
REPORT 2
(1512/52/IM)

PROPOSED DISTRICT PLAN CHANGE 43 – HERITAGE PROVISIONS

1. Purpose of Report

The purpose of this report is to present to the Committee a proposed District Plan Change arising from a review of the Heritage Chapters of the District Plan (Chapter 21 and 22).

2. Recommendations

It is recommended that the Committee:

- 1. Receive the information.*
- 2. Agree to publicly notify the proposed plan change, as set out at Appendix 2 of this report, in accordance with the First Schedule of the Resource Management Act 1991.*
- 3. Delegate to the Portfolio Leader for Urban Development the authority to approve minor editorial word changes and specific wording to give effect to the consequential changes identified in Appendix 2 prior to notification.*
- 4. Adopt the Section 32 Report set out in Appendix 3 to this report.*

3. Background

3.1 December 2005 Report

On 1 December 2005 a report was presented to the Strategy and Policy Committee outlining proposed changes to the existing heritage provisions in the Operative District Plan. The purpose of the report was to seek authorisation for consultation on the proposals before preparing a plan change for public notification.

The report detailed the reasons for promoting a review of the provisions at this time

including:

- Shortcomings with the operation of the existing District Plan provisions
- Amendments to the Resource Management Act 1991 (RMA) requiring stronger recognition for the protection of heritage
- The adoption of the new Built Heritage Policy which, among other things, recommended greater statutory protection for the City's built heritage through changes to the District Plan.

The report also outlined the main changes to the provisions which included the general reformatting of the rules and specific amendments, alterations or additions in respect of the following:

Objectives and Policies

The heritage objective and related policies were redrafted and expanded to emphasise the protection of historic heritage in accordance with section 6(f) of the RMA and the Built Heritage Policy.

Removal of Controlled Activities

The Controlled Activity provisions were deleted and additions and alterations to listed heritage buildings and items made a Discretionary Activity (Restricted or Unrestricted, depending on the extent of the modification of the building). This was to give the rules greater 'teeth' in that resource consent applications could be refused. The demolition of buildings was also made a Discretionary Activity (Unrestricted).

Heritage Areas

The rules relating to heritage areas were redrafted in anticipation of new and expanded areas being included in the Plan comprising both listed buildings and other character buildings that will collectively constitute a distinct heritage identity. For listed buildings the specific rules for listed buildings will apply. Non-listed buildings would be subject to the Heritage Area provisions.

3.2 Consultation

Between mid January and mid February 2006 the owners of all heritage items listed in the District Plan together with a range of special interest groups were consulted on the draft District Plan provisions. A total of 17 submissions were received (see summary attached as Appendix 1). Six of the submissions generally supported the proposals but requested various amendments or alterations. The other submissions covered a variety of issues but there was an emphasis on the question of costs and related issues of earthquake strengthening. All submissions were carefully considered and resulted in a number of amendments or additions to the draft 'final' provisions recommended for public notification. These changes are commented on more fully in Section 4 below. All submitters have been sent a copy of this report, including appendices.

With regard to the issue of increasing costs to land owners as a result of applying more stringent provisions, it is noted the intent has always been to apply a ‘carrot and stick’ approach for the protection of heritage. This is to be achieved through a balance of financial incentives and regulation in the form of District Plan rules. For the more major renovation and/or strengthening work it is fair to say that the financial incentives available will never be enough to satisfy the expectations of many owners. However, concerns about costs and delays for more minor works arising from the need to apply for resource consents could be ameliorated to some extent by the use of incentive funds for assisting applicants through the resource consent process. On this matter consideration is currently being given to the provision of grants towards resource consent costs as part of the incentive package for heritage.

4. Discussion

A copy of the proposed Plan Change for Heritage is attached to this report as Appendix 2. This sets out the changes officers have made to the draft document approved by the Committee in December in response to submissions. Apart from minor corrections and adjustments to improve the workability of the provisions, the provisions differ from what was presented to Committee last December as follows:

Chapter 3: Information to be supplied

Under Chapter 3 of the District Plan a new provision has been included (3.2.2.14) covering the information to be submitted with applications for resource consent. Although such information is no longer specifically required under the Act the provisions nevertheless provide a useful check-list for applicants and will assist the application process. It is therefore recommended that the information requirements be included as part of the change ‘package’.

Introduction to Heritage Chapters

The introduction to the Heritage Chapter has been rewritten to provide a more concise lead-in to the objectives, policies and rules and to give greater recognition of the recent amendments to the Resource Management Act and Council’s Built Heritage Policy. The submission from Greater Wellington Regional Council requested that the amendments to the Resource Management Act regarding heritage be reflected in the introduction.

Archaeological sites

Several submitters (New Zealand Historic Places Trust (NZHPT), Greater Wellington and N Naus) commented that that the proposed change should address the management of archaeological sites as this is now a matter of national importance under section 6 (f) of the Resource management Act. Section 6 (f) provides for the protection of historic heritage from inappropriate subdivision, use and development. Historic heritage is defined as including archaeological sites.

The recent archaeological discovery in lower Taranaki Street and the digs that were undertaken on the alignment of the inner city bypass highlight the importance of adopting measures to protect archaeological finds.

Under the heritage listing some protection is currently afforded through the identification of the Maori Precincts. There is also the general duty of everyone under section 17 of the Resource Management Act to avoid, remedy or mitigate adverse effects arising from an activity, whether or not the activity is permitted or not.

Notwithstanding these measures it would be desirable to have specific management measures in the Plan. Further work is required to determine how best to deal with archaeological issues through the application of District Plan provisions. At this stage the primary difficulty is how to apply controls when the location of archaeological sites is unknown. Consequently no rule changes are proposed.

Until further work can be done it is proposed that an appropriate policy be included in the Plan to identify the issue and to support future protection measures should further sites be revealed. A new Policy 20.2.1.10 has therefore been recommended. A new assessment criteria is also added to some rules (in particular the discretionary activity rules) so that if a resource consent is triggered by a proposal, and there is jurisdiction to consider historic heritage, then effects on archaeological values will be considered.

Protecting the setting of listed heritage items

In the recent submissions the NZHPT commented that the initial proposals do not address the issue of surroundings of historic heritage, also known as curtilage. This has always been considered a 'big' policy issue as the current listing of items in the plan generally relate only to the item itself and the related controls do not affect surrounding properties.

At the present time only Old St Paul's in Mulgrave Street and Futuna Chapel in Karori have restrictions that apply to adjacent privately owned land. Both were the result of Environment Court litigation. The extension of similar control measures to all existing listed items would be a major work task. This work would need to involve a detailed investigation of each individual listed item to assess the contribution that the site itself and adjoining or surrounding properties make to the values of the heritage item. Specific controls may then need to be developed to address identified values and potential impacts.

In the near future it is likely that the Central Area design guides will provide some assistance on the curtilage issue. The design guides are currently being reviewed and it is intended to strengthen the design provisions for buildings adjacent to heritage items. This will form part of the review of the Central Area Chapter of the Plan that will be notified later this year.

Under this heritage plan change it is considered that additional protection can be given to heritage buildings in their setting by controlling new building development or subdivision on the same site. To achieve this end a new policy has been included

(Policy 20.2.1.5) supported by a new Discretionary (Restricted) Rule controlling building development (Rule 21A.2.2) and a new Discretionary (Unrestricted) Rule controlling subdivision (Rule 21A.3.3).

A similar approach is also proposed for heritage areas. Under the draft rules reported to Committee last December new building development within heritage areas was covered but it is now proposed to include the subdivision of land as well. Accordingly Policy 20.2.1.7 has been amended to refer to subdivision supported by new Rule 21B.3.3.

Deletion of the word 'continued' in three places

The phrase 'sustainable continued use' appears in the draft provisions in three places, in Policy 20.2.1.2, Policy 20.2.1.3 and Assessment Criteria 21A.3.2.3. The submission from N Naus commented that the use of the phrase is unclear and problematic in terms of its likely interpretation. It was suggested that if a heritage building was left vacant then this would provide the justification for demolition or relocation. To avoid possible misunderstandings it is recommended that the word 'continued' be deleted from the phrase in the three places where it appears.

Deletion of Non Complying Rule references

A number of submitters requested that the demolition of listed buildings be dealt with as a Non-Complying Activity but this has not been supported. The reasons for this were outlined in the previous Committee report and concern the effective prohibition of the activity if adopted. The submission from Capital Properties Limited has instead commented that the Non-Complying Activity Rule 21A.4 is redundant because if a proposal contravenes one of the heritage rules then it will be a Discretionary Activity (Restricted) or Discretionary Activity (Unrestricted). It was requested that the rule be deleted. Legal advice has confirmed that for the heritage provisions a Non-Complying provision is not required. It is therefore recommended that rule 21A.4 and also 21B.3 be removed. It is noted that the current heritage provisions has no Non-Complying rule.

New definition of 'contributing building or structure' and Policy 20.2.1.6

Policy 20.2.1.6 and the Discretionary Activity (Unrestricted) Rule 21B.3.1 were proposed in the redrafted chapter that was approved in December for consultation. They sought to rectify the lack of clarity with the current district plan provisions that apply to heritage areas so that it is clear that the restrictions on demolition, destruction and removal/relocation only relate to buildings and structures that have heritage values that form part of the heritage values of the heritage area. To assist with the application of the heritage area rules a new definition is proposed for such buildings and structures; 'contributing building or structure'. All new heritage areas in the future, including any review of the existing areas, will need to identify which buildings or structures are 'contributors'.

New policy 20.2.1.5 is also proposed to specifically recognise that the process of identifying heritage areas to cover groups of buildings, structures and spaces is a specific way the overall objective will be attained.

Amended policy for listed trees – Policy 20.2.1.10

Although the proposed plan change does not alter the rules relating to listed trees the opportunity has been taken to expand the policy by making reference to trimming and activities within the dripline of trees which under the rules is a Discretionary Activity (Unrestricted). The proposed amended policy states that such activities will only be allowed where they maintain or enhance the heritage values recognised in the listing of trees.

5. Relationship with Central Area Review

The Central Area provisions of the Plan are currently being reviewed. A consultation programme is underway and a Proposed Plan Change will be brought to the Committee in June for consideration. There may be some aspects of the Central Area provisions that will be relevant to the heritage chapter provisions, although there will be no direct overlap.

Some parties will wish to consider both sets of plan changes at the time they prepare their submissions. To enable this it is proposed to provide an extended submission period for Plan Change 43.

6. Conclusion

It has been acknowledged that the existing heritage rules in the District Plan are in need of review to better protect the City's heritage. Proposed changes were presented to the Strategy and Policy Committee in December last year to strengthen the provisions. The changes responded to the Council's new responsibilities under the Resource Management Act and took account of the policy direction of the Built Heritage Policy. Following consultation the provisions have been further refined and are now recommended for public notification.

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Supporting Information

1) Strategic Fit / Strategic Outcome

The District Plan supports a wide range of strategic outcomes, particularly those under the Built Environment, Natural Environment and Transport KAA's.

2) LTCCP/Annual Plan reference and long term financial impact

Project C533 – District Plan

3) Treaty of Waitangi considerations

All District Plan work is required to take into account the principles of the Treaty of Waitangi (refer to section 8 of the Resource Management Act 1991).

4) Decision-Making

The proposed changes to the District Plan are not significant in that they amend existing provisions that were adopted after following required Resource Management Act processes.

5) Consultation

a) General Consultation

Specific consultation has been undertaken, in accordance with the Consultation Programme presented to the Committee in December.

b) Consultation with Maori

As above.

6) Legal Implications

The Council's lawyers have been involved in reviewing the proposal.

7) Consistency with existing policy

The existing Heritage provisions in the District Plan work to achieve established Policy for the protection of the City's heritage. The proposed plan changes to strengthen the District Plan provisions are consistent with the existing approach.