed buildings would still be

APPENDIX 1

subject to more restrictive provisions but in the view of the Committee this was appropriate given the range of controls designed to maintain or enhance the appearance of these buildings.

As a consequence of the suggested changes to the signage provisions in the Central Area the Committee realised in respect of Submission 82 concerning the St John's Church property on the corner of Willis and Dixon Streets that some confusion could arise over the application of the amended provisions. St John's Church is the site of two listed buildings but the site is also an identified heritage area. This is a unique situation that does not apply elsewhere in the Central Area. As it is most likely that the more restrictive sign provisions for listed heritage buildings would apply in respect of any future application proposals this would negate the relief sought by the submitter. The Committee was therefore of the view that an appropriate exception be made to make it clear that the sign controls for Central Area heritage areas apply to the St John's Church site.

The Committee also wished to note that no problems were anticipated with regard to signage in heritage areas outside the Central Area as other zones, namely Residential and Open Space already have very restrictive sign rules. Some further adjustment may be required for Suburban Centres but this is a matter that will be addressed in the Suburban Centre review that has commenced.

Decisions:

It is recommended that Submissions 35 and 39 in respect of Rule 21D.1, not be accepted.

It is recommended that Submissions 76, 81 and 82 relating to signage in heritage areas within the Central Area be accepted and the following amendments be made:

That in the introduction to the Heritage Sign Rules the second bullet point be deleted

That in Rule 21D.1.1 the second bullet point be deleted

That the provisions relating to Area-Based Rules under the heading 'Additions to Area-Based Rules' on page 7 of the Plan Change document be amended as follows:

- In the first bullet point before the word 'heritage' include the word 'listed'.*
- Delete the last bullet point and the preceding words 'and in the central area/suburban centres add the following to the above bullet points'.*

That Rule 21D.3.1 be amended as follows:

- In the introductory paragraph the words 'or within a heritage area located in the Central Area or Suburban Centre' be delete.*

APPENDIX 1

- *The deletion of the second bullet point in the rule which reads, ‘within a listed heritage area in the Central Area or Suburban Centre’.*
- *Amend the words ‘object or area’ at the end of Rule 21D.3.1.5 and replace with ‘or object’.*
- *Amend the words ‘object or area’ at the end of Rule 21D.3.1.8 and replace with ‘or object’.*
- *In the italicised explanatory statement to Rule 21D.3.1 delete the words ‘Signs have the potential to compromise the heritage values of heritage areas’ in the second and third lines and delete the words ‘area or’ in the fourth line.*

It is recommended that Submission 82 be accepted in respect of signage on St John’s Church on the corner of Willis and Dixon Streets and that the following amendments be made:

That under the heading ‘Additions to Area-Based Rules the first bullet point be amended by the addition of the words:

(except for individual sites on which listed heritage buildings or objects are located that are also separate heritage areas).

That in the introduction to Rule 21D the first bullet point be amended by the addition of the words:

(except for individual sites on which listed heritage buildings or objects are located that are also separate heritage areas).

Discretionary Activities (Restricted) – Rule 21D.3.1

Submission 76 commented that a Design Guide for Signs has been included as part of Plan Change 48 and that this should be referenced in the Rule 21D.3.1.

Submission 81 requested that it be made clear that signs not be excluded from commercial areas.

Consideration:

With regard to Submission 76 the Committee noted that in response a submission on Policy 20.2.1.9 it has been recommended that the Design Guide for Signs be included as a method for the implementation of the policy. The Committee therefore agreed that there should be a similar reference in the rules. It was deemed that the assessment criteria to Rule 21D.3.1 would be the appropriate place.

In response to Submission 81 the Committee was of the view that the recommendations in respect of Rule 21D.1.1 should largely have addressed the Submitters concerns. Under the Central Area rules proposals exceeding the permitted activity standards may

APPENDIX 1

be considered as a Discretionary Activity (Restricted). To this extent, the rules will provide for the consideration of additional signage in commercial areas.

However, the Committee noted that the first bullet point to Rule 21D.3.1 omits reference to the site on which a listed heritage building or object is located. The Committee considered that to be consistent with Rule 21D.1.1, a reference to sites should be included. This was believed to be within the wide ambit of Submission 81 requesting that it be made clear that signs not be excluded from commercial areas.

Decisions:

It is recommended that Submission 76 be accepted and a new provision be included as follows:

‘21D3.1.11 The extent to which signs comply with the Design Guide for Signs.’

It is recommended that Submission 81 be accepted to the extent the first bullet point to Rule 21D.3.1 be amended as follows:

- *‘listed heritage buildings or objects, or sites on which a listed building or object is located; or’*

FURTHER SECTION 32 EVALUATION

Under section 32 (2) (a) of the Resource Management Act 1991 the Council is required to make a further evaluation of Proposed Plan Change 43 before a decision is made under clause 10 to Schedule 1 of the Act.

An evaluation must examine:

- (a) the extent to which each objective is the most appropriate way to achieve the purpose of the 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.*

An evaluation must also take into account:

- (a) the benefits and costs of policies, rules, or other methods....defined as including benefits and costs of any kind, whether monetary or non-monetary.*

With regard to the majority of the recommended changes and amendments to the Plan Change which are of a minor nature it was considered that that they are necessary to improve the efficiency and effectiveness of the provisions. Most of the changes or amendments were made to assist in the clarification or explanation of the provisions to promote the better implementation of the rules. The benefits of this were believed to outweigh the costs of administering provisions that might otherwise result in uncertainty and misunderstandings leading to costs and delays.

APPENDIX 1

A further three changes of a more substantive nature were made to the provisions.

The first was the rewording of the main objective (20.2.1) to focus on the protection of historic heritage from inappropriate subdivision, use and development rather than protection per se. As the amended objective reflects the wording of section 6(f) of the Resource Management Act 1991, it was considered that the objective was the most appropriate way to achieve the purpose of the Act.

The second was the reclassification of all Discretionary (Unrestricted) Activities under Rules 21A and 21B (except for subdivision) as Discretionary Activities (Restricted). This was done to ensure that the matters over which the Council has reserved discretion would remain focused on the effects on historic heritage and not other unrelated matters. Other matters would be addressed through relevant area-based provisions. It was considered that for a specific activity such as heritage it would be more effective and efficient to deal with development proposals as Discretionary (Restricted) Activities which would avoid potential entanglement with other non-heritage issues. Greater rule clarity would provide increased certainty to all parties and potentially lower implementation costs while maintaining the ability to achieve desired heritage outcomes.

The third change covered amendments to the heritage provisions to give effect to the control of signage in Central Area Heritage Areas through the Central Area rules. This was to acknowledge the greater role of signage in commercial areas and to avoid possible conflict between the Heritage and Central Area provisions. It was also considered that a clear rule structure would promote the efficient and effective implementation of the Plan, provide increased certainty to all parties and potentially lower implementation costs while maintaining the ability to achieve desired visual amenity outcomes.

CONCLUSION

Proposed District Plan Change 43 was introduced to strengthen the management of heritage in the city through enhanced regulatory measures. The Plan change forms part of a wider range of measures outlined in the Council's Built Heritage Policy for the protection and conservation of the city's heritage and was also a response to recent amendments to the Resource Management Act elevating the status of heritage protection to a matter of national importance.

The Plan Change attracted 85 main submissions and 14 further submissions. The submissions covered all key aspects of the proposals and ranged from full support to total opposition. The majority were however generally supportive provided various issues were addressed.

The Committee gave careful consideration to all of the matters raised but in the end were not persuaded to make significant changes that would have the effect of altering the main thrust of the Plan Change. However, selective changes were made that in the opinion of the Committee would better align the provisions with requirements of the Resource Management Act and improve their operational effectiveness.

APPENDIX 1

The Committee was therefore satisfied that many of the submitter's concerns had been adequately dealt with through the various recommendations and that the resulting amended provisions would work to ensure the protection of historic heritage in the city form inappropriate subdivision, use and development.

Alick Shaw

Chair of the Hearing Committee on Plan Change 43 – Heritage Review