

# Proposed Plan Change 83 (PPC83) to the Auckland Unitary Plan Operative in part Section 32 – Evaluation Report

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# Executive summary

PPC83 introduces changes to Chapter L Schedules, Schedule 10 Notable Trees Schedule (Schedule 10) and the Notable Trees overlay in the AUP maps.

## The objectives of the plan change

The purpose of PPC83 is to ensure the continued identification, management and protection of notable trees across the region and recognition of their section 6<sup>1</sup> and section 7<sup>2</sup> values.

The purpose of PPC83 is achieved by:

- Additions to Schedule 10
  - the addition of 24 individual trees and four groups of trees to Schedule 10
  - the introduction of an automatic update clause
- Addressing inaccuracies/inconsistencies in Schedule 10 Notable Tree Schedule and Chapter D13 Notable Trees Overlay
  - the amendment of a further 64 listings in Schedule 10
  - the removal of 51 trees in Schedule 10 where the trees are no longer present or health has deteriorated considerably
  - the removal of reference in Chapter D13 Notable Trees Overlay to diagrams which have been removed

The scope of the proposed changes is limited to the following:

- Scheduling 24 individual and four groups of those nominated trees which have been found to meet the Notable Trees criteria and adding them to the Notable Trees Overlay<sup>3</sup>. These additions ensure the provisions of the AUP apply, including the Notable Trees Overlay provisions.
- The introduction of an automatic update clause ensures all future subdivisions are captured and amendments as a result of removals can be undertaken outside the Schedule 1 process
- amendments to 64 listings which:
  - update legal descriptions and/or addresses where they have changed as a result of development and subdivision
  - correct minor errors such as spelling and grammar
  - improve the location of symbology in the Notable Trees Overlay to ensure the trees are accurately identified where the location has been verified
  - update the number of trees for different species where this has been omitted
  - improve species descriptions where these are not specific enough

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<sup>1</sup> RMA s6

<sup>2</sup> RMA s7

<sup>3</sup> AUP Chapter D13 Notable Trees Overlay

- remove 51 notable trees (27 listings in full and 11 partial listing removals) where there is evidence they have been physically removed as a result of consents (often development or subdivision related), emergency works and/or deteriorated health.

## **Rationale for the plan change**

Tree schedules are highly dynamic meaning that they fall out of date over time. This is because subdivision, development and consents for removal/alteration as well as emergency works affect the description of listings on the schedule. Given that there are nearly 3000 listings in Schedule 10, representing 6-7000 trees across the region, errors will continue to be identified and further updates will therefore be required. It is important that these inaccuracies and inconsistencies are addressed to ensure the correct application of Schedule 10. To update Schedule 10 requires a plan change. These changes cannot be addressed through any other process.

A long-term approach is also required, to enable those changes which are of neutral effect and against which members of the public would not be inclined to make submissions on, to be made outside the Schedule 1 process. It is also important that notable trees do not lose protection as a result of legal descriptions/addresses changing through the subdivision process. The introduction of an automatic update clause to capture future subdivisions and allow for removals where trees have physically gone will improve the management of Schedule 10 in the future by allowing amendments to the schedule in a more timely manner.

Approximately 587 nominations have been held in a database by the Plans and Places department. The bulk of these nominations were received as submissions through the Proposed Auckland Unitary Plan (PAUP) process with further unsolicited nominations received through the nominations process since the AUP became Operative in Part in 2016. The Regional Policy Statement (RPS) within the AUP contains a number of objectives and policies relating to notable trees. The key objective related to notable trees is B4.5.1 which states

*Notable trees and groups of trees with significant historical, botanical or amenity values are protected and retained.*

Consistent with this objective, PPC83 has started to respond to the existing nomination database by evaluating nominated trees and adding those which merit inclusion to the schedule, ensuring that notable trees are recognised, protected and retained.

These proposed changes will positively contribute to the management and protection of notable trees and ensure the schedule is applied correctly. Additions through nominations and re-evaluations or amendments to the policy approach for notable trees would be subject to a future plan change.

No other objectives, policies, and rules or other methods for the purpose of managing notable trees are proposed to be changed as part of PPC83.

## **Analysis of options**

In the preparation of PPC83, there were four clear options identified:

Option 1 – do nothing/retain the status quo

Option 2 - rely on other regulatory and non-regulatory methods

Option 3 – a plan change to amend errors and update information within the Notable Trees Overlay, address those existing nominations which have been evaluated and meet the scheduling criteria and add an automatic update provision to the schedule (preferred option)

Option 4 – a hybrid approach which in addition to Option 3 also calls for further nominations from the public

The assessment of possible options against the selection criteria is discussed in detail in Section 7 of this report.

### **Matters outside the scope of the plan change**

The scope of PPC83 does not include:

- the addition of further notable trees or notable groups of trees other than those specifically addressed in this report. The scope of nominations which were considered for additions as part of this plan change are limited to those existing nominations which have been recorded in council's database
- the removal of existing notable trees or notable groups of trees on the schedule (other than those which have been physically removed from a property and therefore no longer exist)
- amendments to the objectives or policy framework or to the rules relating to notable trees
- re-visitation of previous plan changes undertaken by legacy councils which developed the legacy schedules of notable trees which were subsequently amalgamated to the operative Schedule 10

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# 1 Introduction

This report is prepared as part of the evaluation required by Section 32 of the Resource Management Act 1991 ('the Act') for proposed Plan Change 83 (PPC83) to the Auckland Unitary Plan (Operative in Part) (AUP).

PPC83 introduces changes to Chapter L Schedules, Schedule 10 Notable Trees Schedule (Schedule 10) and the Notable Trees overlay in the AUP maps.

The additions and amendments proposed in PPC83 will assist in the management and protection of scheduled trees. The purpose of PPC83 is to ensure the continued identification, management and protection of notable trees across the region and recognition of their section 6<sup>4</sup> and section 7<sup>5</sup> values.

In-scope changes:

The scope of the plan change is limited to those identified amendments in the Introduction and section 7 of this report. It seeks only to amend the Schedule and corresponding Overlay to correct errors, inconsistencies and anomalies regarding the way in which trees and groups of trees are described and recorded in the schedule. The plan change also seeks to add those nominated trees which have been evaluated as meeting the criteria for scheduling. PPC83 also proposes to add an automatic update clause which will allow for the continued protection of notable trees where properties have been subdivided and also delete from the Schedule those notable trees which are known to have been physically removed.

Out of scope changes:

PPC83 does not propose to add any additional trees to the Schedule other than those specifically identified in this report. The plan change does not propose to re-evaluate existing trees in Schedule 10. Therefore, any inclusions, deletions (aside from those notable trees which have been confirmed as removed) or re-evaluation of any existing notable tree currently listed in Schedule 10 is out of scope of the proposed plan change.

Further, PPC83 does not seek to alter the outcomes of any of the objectives and policies of the AUP. Nor does it introduce any new objectives, policies, rules, or zoning. The policy approach to Notable Trees, its purpose and function remains unchanged, and this report does not evaluate these unchanged purposes and functions in any more detail.

Finally, PPC83 does not re-visit the previous plan changes of legacy councils which developed or amended their respective notable tree lists. In some cases the legacy maps of previous councils were consulted to assist with the location of previously-identified listed trees and groups. PPC83 focuses

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<sup>4</sup> RMA s6

<sup>5</sup> RMA s7

on the operative Schedule 10, which contains the current and accepted list of notable trees, having undergone a Schedule 1 RMA process as part of the development of the AUP.

Inviting further additions through nominations would potentially require significant resources and time, depending on the number of submissions received. Addressing further nominations would be subject to political decision and it is therefore appropriate that addressing the existing nominations database and calling for further nominations from the public are treated as two separate issues. Additions through nominations and re-evaluations or amendments to the policy approach for notable trees would be subject to a future plan change.

These proposed changes will positively contribute to the management and protection of notable trees and ensure the schedule is applied correctly.

No other objectives, policies, and rules or other methods for the purpose of managing notable trees are proposed to be changed as part of PPC83.

## **1.1 Section 32 Evaluation**

Section 32 of the Act requires that before adopting any objective, policy, rule or other method, the Council shall carry out an evaluation to examine:

The extent to which each objective is the most appropriate way to achieve the purpose of the Act, and Whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objective.

The evaluation must also take into account:

The benefits and costs of policies, rules, or other methods; and

The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.

A report must be prepared summarising the evaluation and giving reasons for the evaluation.

In accordance with section 32(6) of the Act and for the purposes of this report:

- the 'proposal' means PPC83,
- the 'schedule' means Schedule 10 Notable Trees Schedule,
- the 'objectives' means the purpose of the proposal/proposed PPC83, and
- the 'provisions' means the policies and rules or other methods that implement or give effect to the objectives of the proposal.

PPC83 is to be notified at the same time as the Council's Intensification Planning Instrument (IPI) to incorporate the Medium Residential Density Standards (MDRS) and implement the NPS UD into the AUP. The environment against which options for this plan change are considered is that arising from application of the MDRS and Policy 3 of the NPS-UD. To be clear, PPC83 is prepared against this baseline or reference point.

The AUP contains existing objectives, policies, and rules or other methods for the purpose of protecting and managing scheduled trees. PPC83 is not seeking to alter or re-litigate any of these provisions. This evaluation report on PPC83 relates only to the addition of existing nominated trees which merit inclusion on the schedule, amendment of the existing Schedule to correct the information as it relates to individual trees and groups of trees and amendments to the corresponding GIS viewer/maps within the existing policy framework of the AUP. The policy approach remains unchanged, and this report will not evaluate it in any more detail.

## 1.2 The Evaluation Approach

This section 32 evaluation will continue to be refined in relation to any consultation that occurs and in relation to any new information that may arise, including those submission on PPC83 and during hearings.

Sections of this report	Evaluation Approach
<b>Section 2: Issues</b>	This part of the report will explain the resource management issue(s) and why there is a need to resolve them.
<b>Section 3: Objectives</b>	This part of the report will outline the purpose of PPC83.
<b>Section 4: Reasons for the proposed plan change</b>	In accordance with subsections 32(1)(a) and (1)(b)(iii) of the RMA, this part of the report examines the extent to which the objectives of the proposal (PPC83) are the most appropriate way to achieve the purpose of the RMA. This section outlines the reasons for and the scope of PPC83.
<b>Section 5: Statutory evaluation</b>	This part of the report evaluates the relevance of PPC83 to Part 2 (sections 5-8) and other relevant parts / sections of the RMA.
<b>Section 6: National and local planning context</b>	This part of the report evaluates the relevance of PPC83 against the national and local planning context.
<b>Section 7: Development of the plan change</b>	This part of the report outlines the methodology and development of PPC83, including the information used.
<b>Section 8: Consultation</b>	This part of the report outlines the consultation undertaken in preparing PPC83. It includes a summary of all advice received

	from iwi authorities on PPC83 (as required by section 32(4)(a) of the RMA).
<b>Section 9: The development and evaluation of options</b>	In accordance with section 32(1)(b) and (2) of the RMA, this section examines whether the options appropriately achieve the objectives of the AUP and the sustainable management purpose of the RMA. The options are assessed by their efficiency and effectiveness, costs, benefits and risks to resolve the RMA issue.
<b>Section 10: Conclusion</b>	This part of the report provides a conclusion as to whether PPC83 is the most efficient, effective and appropriate means of addressing the resource management issues identified.

This section 32 evaluation report will continue to be refined as the proposed plan change progresses through the plan change process. The section 42a hearing report will also be part of the section 32 evaluation.

## 2 The Issues

### 2.1 The Auckland Unitary Plan and background to the proposed plan change

The AUP became operative in part on 15 November 2016. PPC83 is the third plan change to amend Schedule 10 since the AUP became operative in part<sup>6</sup>. The AUP contains objectives, policies and rules to protect particular notable individual trees and groups of trees from damage or destruction by inappropriate subdivision, use or development or through inappropriate construction methods. The AUP methods to achieve this protection are primarily focused on the Notable Trees Overlay. Individual trees and groups of trees that have been identified as notable trees are included in the Schedule. The AUP also includes criteria which must be met in order for a tree or group of trees to be included on the Schedule.

The AUP protects and retains notable trees with significant historical, botanical or amenity values. Trees or groups of trees in Schedule 10 were evaluated using a set of criteria based on historical association, scientific importance or rarity, contribution to ecosystem services, cultural association or accessibility and intrinsic value. These factors are considered in the context of human health, public safety, property, amenity values and biosecurity.

The presence of a notable tree or group are identified in the GIS viewer/planning maps by a green triangle indicating the verified position of the tree or trees, a green triangle with a red dot in the center of the parcel indicating the presence of a tree or group of trees where the location has not been verified, or a green polygon which denotes the extent of a group of notable trees.

The notable trees proposed in PPC83 to be included in Schedule 10 were identified through public nominations. The proposed deletions are a consequence of consents (often development or subdivision related), emergency works and/or deteriorated health.

The notable trees in PPC83 have been identified for values that are a mix of section 6 significant indigenous vegetation and significant habitats of indigenous fauna, historic heritage, cultural heritage as well as section 7 amenity. The proportional mix varies tree by tree but as a whole there are section 6 and section 7 matters intertwined for most trees.

#### 2.1.1 Plan Change 29 and Plan Change 68

Prior to the creation of the AUP, each legacy council had its own schedule of notable trees. These varied in number and extent according to the local area. These legacy schedules of notable trees were “rolled over” into the AUP and there are subsequently almost 3000 individual line items representing several thousand trees or groups of trees regionally. Many of the legacy schedules had not been updated at the time of being incorporated into the AUP.

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<sup>6</sup> Plan Changes 29 and 68

Since the AUP became operative in part, Schedule 10 has been amended twice via Proposed Plan Changes 29 (PC29) and 68 (PC68). PC29 amended errors and inconsistencies in the Schedule 10 text and maps. This only included correcting errors such as mapping (e.g. tree identification mapped at the wrong location), incorrect information in the Schedule (e.g. address and/or legal description is incorrect, the number of trees is missing/incorrect, the botanical and/or common names are incorrect or do not align), or items missing from Schedule 10 or included in error.

PC29 did not add to or re-evaluate existing trees on the schedule. PC29 sought to ensure that the current Schedule 10 is correct and up to date and to improve the overall usability of the Schedule.

At the time PC29 was presented to council it was proposed that nominations for additions to/removals from Schedule 10 would not form part of the plan change process. Any submissions for additions to/removals from the Schedule would be considered as a separate matter at a later date. It was not considered appropriate to add to or remove from the Schedule concurrently with the fixing of errors and inconsistencies.

PC29 was made operative in full on 9 July 2021.

PC68 introduced a single pōhutukawa to the schedule and the application of the Notable Tree overlay to one additional property in the Unitary Plan maps showing the location of the tree. PC68 was made operative on 8 July 2022.

## 2.2 The proposed plan change

PPC83 introduces changes to Schedule 10, Chapter D13 and the GIS viewer Notable Trees Overlay. The proposed changes are to listings of individual trees and groups of trees identified within the Notable Trees Overlay and included in Schedule 10. The proposed changes also include amendments to Chapter D13. The changes proposed to Schedule 10 also add or remove information from the GIS viewer.

The plan change documents for PPC83 show:

- proposed amendments to Schedule 10 (see Attachment A),
- proposed amendments to Chapter D13 (see Attachment B), and
- proposed amendments to the Notable Trees Overlay (shown in the planning maps) (see Attachment C)

An evaluation has been prepared for each new added tree that is included in PPC83. These evaluations, which do not form part of the plan change, can be viewed on Council's website with the plan change documents.

## 2.3 The issue / problem definition

The issue addressed by PPC83 relates to the most appropriate method to manage the protection of Auckland's notable tree stock which are a valuable natural and physical resource. The ongoing identification and protection of notable trees will assist with achieving many of the matters outlined in Section 6 and section 7 of the Act.

Tree schedules are highly dynamic and are not as easily maintained as other AUP schedules which are static (e.g. Outstanding Natural Landscapes Overlay Schedule, Outstanding Natural Features Overlay Schedule) meaning that they fall out of date over time. This is because subdivision, development and consents for removal/alteration as well as emergency works affect the description of listings on the Schedule. The health of trees can also naturally deteriorate. Given the number of listings contained in the Schedule, errors will continue to be identified and further updates will therefore be required. To update Schedule 10 and Appendix 1G requires a plan change. These changes cannot be addressed through any other process.

For the schedule to function as originally intended, and the ongoing identification and protection of notable trees, it is important that it is kept up to date. The proposed changes in PPC83 will assist with this. Failing to do this would put existing and future notable trees at risk.

## **2.4 The scale and significance of the issues**

An amendment to the RMA in 2013 removed the use of general tree protection in urban areas, this resulted in a limited ability for the council to apply rules for the removal of urban trees, other than by specifically identifying them on a schedule.

Within urban areas the RMA does enable the council to protect 'significant ecological areas' and other 'groups' of trees. This is on the basis that the protection is through regional rather than district rules that are based on regional functions such as natural hazard management or the maintenance of indigenous biodiversity. District plan tree protection in urban areas can only occur through notable tree schedules that specifically describe and identify trees.

For the schedule to function as originally intended, and for the ongoing identification and protection of notable trees, it is important that it is kept up to date. The proposed changes in PPC83 will assist with this. Failing to do this would put existing and future notable trees at risk.

## 3 Objectives

An evaluation under section 32 of the Act must examine the extent to which the objectives of PPC83 are the most appropriate way to achieve the purpose of the Act<sup>7</sup>. The objective of PPC83 is to ensure the continued identification, management and protection of notable trees across the region and recognition of their section 6 and section 7 values.

The proposed plan change will assist the Council to carry out its functions in order to achieve the purpose of the Act, being to promote the sustainable management of natural and physical resources.

Natural heritage is identified as an issue of regional significance in the AUP's RPS<sup>8</sup>.

The approach of the AUP is to protect and retain notable trees with significant historical, botanical or amenity values. Trees or groups of trees are evaluated using a set of criteria based on historical association, scientific importance or rarity, contribution to ecosystem services, cultural association or accessibility and intrinsic value. These factors are considered in the context of human health, public safety, property, amenity values and biosecurity.

The AUP methods to achieve this protection are primarily focused on the Schedule, which identifies trees and groups of trees. The Schedule contains approximately 3000 'line items' which were essentially rolled over from legacy plan schedules at the time the AUP was drafted.

The criteria were standardised and amended as part of the AUP and thousands of trees were 'rolled over' into the combined AUP schedule from the legacy council lists. These trees were not re-evaluated, given that these trees or groups of trees had previously undergone historical evaluation under accepted criteria at the time.

To re-evaluate the trees in the schedule is outside of the scope of PPC83 and would require a vast amount of resources and time. PPC83 also only adds trees from those existing nominations that meet the criteria (20 per cent of the nominated trees were evaluated to identify 24 individual trees and four groups of trees). Any re-evaluation of existing trees in the Schedule and call for further nominations to the Schedule would require a future plan change and is subject to political decision. As outlined previously, this is a separate exercise.

The evaluation of 24 individual trees and four groups of trees concludes that these trees are notable and should be included in Schedule 10. Due to the significance of these trees, and the importance of protecting them from inappropriate subdivision, use and development, this is considered the most appropriate way to achieve the purpose of the Act, as outlined in the evaluation of options below.

A number of the listings within the Schedule have known errors. These are wide-ranging in nature. From minor errors such as spelling and grammar, amendments to legal descriptions and addresses to consents for removal. PPC83 seeks to amend these inaccuracies and, where appropriate, update information.

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<sup>7</sup> RMA s32(1)(a)

<sup>8</sup> AUP B1.4 Issues of regional significance

In addition, PPC83 seeks to amend the notable trees overlay in the GIS viewer/maps correcting the location of trees and the extent of groups where these have been verified. In relation to the application of NPS UD and MDRS the enablement of additional urban development increases the importance of a schedule that is reflective of values and as correct as possible. The existing inaccuracies/inconsistencies will be exacerbated by increased development and if left unaddressed increasingly difficult to apply the provisions of the schedule as originally intended.

The amendments proposed to the Schedule and the GIS viewer/maps enable the provisions of the AUP to apply appropriately to notable trees and will ensure that they are protected and retained. PPC83 is considered to be the most appropriate way to achieve the purpose of the Act, as outlined in the analysis below.

### **3.1 Development of options**

In the preparation of PPC83, the following options have been identified:

Option 1 – do nothing/retain the status quo

Option 2 - rely on other regulatory and non-regulatory methods

Option 3 – a plan change to amend errors and update information within the Notable Trees Overlay and address those existing nominations which have been evaluated and meet the scheduling criteria (preferred option)

Option 4 – a hybrid approach which in addition to Option 3 also calls for further nominations from the public

### **3.2 Evaluation of options**

In accordance with Section 32(1)(b) and (2) of the Act, the options have been assessed on their appropriateness, efficiency, effectiveness, costs, benefits and risks. The results of this evaluation are included in this section and in Table 1: Summary of analysis under Section 32(2) below.

#### **Option 1 – Adopt a ‘do nothing’ approach/retain the status quo**

The status quo option would rely on the existing Schedule 10 for the continued management and protection of scheduled trees. No plan changes would be made to the AUP at this point in time.

The ‘do nothing’ option means the notable trees proposed to be added to Schedule 10 that have been evaluated as meeting the notable tree criteria are not subject to the provisions of the AUP, including the Notable Trees Overlay. By doing nothing, the values of these trees will not be recognised or protected which may lead to the loss of their significant values through inappropriate subdivision, use and development which is inconsistent with RPS provisions of the AUP and section 6 and 7 of the RMA.

The ‘do nothing’ option for the amendments to Schedule 10 means it is not maintained and the information held becomes increasingly out of date. This constitutes poor management of a valued natural and historic resource.

The 'do nothing' options means those listings where trees have been physically removed remain unnecessarily managed by AUP provisions as they do not have notable trees to be protected from inappropriate subdivision, use and, development. This increases the reputational risk to the integrity of the Schedule.

### **Option 2 – rely on other regulatory and non-regulatory methods**

Auckland Council has a range of regulatory tools to protect trees, such as rules relating to Significant Ecological Areas (SEAs), and rules to limit the extent of vegetation removal in sensitive environments, like streams and coastlines. These regulatory tools apply to trees and vegetation on private properties. However, since amendments to the RMA came into effect in 2013, the council has had to depend more on non-regulatory tools such as Local Board Plans, Greenway Plans, the Indigenous Biodiversity Strategy and the Urban Ngahere Strategy.

As demonstrated by the most recent notable trees plan change (PC68) there are also external processes such as interim enforcement orders issued by the Environment Court, which could result in the protection of trees. However, these are costly exercises and often without any guaranteed outcomes.

It is not suitable to rely on these processes as they will not achieve the object of PPC83, being to ensure the protection of the section 6 and 7 values (as reflected in the RPS criteria) from inappropriate use and development as originally intended by the Notable Trees Schedule. Option 2 would also not address the growing issue of the inaccurate and out of date schedule.

### **Option 3 – a plan change to amend errors and update information within the Notable Trees Overlay and address those existing nominations which have been evaluated and meet the scheduling criteria (preferred option)**

The AUP provides for the protection and management of notable trees by their inclusion in the Notable Trees Overlay, as identified in Schedule 10 and in the GIS viewer/planning maps.

The objective of the Notable Trees Overlay<sup>9</sup> is:

- Notable trees and notable groups of trees are retained and protected from inappropriate subdivision, use and development.

Amending errors and inconsistencies in the schedule requires a plan change. This can be implemented but will take time and resources.

The Notable Trees Overlay policies seek to manage the use and development of notable trees to avoid significant adverse effects on these trees.

The Notable Trees Overlay rules are triggered when proposed development has the potential to affect the values of a notable tree or notable group of trees. Pruning and alteration, for example, is permitted (subject to standards), while removals and works in the root zone are discretionary activities.

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<sup>9</sup> AUP, Chapter D13, Objective D13.2(1)

The proposed changes to Schedule 10 will provide for the identification and protection of notable trees, and will ensure that their notable tree values are considered when the use and development of these places is proposed. The inclusion of an automatic update clause that captures all future legal descriptions and address ensures protection of notable trees is retained despite a change in legal description or address. The automatic update clause also enables the removal or amendment of those listings where trees have been removed. This removes the unnecessary management by AUP provisions of trees that no longer exist or have deteriorated health and will not recover and therefore do not need to be protected from inappropriate subdivision, use and development.

**Option 4 – a hybrid approach which in addition to Option 3 also calls for further nominations from the public**

Option 4 builds on Option 3 as the scope of the plan change would allow consideration of further nominations from the public. This is likely to lead to numerous new nominations.

The benefit of this approach would be the protection of additional trees that meet the notable tree criteria in the AUP. This would be a costly and timely undertaking and given the prioritisation of resource across the organisation it would need to be a political decision.

### 3.3 Summary of analysis under Section 32(2)

Options	Efficiency and effectiveness of provisions in achieving the objectives <sup>10</sup>	Benefits	Costs
<p><b>Option 1 – Do nothing/retain status quo</b></p>	<p>The ‘do nothing’ option is not an efficient or effective option. This is because there is no mechanism that will protect the notable tree values which have been identified through the evaluations. This is inconsistent with RPS provisions of the AUP and section 6 and 7 of the RMA.</p> <p>This option will also not achieve the objectives of PPC83 to manage and protect the notable values of the identified trees.</p> <p>Potentially, these places could wait for a future plan change with more places being added to Schedule 10 to be more efficient. However, this would not be effective in protecting the values of these trees which could be lost before a future plan change is undertaken.</p> <p>It is not efficient or effective to owners of the trees proposed to be deleted from Schedule 10 when the information about the tree is incorrect and/or outdated, or when the values of the tree do not meet the AUP criteria and thresholds for scheduling. This exacerbates through time affecting the integrity of the Schedule and causing unnecessary regulation such as</p>	<p>No cost to the Council to undertake a public plan change – i.e. economic benefit.</p> <p>The values of the identified trees would not need to be taken into account if the landowners wanted to develop their land. In addition, a landowner may not require a resource consent for certain activities which are permitted activities within an underlying zoning (depending on whether comply with all relevant standards of that zone). These may be perceived as benefits to the landowner.</p>	<p>Potential cost to the environment through possible loss of significant values due to inappropriate subdivision, use and development. Any loss would be contrary to both the provisions of the AUP and the purpose of the Act. This loss would be to both current and future generations.</p> <p>The values of the identified trees would not need to be taken into account in relation to any growth and development opportunities – this loss of value could be perceived as a cost to society.</p> <p>The notable trees would not be appropriately managed and protected in a way that aligns with their values. This has the potential to cause the loss of significant values through inappropriate subdivision, use and, development.</p> <p>For those listings where trees are proposed for removal, they are unnecessarily managed by AUP provisions as they no longer exist or have deteriorated health and will not recover and therefore do not need to be protected from inappropriate subdivision, use and development.</p> <p>There are implementation issues in terms of the ‘usability’ and accuracy of the schedule and</p>

<sup>10</sup> RMA s32(1)(b)(ii)

Options	Efficiency and effectiveness of provisions in achieving the objectives <sup>10</sup>	Benefits	Costs
	<p>uncertainties through property sale processes and the issuances of Land Information Memoranda.</p>		<p>corresponding mapped overlay. These issues would not be addressed by this option.</p>
<p><b>Option 2 – rely on other regulatory and non-regulatory methods</b></p>	<p>There are external processes (i.e. outside the Schedule 1 process) that could protect these trees. For example, interim enforcement order put in place by the Courts, heritage orders, Local Board Plans, provision of education and information to landowners.</p> <p>However, consideration of these matters is at the discretion of the landowners. This could lead to inefficiency if effort is put into the provision of information, education and advocacy, but such effort does not result in any additional protection of significant notable tree values.</p> <p>Funding, such as grants, is a non-regulatory method of assisting with the protection of tree values. However, such funding usually first requires a regulatory method, such as scheduling, to ensure a place receives priority consideration for a grant and to justify the investment of public funding.</p> <p>Covenants and heritage orders are effective options to protect the values of trees.</p> <p>However, the protection and management of each tree included in PPC83 by methods such as covenants and heritage orders are likely to be a</p>	<p>Potentially no cost at present to Council to undertake a public plan change i.e. an economic benefit.</p> <p>The values of the identified trees would not need to be taken into account if the landowners wanted to develop their land. In addition, a landowner may not require a resource consent for certain activities which are permitted activities within an underlying zoning (depending on whether the activity complies with all relevant standards of that zone). These may be perceived as benefits to the landowner.</p> <p>Advocating to and providing education and information could be seen as a benefit to the landowner, and to Council, as this may lead to a greater understanding and willingness of the landowner to protect the values of a tree.</p> <p>Funding may be seen as a potential benefit as this means less cost is borne by the landowner.</p>	<p>There are costs associated with the preparation and registration of a covenant on each certificate of title. The financial burden usually falls on the Council, and therefore ratepayers, if the covenant is in favour of Council. There may also be a cost to remove the covenant from the certificate of title if required at a future date and this would need agreement from all parties to the covenant.</p> <p>There are costs associated with the preparation of a Heritage Order. Each order requires a notice of requirement and submissions process, and similar to decisions on a plan change, the local authorities recommendation on a heritage order may be appealed to the Environment Court. In addition, the Environment Court can order that the land subject to a heritage order is purchased by the heritage protection authority.</p> <p>Cost to the landowner as prior written consent of the heritage protection authority is required for any works on land subject to a heritage order. This may result in time delays, and other costs, where the works are for maintenance or repair which is a permitted activity.</p> <p>Potential cost to Council to advocate for and provide education and information to landowners</p>

<b>Options</b>	<b>Efficiency and effectiveness of provisions in achieving the objectives<sup>10</sup></b>	<b>Benefits</b>	<b>Costs</b>
	<p>time consuming and costly administrative process, as each address where the trees are located would require a separate regulatory process.</p> <p>In summary, other regulatory methods may be effective in achieving the objectives of PPC83 but are not the most efficient option to achieve the objectives of the plan change.</p> <p>In summary, external methods are not considered an efficient or effective option to achieve the objectives of PPC83 on their own. These methods are unlikely to protect the values that have been identified in the evaluations of these trees.</p>		<p>where this does not lead to any additional protection of the value of a tree.</p> <p>Potential cost to the environment through possible loss of notable tree values due to inappropriate subdivision, use and development. Any loss would be contrary to both the provisions of the AUP and the purpose of the Act. This loss would be to both current and future generations.</p> <p>The values of the identified trees would not need to be taken into account in relation to any growth and development opportunities – this loss of value could be perceived as a cost to society.</p> <p>Potential cost of a plan change, in addition to funding, as funding usually first requires a regulatory method, such as scheduling, to receive priority consideration for a grant.</p> <p>There are implementation issues in terms of the ‘usability’ and accuracy of the schedule and corresponding mapped overlay. These issues would not be addressed by this option.</p>
<p><b>Option 3 – a plan change to amend errors and update information within the Notable Trees</b></p>	<p>This option would focus on scheduling those nominated trees which have been found meet the criteria and amending the schedule to ensure it is accurate and up to date.</p> <p>This is considered the most efficient and effective option to achieve the objectives of PPC83.</p>	<p>The significant values of notable trees will be protected from inappropriate subdivision, use and development. This environmental benefit will be on an ongoing basis, for current and future generations.</p> <p>Social and cultural benefits from the recognition, protection, and appropriate management of notable trees.</p>	<p>There is a financial cost to the Council to proceed with a plan change.</p> <p>There are costs to Council relating to the provision of advice on the additional notable trees and for processing any resource consents received that relate to these trees.</p>

<b>Options</b>	<b>Efficiency and effectiveness of provisions in achieving the objectives<sup>10</sup></b>	<b>Benefits</b>	<b>Costs</b>
<p><b>Overlay and address those existing nominations which have been evaluated and meet the scheduling criteria (preferred option)</b></p>	<p>One plan change is a more efficient way to meet the objectives of PPC83, compared to the separate regulatory and non-regulatory processes of Option 2 that would be required to effectively protect their values.</p> <p>The proposed changes to Schedule 10 will help ensure the objectives of the AUP and purpose of the Act are achieved, as well as the Council’s statutory requirements for the AUP to give effect to its RPS section.</p> <p>The eight properties (ten individual trees and one group of trees) to be included in PPC83 will be clearly identified in Schedule 10 and the planning maps. The management regime applying to them is efficient and effective as it is clearly established for Council, landowners and interested parties. Policies provide a framework for the appropriate use and development of properties with notable trees. Rules are an effective way to enable protection, maintenance and adaptation of scheduled trees. Permitted activity statuses allow maintenance and pruning/alteration to be undertaken without the need for resource consent.</p> <p>The identification and management of notable trees by including them in Schedule 10, and removing places that do not meet the threshold for inclusion is considered the most efficient</p>	<p>This addition of trees to Schedule 10 provides certainty to landowners as the regulatory controls are clearly set out and relate to the significance of a notable tree.</p> <p>Support is offered to landowners of scheduled trees through provisions relating to the use of scheduled trees, including reducing or waiving consent application costs and the provision of free expert advice.</p> <p>The identification of a notable trees in Schedule 10 is likely to afford a landowner a higher priority for grants and other financial assistance as this method of support usually relies on some manner of legal or statutory control over a place.</p> <p>No economic growth or employment benefits anticipated.</p> <p>Removal of trees from Schedule 10 that no longer exist or that do not meet the threshold for inclusion benefits the landowner as the inaccurate provisions of the Notable Trees Overlay do not apply.</p>	<p>There may be perceived opportunity costs associated with the sub-set of trees that have been assessed as meeting the notable tree criteria, through particular properties being subject to greater management and protection.</p>

<b>Options</b>	<b>Efficiency and effectiveness of provisions in achieving the objectives<sup>10</sup></b>	<b>Benefits</b>	<b>Costs</b>
	<p>and effective means to achieve the objectives of PPC83 and the purpose of the Act.</p> <p>The inclusion of an automatic update clause that captures all future legal descriptions and address ensures protection of notable trees is retained despite a change in legal description or address. The automatic update clause also enables the removal or amendment of those listings where trees have been removed. This removes the unnecessary management by AUP provisions of trees that no longer exist or have deteriorated health and will not recover and therefore do not need to be protected from inappropriate subdivision, use and development.</p>		
<p><b>Option 4 – a hybrid approach which in addition to Option 3 also calls for further nominations from the public</b></p>	<p>There is significant interest from the public in notable tree protection. Option 4 builds on Option 3 as the plan change would also call for additional nominations from the public. This is likely to lead to numerous new nominations and a considerable increase in the associated costs and timeframes.</p> <p>The potential loss of value due to the extended timeframes is also likely. As people would be made aware of nominations and have the ability to remove trees without consent before evaluations take place.</p>	<p>The benefit of this approach would include those identified in Option 3 and the protection of additional trees that meet the notable tree criteria in the AUP.</p>	<p>There would be considerable costs (both financial and timewise) associated with this option, in anticipation of hundreds (potentially thousands) of trees being nominated and needing to be assessed for inclusion on the schedule.</p> <p>A plan change of this magnitude would require political endorsement to allocate it resources.</p>

<b>Options</b>	<b>Efficiency and effectiveness of provisions in achieving the objectives<sup>10</sup></b>	<b>Benefits</b>	<b>Costs</b>
	It is not considered the most efficient and effective means to achieve the objectives of PPC83 and the purpose of the Act.		

## 4 Reasons for the evaluation

The notable trees proposed to be included in Schedule 10 have been evaluated against the AUP factors and thresholds and have been determined to be eligible for inclusion in Schedule 10. These have been determined to be of such significance that if they were removed or altered in an inappropriate way significant values of Auckland's environment will be lost. For the trees to be removed from Schedule 10, they have either been physically removed or it has been assessed that their health has deteriorated to such a point that they do not have sufficient values to be included in the schedule. A long-term approach is also required, to enable those changes which are of neutral effect to be made outside the Schedule 1 process. It is also important that notable trees do not lose protection as a result of legal descriptions/addresses changing through the subdivision process and that those trees which have been removed are not unnecessarily managed by the Overlay. The introduction of an automatic update clause to capture future subdivisions and allow for schedule updates where trees have physically gone will improve the management of Schedule 10 in the future by allowing amendments to the schedule in a timelier manner.

To ensure notable trees are identified correctly and managed appropriately, amendments to Schedule 10 are required. Therefore, the 'do nothing' approach is not considered to be an appropriate option for notable trees.

The evaluation of options in Section 3 of this report shows that the preferred option for meeting the objectives of the proposal, and the most efficient and effective option, is a plan change to the AUP to add notable trees to Schedule 10 and make amendments within the Notable Trees Overlay. This includes the deletion of trees that no longer exist or do not meet the RPS criteria and thresholds for scheduling. The only instances of not meeting the criteria which have been considered as part of PPC83 are in situations where the tree is still present on the site but has been assessed as no longer meeting the thresholds for scheduling due to significant deterioration of health (to the point of no recovery). Trees that are still present and of adequate health have not been evaluated as that requires a full re-evaluation of the schedule which is for a later date.

In accordance with section 32(1)(a) of the Act, the objectives of the proposal are the most appropriate way to achieve the purpose of the Act. No new objective or policy is proposed in PPC83. PPC83 uses the existing objectives, policies and rule framework for the recognition and protection of notable trees.

# 5 Statutory Evaluation under the Resource Management Act 1991 (RMA)

The objectives of this evaluation are to determine the most appropriate methods for achieving the following outcomes:

- ensure the continued identification, management and protection of notable trees across the region and recognition of their section 6<sup>11</sup> and section 7<sup>12</sup> values, by:
  - Additions to Schedule 10
    - the addition of 24 individual trees and four groups of trees to Schedule 10
    - the introduction of an automatic update clause
  - Addressing inaccuracies/inconsistencies in Schedule 10 Notable Tree Schedule and Chapter D13 Notable Trees Overlay
    - the amendment of a further 64 listings in Schedule 10
    - the removal of 51 trees in Schedule 10 where the trees are no longer present
    - the removal of reference in Chapter D13 Notable Trees Overlay to diagrams which have been removed

## 5.1 Part 2 considerations

Section 5 of the RMA describes the purpose of the Act. This is:

*(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*

*(2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*

*(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

*(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*

*(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

Section 6 of the RMA outlines matters of national importance. In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

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<sup>11</sup> RMA s6

<sup>12</sup> RMA s7

*(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*

*(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*

*(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*

*(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*

*(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*

*(f) the protection of historic heritage from inappropriate subdivision, use, and development:*

*(g) the protection of protected customary rights:*

*(h) the management of significant risks from natural hazards.*

Section 6 matters in the Act relevant to notable trees as provided for in the AUP include:

- Section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna,
- Section 6(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga,
- Section 6(f) the protection of historic heritage from inappropriate subdivision, use and development.

#### 7 Other matters

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—*

*(a) kaitiakitanga:*

*(aa) the ethic of stewardship:*

*(b) the efficient use and development of natural and physical resources:*

*(ba) the efficiency of the end use of energy:*

*(c) the maintenance and enhancement of amenity values:*

*(d) intrinsic values of ecosystems:*

*(e) [Repealed]*

*(f) maintenance and enhancement of the quality of the environment:*

*(g) any finite characteristics of natural and physical resources:*

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

*(i) the effects of climate change:*

*(j) the benefits to be derived from the use and development of renewable energy.*

Section 7 matters in the Act relevant to notable trees as provided for in the AUP include:

- Section 7(a) kaitiakitanga
- Section 7(b) the efficient use and development of natural and physical resources
- Section 7(c) the maintenance and enhancement of amenity values
- Section 7(d) intrinsic values of ecosystems

- Section 7(f) the maintenance and enhancement of the quality of the environment

## 8 Treaty of Waitangi

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).*

The Treaty principles<sup>13</sup> include the following:

Partnership - the Treaty signified a partnership between the races' and each partner had to act towards the other 'with the utmost good faith which is the characteristic obligation of partnership'. The obligations of partnership included the duty to consult Māori and to obtain the full, free, and informed consent of the correct right holders in any transaction for their land.

Reciprocity - the partnership is a reciprocal one, involving fundamental exchanges for mutual advantage and benefits. Māori ceded to the Crown the kawanatanga (governance) of the country in return for a guarantee that their tino rangatiratanga (full authority) over their land, people, and taonga would be protected. Māori also ceded the right of pre-emption over their lands on the basis that this would be exercised in a protective manner and in their own interests, so that the settlement of the country could proceed in a fair and mutually advantageous manner.

Active protection - the Crown's duty to protect Māori rights and interests arises from the plain meaning of the Treaty, the promises that were made at the time (and since) to secure the Treaty's acceptance, and the principles of partnership and reciprocity. The duty is, in the view of the Court of Appeal, 'not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable', and the Crown's responsibilities are 'analogous to fiduciary duties'. Active protection requires honourable conduct by, and fair processes from, the Crown, and full consultation with – and, where appropriate, decision-making by – those whose interests are to be protected.

Equity - The obligations arising from kawanatanga, partnership, reciprocity, and active protection required the Crown to act fairly to both settlers and Māori – the interests of settlers could not be prioritised to the disadvantage of Māori. Where Māori have been disadvantaged, the principle of equity – in conjunction with the principles of active protection and redress – requires that active measures be taken to restore the balance.

Equal treatment - The principles of partnership, reciprocity, autonomy, and active protection required the Crown to act fairly as between Māori groups – it could not unfairly advantage one group over another if their circumstances, rights, and interests were broadly the same.

PPC83 will assist in achieving, in part, the above principles of Te Tiriti o Waitangi. This is particularly the case where trees or groups of trees have been identified for their historic and cultural significance. There are notable trees which have been identified on Sites of Significance to Mana

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<sup>13</sup> Waitangi Tribunal website, [justice.govt.nz](http://justice.govt.nz)

Whenua for their cultural association and the amendments proposed by PPC83 will ensure these trees remain protected through time as originally intended.

PPC83 is consistent with Part 2 of the Act, and in particular with the purpose of the Act, as it seeks to provide for the sustainable management of Auckland's historic heritage resources.

The proposed addition of the six individual trees and one group of trees, the 64 amendments, 51 removals in Schedule 10 and the corresponding overlay will provide for the use, development and protection of these natural resources and for them to be managed in a way, or at a rate which enables people and communities to provide for their social, economic, and cultural well-being, and for their health and safety.

The management and protection of notable trees is a responsibility of the Council's role in exercising its power and functions under the Act. The scheduling of notable trees is an appropriate method for assisting the management of significant natural resources in Auckland. Through their identification, evaluation and addition to Schedule 10, notable trees are subject to appropriate objectives, policies and rules. Schedule 10 is therefore an important tool to assist in avoiding, remedying and mitigating adverse effects on notable trees in order to protect them from inappropriate subdivision, use and development.

## **5.2 The relevance of the plan change to other sections of the RMA**

There are relevant sections of the RMA that must be considered in context of the proposed plan change. These are:

- *Section 31 – Functions of territorial authorities under this Act*
- *Section 72 – Purpose of district plans*
- *Section 73 – Preparation and change of district plans*
- *Section 74 – Matters to be considered by territorial authority*
- *Section 75 – Contents of district plans*
- *Section 76 – District rules*
- *Section 77 –*
- *Section 79 – Review of policy statements and plans*
- *Section 80 – Combined regional and district documents*

Relevance of PPC83 in the context of the above sections:

Section 31(a) of the Act states that a function of the Council is: the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. It is considered that PPC83 assists the Council to carry out its functions as set out in section 31 of the Act.

Section 74 of the Act sets out the matters to be considered by a territorial authority when preparing or changing its district plan. These matters include any proposed RPS, proposed regional plan, and management plans or strategies prepared under other legislation. The authority must take into account any relevant planning document recognised by an iwi authority to the extent that its content has a bearing on the resource management issues of the district, but must not have regard to trade competition.

Section 77I sets out when a Tier 1 urban environment, which includes Auckland Council, may make the MDRS and the relevant building height or density requirements under NPS UD policy 3 less enabling of development within a relevant residential zone to accommodate qualifying matters that are present. Section 77O sets out when a specified territorial authority may modify the requirements of NPS UD policy 3 in an urban non-residential zone to be less enabling only to the extent necessary to accommodate qualifying matters that are present.

Sections 77I(a) and 77O(a) include a matter of national importance that decision makers are required to recognise and provide for under section 6 of the Act. The protection of historic heritage from inappropriate subdivision, use and development is a matter of national importance under section 6(f) of the Act.

Where Policy 3 or the MDRS is to be made less enabling due to a new qualifying matter or an addition to a qualifying matter already incorporated into the AUP, then Section 77(J) sets out that the section 32 report is to address the following:

- (3) *The evaluation report must, in relation to the proposed amendment to accommodate a qualifying matter:*
  - (a) *demonstrate why the territorial authority considers—*
    - (i) *that the area is subject to a qualifying matter; and*
    - (ii) *that the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 for that area; and*
  - (b) *assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and*
  - (c) *assess the costs and broader impacts of imposing those limits.*

Section 77P(3) contains equivalent provisions relative to Policy 3 for non-residential land.

Sections 77J(5) and (6) also provide:

- (5) *The requirements set out in subsection (3)(a) apply only in the area for which the territorial authority is proposing to make an allowance for a qualifying matter.*
- (6) *The evaluation report may for the purposes of subsection (4) describe any modifications to the requirements of section 32 necessary to achieve the development objectives of the MDRS.*

Those sites subject to MDRS and Policy of the NPS UD and that will have effect at the time PPC83 is notified are set out in Table 2: Properties subject to MDRS and NPS UD Policy 3.

Table 2: Properties subject to MDRS and NPS UD Policy 3

Proposed Schedule 10 ID number	Species	Number of trees	Address/location	Within Urban Area <sup>14</sup>	Subject to NPS UD Policy 3 <sup>15</sup>	Subject to MDRS
2988	Pohutukawa	1	90 Paritai Drive, Orakei	Yes	No	No
2983	Oak	1	11 West End Road, Herne Bay	Yes	No	No
2989	Oak	1	37 Notley Street, Westmere	Yes	No	No
985 (address is currently scheduled)	Puriri	1	728 Remuera Road, Remuera	Yes	No	No
2996	Smooth Barked Apple	2	33B James McLeod Road, Shelly Beach	Yes	No	No
2981	Date Palms (4) Ginkgo trees (4)	8	99 Rosebank Road, Avondale	Yes	No	Yes

<sup>14</sup> As defined in section 77F

<sup>15</sup> NPS UD Policy 3: In relation to tier 1 urban environments, regional policy statements and district plans enable:

- (a) in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and
- (b) in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and
- (c) building heights of least 6 storeys within at least a walkable catchment of the following:
  - (i) existing and planned rapid transit stops
  - (ii) the edge of city centre zones
  - (iii) the edge of metropolitan centre zones; and
- (d) in all other locations in the tier 1 urban environment, building heights and density of urban form commensurate with the greater of:
  - (i) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or
  - (ii) relative demand for housing and business use in that location.

<b>Proposed Schedule 10 ID number</b>	<b>Species</b>	<b>Number of trees</b>	<b>Address/location</b>	<b>Within Urban Area<sup>14</sup></b>	<b>Subject to NPS UD Policy 3<sup>15</sup></b>	<b>Subject to MDRS</b>
2987	Deodar cedar	1	886 Mount Eden Road, Mt Roskill	Yes	No	No
2990	Brush cherry	1	181 Onewa Road, Birkenhead	Yes	No	No
2991	Willow Peppermint gum	1	23 Uppingham Crescent, Hillcrest	Yes	No	No
2992	Kahikatea	Group	R20 Gills Road	Yes	No	No
2993	Deodar cedar	1	58 Colonial Road, Birkenhead	Yes	No	No
2994	Pohutukawa	1	3A Maunganui Road, Birkenhead	Yes	No	No
2995	Swamp Spanish Oak	4	R320 Rosedale Road	Yes	No	No
2997	Totara	1	186 Matua Road, Huapai	Yes	No	Yes
2998	Maidenhair – ginkgo biloba	1	21 Queen Street, Riverhead	Yes	No	No
2999	Macrocarpa	1	1136 Takatu Road, Tawharanui	No	No	No
3000	Avocado Tree	Group	11 Crown Street, Royal Oak	Yes	No	No
3001	Pohutukawa and	Group	560 Mount Albert Road, Three Kings	Yes	No	No

<b>Proposed Schedule 10 ID number</b>	<b>Species</b>	<b>Number of trees</b>	<b>Address/location</b>	<b>Within Urban Area<sup>14</sup></b>	<b>Subject to NPS UD Policy 3<sup>15</sup></b>	<b>Subject to MDRS</b>
	Kermadec Pohutukawa					
3002	Totara	1	35 Sunnyside Road, Coatesville	No	No	No
3003	Pohutukawa	1	27-29 Angle Street, Te Papapa	Yes	No	No
3004	Variiegated kermadec Pohutukawa	1	5 Ko Street, Northcote	Yes	No	Yes
3005	Magnolia	1	R308 Oteha Valley Road, Albany	Yes	No	No

Section 80 of the RMA sets out the approach to which local authorities may prepare, implement, and administer the combined regional and district documents. Auckland Council has a combined regional and district plan - the Auckland Unitary Plan (AUP).

The Auckland Unitary Plan contains existing objectives, policies, rules and other methods that are of regional and district significance.

An evaluation of each tree using the criteria set out in RPS policy B4.5.2(1) has determined that they met the threshold for inclusion in Schedule 10 (noting that the plan change also includes removing those trees which no longer exist or meet the threshold). The notable trees that are included in PPC83 are identified by species, location, and shown spatially on the planning maps.

The section 32 report for the IPI plan changes discusses the Notable Trees Overlay as a qualifying matter and concludes that the values of scheduled notable trees subject to the Notable Trees Overlay are significant and it is appropriate to continue to manage these values.

The section report for the IPI plan change also identifies that in relation to the MDRS, the provisions of the Notable Trees Overlay do not manage building height, height in relation to boundary (HIRB), setbacks, building coverage, outdoor living space, outlook space, windows to street or landscaped area. For NPS UD Policy 3, the Notable Trees overlay does not control the height of buildings. However, subdivision is managed within the overlay and consent is required for new buildings and development which requires the removal or alteration of notable trees or work within the protected dripline of a notable tree/s. This effects the enablement of density within Policy 3 areas and the ability to implement the MDRS standard for up to three residential units per site in relevant residential zones. The rules for removal, alteration and works within the protected dripline apply everywhere the overlay is located, in both residential and non-residential zones, so these rules also impact on the application of Policy 3.

The land that is subject to the Notable Trees Overlay represents an extremely small proportion of Auckland's total land area; only 0.6% of property parcels are subject to the overlay.

The places included in this plan change represent an insignificant increase in Notable Trees Overlay. The extent to which development capacity for each site is constrained by the Notable Trees Overlay depends on the notable tree values present. It also depends on factors such as the location of the tree or group of trees and the extent to which they cover the site. The ability to add additional intensity within the overlay depends on whether or not the development proposes to remove or alter any present notable trees. Any applications are assessed against the values of the tree or group of trees. This is discussed further in section 9 of this evaluation report.

When determining the date on which a plan change takes effect the Act provides in section 86B(1) that a rule in proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified, except in certain circumstances. Section 86B(3) of the Act provide for a rule in a proposed plan to have immediate legal effect in certain circumstances, including if a rule protects section 6 values.

Schedule 10 is a rule in the AUP that protects a wide range of section 6 and 7 matters. As the plan change proposes to amend historic heritage places in Schedule 10 in order to appropriately manage and protect them, in accordance with section 86B(3)(d) of the Act, PPC83 will have immediate legal effect.

Plan Change 83 must have regard to the operative regional policy statement provisions and is required to give effect to the regional policy statement.

Overall, it is considered that Plan Change 83 assists the council in carrying out its functions set out in section 30 and 31 of the RMA to meet the requirements of the prescribed sections of the RMA set out above.

Section 31(a) of the Act states that a function of the Council is: the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. It is considered that PPC83 assists the Council to carry out its functions as set out in section 31 of the Act.

# 6 National and Regional Planning Context

National policy statements are instruments issued under section 52(2) of the Act and state objectives and policies for matters of national significance. The Unitary Plan is required to give effect to any national policy statement<sup>16</sup>. Those national policy statements that are relevant to the proposed plan change are discussed below. The objectives of this evaluation are to determine the most appropriate methods for achieving the following outcomes:

## 6.1 Relevance to National Policy Statements

### *NPS:UD*

National Policy Statement on Urban Development (NPS UD)

The NPS UD applies to all local authorities that have all or part of an urban environment within their district or region and planning decisions by any local authority that affect an urban environment. Tāmaki Makaurau Auckland is identified as a Tier 1 urban environment in the NPS UD. The NPS UD recognises the national significance of:

- having well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future, and
- providing sufficient development capacity to meet the different needs of people and communities.

Specific policies in the NPS UD direct Council, as a Tier 1 local authority, to change the AUP to enable intensification (building heights and density) in specific locations (including the City Centre zone, Metropolitan Centre zones and near Rapid Transit Network stops). As noted earlier, PPC83 takes into account the Council's plan changes to give effect to the NPS UD and for purpose of this evaluation, forming part of the environmental baseline.

Objective 2 seeks that planning decisions improve housing affordability by supporting competitive land and development markets and objective 5 directs that planning decisions relating to urban environments take into account the principles of the Treaty of Waitangi. Objective 7 seeks that local authorities use robust and frequently updated information about their urban environments to inform planning decisions.

Policy 1 seeks that planning decisions contribute to well-functioning urban environments. Policy 6 directs decision makers to have particular regard to a range of matters when making planning

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<sup>16</sup> RMA s67(3) and s75(3)

decisions that affect urban environments, including planned urban built form, the benefits of urban development that are consistent with well-functioning urban environments, and the likely and future effects of climate change.

The proposed addition of the 24 individual trees and four groups of trees to Schedule 10 and the planning maps will provide for the use, development, and protection of these natural resources and for them to be managed in a way, or at a rate which enables people and communities to provide for their social, economic, and cultural well-being, and for their health and safety.

The provision of sufficient development capacity as sought in the NPS UD is not necessarily limited by the Notable Trees Overlay. The Notable Trees Overlay does not in itself limit height or density, as the underlying zone provisions relating to these matters apply, so development can incorporate historic heritage places. PPC83 does not propose to change the underlying zoning of the properties that are subject to the plan change. Therefore, the provisions of the NPS UD are met.

The effect of scheduling of these trees proposed to be included in the plan change has been discussed in Section 9.

### National Policy Statement on Freshwater Management (NPS FM)

The NPS FM seeks that natural and physical resources are managed in a way that prioritises the health and well-being of water bodies and freshwater ecosystems, the health needs of people, and the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future. There are no provisions in the NPS FM referring directly to notable trees.

## 6.2 Relevance to the Auckland Plan 2050

The table below list the priorities and directives of the Auckland Plan 2050 (Auckland's non-statutory spatial planning document) which was approved by Auckland Council on 5 June 2018.

Table 1: Auckland Plan Directives and Focus Areas

Outcome	Directives and Focus Areas	Relevance to the evaluation - i.e., how does addressing the transport issues identified assist in achieving the relevant directives and focus areas
Outcome: Environment and cultural heritage  Aucklanders preserve, protect and care for the natural	Direction 1: Ensure Auckland's natural environment and cultural heritage is valued and cared for  Direction 4: Ensure Auckland's infrastructure is future-proofed	Recognition of the value of Auckland's cultural heritage and the importance of its protection is a core

<p>environment as our shared cultural heritage, for its intrinsic value and for the benefit of present and future generations.</p>		<p>component of the Environment and Cultural outcome that ‘Aucklanders preserve, protect and care for the natural environment as our shared cultural heritage, for its intrinsic value and for the benefit of present and future generations. ‘Natural Environment’, as defined by the Auckland Plan, is part of Auckland’s shared cultural heritage<sup>17</sup> Cultural heritage includes natural heritage, which many Schedule 10 listings would be categorised as.</p> <p>The Auckland Plan 2050 includes the following direction ‘Ensure Auckland’s natural environment and cultural heritage is valued and cared for’<sup>18</sup>. The Auckland Plan states that council must actively seek opportunities to protect and enhance these values (including cultural heritage values) through our</p>
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<sup>17</sup> Cultural Heritage is the term used to describe the ways of living developed by a community and passed on from generation to generation.

<sup>18</sup> Auckland Plan, Environment and Cultural Heritage: Direction 1

		<p>short and long-term decisions.</p> <p>PPC83 will assist with the protection and conservation of Auckland's natural heritage for the benefit and enjoyment of present and future generations.</p>
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## Relevance to the Auckland Unitary Plan Regional Policy Statement

Table 7 below identifies the relevant Auckland Unitary Plan Regional Policy Statement objectives and policies relating to transport and assesses the relevance of the plan change against each objective or policy.

Table 2: Auckland Unitary Plan RPS Objectives and Policies

<b>RPS Chapter</b>	<b>Relevant objective or policy</b>	<b>Relevance to the evaluation - i.e. how does addressing the issues identified assist in achieving the relevant objectives and policies</b>
<b>B1.4 Issues of Regional Significance</b>	<b>(4) Natural heritage</b> (landscapes, natural features, volcanic viewshafts and trees)	Trees are clearly identified as part of one of the issues of regional significance. Indigenous and exotic notable trees (along with the other identified elements of natural heritage) create the natural character and environmental quality of Auckland. Therefore the PPC will ensure that the integrity and reliability of information about notable trees across the region is maintained.
<b>B2.2. Urban growth and form</b>	<b>B2.2.1. Objectives</b> (1) A quality compact urban form that enables all of the following: (a) a higher-quality urban environment; (b) greater productivity and economic growth;	Chapter B2 sets out the objectives and policies for growth and form in the region. The chapter states that a quality built environment is one which enhances opportunities for peoples' well-being by ensuring that new buildings respond to the existing built and natural environment in ways that promote the plan's objectives

	<p>(c) better use of existing infrastructure and efficient provision of new infrastructure; (d) improved and more effective public transport;</p> <p>(e) greater social and cultural vitality;</p> <p>(f) better maintenance of rural character and rural productivity; and</p> <p>(g) reduced adverse environmental effects.</p>	<p>and maintain and enhance the amenity values of an area. Relevant objectives and policies provide direction on urban growth and form, a quality built environment, residential growth, and commercial and industrial growth.</p> <p>PPC83 aligns with these objectives as it does not unnecessarily constrain urban growth or impact on land capacity. As noted earlier, all notable trees proposed for inclusion in PPC83 are on parcels which have an underlying zone that provides capacity for increased growth and density.</p>
<p><b>B2.3. A quality built environment</b></p>	<p><b>B2.3.1. Objectives</b></p> <p>(1) A quality built environment where subdivision, use and development do all of the following:</p> <p>(a) respond to the intrinsic qualities and physical characteristics of the site and area, including its setting;</p> <p>(b) reinforce the hierarchy of centres and corridors;</p> <p>(c) contribute to a diverse mix of choice and opportunity for people and communities;</p> <p>(d) maximise resource and infrastructure efficiency;</p> <p>(e) are capable of adapting to changing needs; and</p> <p>(f) respond and adapt to the effects of climate change.</p> <p>(2) Innovative design to address environmental effects is encouraged.</p> <p>(3) The health and safety of people and communities are promoted.</p>	<p>PPC83 aligns with the objectives and policies of B2, including Objective B2.3.1, and Policy B2.3.2(1). While the notable trees proposed to be included in PPC83 have an underlying zone that provides capacity for growth and density, the plan change does not necessarily constrain urban growth or impact on land capacity. As discussed earlier, land that is subject to the Notable Trees Overlay represents an extremely small proportion of Auckland’s total land area.</p> <p>The inclusion of trees on Schedule 10, and the associated application of the Notable Trees Overlay, has the potential to affect the development of a place. For example, removal of a notable tree is a discretionary activity in the overlay. However, it is important to recognise that maximum development potential under the provisions of the AUP is affected by a range of factors, not just the Notable Trees Overlay. The underlying zoning of a property, any relevant precinct, other overlays, and areas where any qualifying matter under the NPS UD applies (e.g., Volcanic Viewshafts and Height Sensitive Areas, Special Character Areas, Historic Heritage), or other AUP provisions that</p>

		<p>apply to a property may result in additional objectives, policies and rules to apply that may also affect the development potential of a property. This is discussed further in section 9 of this evaluation report.</p> <p>By protecting specific trees, PPC83 recognises their values and applies a management regime that requires consideration of those values when development, including subdivision, is proposed.</p>
<b>B4.5. Notable Trees</b>	<p><b>B4.5.1. Objectives</b></p> <p>(1) Notable trees and groups of trees with significant historical, botanical or amenity values are protected and retained.</p>	<p>The clear objective is to protect and retain notable trees and groups of trees. By addressing errors and anomalies in the schedule and by providing an enhanced mapped overlay, the risk that notable trees are not adequately protected due to misinterpretation of lack of adequate information will be reduced.</p>
	<p><b>B4.5.2(2)(4)</b></p> <p>Avoid development that would destroy or significantly adversely affect the identified values of a notable tree or group of trees unless those effects are otherwise appropriately remedied or mitigated.</p>	<p>Ensuring that the relevant data pertaining to the trees and groups of trees listed in the schedule is amended and updated will reduce the risk of adverse effects on these resources.</p>
<b>B6.3. Recognising Mana Whenua Values</b>	<p><b>B6.3.2(6)</b></p> <p>Require resource management decisions to have particular regard to potential impacts on all of the following:</p> <p>(a) the holistic nature of the Mana Whenua world view;</p>	<p>Of particular relevance is this policy which focuses on the importance of recognising the Maori world view. While notable trees are not specifically referenced in the Mana Whenua RPS provisions, the holistic Mana Whenua world view inherently includes those resources which comprise part of the natural, cultural and physical environment. In particular native trees which make up a large proportion of the notable tree stock are an important component of this.</p> <p>Mana whenua were informed the proposal to include trees in Schedule 10 at the Mana Whenua forum on the NPS UD on 19 May 2022. A draft of the plan change, along with the draft s32 evaluation report, will be provided to iwi authorities on 23 June</p>

		2022. Any responses will be incorporated into this section 32.
<p><b>D13 Notable Trees Overlay</b></p>	<p><b>D13.2. Objective</b></p> <p>(1) Notable trees and notable groups of trees are retained and protected from inappropriate subdivision, use and development.</p> <p><b>D13.3. Policies</b></p> <p>(2) Require notable trees and notable groups of trees to be retained and protected from inappropriate subdivision, use and development</p>	<p>It is considered that in order for the objective and relevant policies to be effectively considered, information regarding the region’s stock of notable trees should be as accurate as possible. By implementing the proposed amendments to the Schedule, its integrity and accuracy will be improved.</p>

# 7 Development of the Options to Address the Issues

The objectives of this evaluation are to determine the most appropriate methods for achieving PPC83 primary objective:

*ensure the continued identification, management and protection of notable trees across the region and recognition of their section 6<sup>19</sup> and section 7<sup>20</sup> values.*

The purpose of PPC83 is achieved by:

- Additions to Schedule 10
  - the addition of 7 individual trees and one group of trees to Schedule 10
  - the introduction of an automatic update clause
- Addressing inaccuracies/inconsistencies in Schedule 10 Notable Tree Schedule and Chapter D13 Notable Trees Overlay
  - the amendment of a further 64 listings in Schedule 10
  - the removal of 51 trees in Schedule 10 where the trees are no longer present
  - the removal of reference in Chapter D13 Notable Trees Overlay to diagrams which have been removed

## 7.1 Methodology

Each notable tree included in PPC83 has been evaluated for its notable tree values in accordance with the Council's guidance for evaluating notable trees. The evaluations were undertaken in 2022, 13 per cent of existing nominations have been assessed resulting in ten individual trees and a group of ten trees being proposed for scheduling. Known irregularities resultant from development arborists identifications, staff investigations and public identifications have resulted in the proposed amendments to the schedule.

The guidance document is a non-regulatory method of achieving the objectives and policies of the AUP. It provides guidance on the process of evaluating the values of notable trees against the factors set out in the RPS. The methodology outlines the process of evaluating notable trees, which is based on the following steps in the RPS:

1. Identify and evaluate a tree or group of trees as notable considering the following factors:
  - (a) heritage or historical association: the trees are associated with or commemorate a historic event, have a historic association with a well-known historic or notable figure, have a strong public association, or are strongly associated with a local historic feature and now form a significant part of that feature;

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<sup>19</sup> RMA s6

<sup>20</sup> RMA s7

- (b) scientific importance or rarity: the trees are the largest or only example of a species in Auckland, a significant example of a species rare in the Auckland region, a native species that is nationally or regionally threatened, or have outstanding value because of their scientific significance;
- (c) ecosystem service or environmental function: the trees provide a critical habitat for a threatened species population;
- (d) cultural association and accessibility: the trees demonstrate a custom, way of life or process once common but now rare or in danger of being lost or have been lost; have an important role in defining the community identity and distinctiveness of the community though having special symbolic, spiritual, commemorative, traditional or other cultural value; or represent important aspects of collective memory, identity or remembrance, the meanings of which should not be forgotten; and
- (e) intrinsic value: the trees are intrinsically notable because of a combination of factors including size, age, vigour and vitality, stature and form or visual contribution.

The notable trees and areas proposed to be included in PPC83 have been recommended for scheduling as they have been evaluated as having value in relation to the RPS evaluation factors.

PPC83 proposes to add ten individual trees and one group of ten trees to Schedule 10. The proposal also includes the addition of an automatic update clause which will ensure the continued protection of notable trees where the legal description or address relating to its location description has changed as a result of subdivision. The automatic update clause will also enable the removal of entire or partial listings when a tree or group of trees has been physically removed as a result of consented works.

Feedback received on the Council's preliminary response to the NPS UD and the Act included requests to add additional trees to Schedule 10. Where specific trees were identified it was not possible to complete evaluations using the RPS methodology in time for this plan change.

## 7.2 Information Used

The list of reports, documents and evidence that have been used in the development of this section 32 report are listed below:

**Table 4: Information Used**

Name of document, report, plan	How did it inform the development of the plan change
Auckland Plan 2050 (refresh)	A refresh of Auckland's high level strategic plan – contains directives and focus areas that are relevant to open space and recreation. Used to assess the appropriateness of the recommended option.
The following Legislation: Resource Management Act 1991	Relevant sections of the legislation are used to assess the appropriateness of the recommended option.

## 8 Consultation

### 8.1 Relevant Sections of Resource Management Act and Local Government Act

Schedule 1 of the Resource Management Act 1991 contains the process for the preparation, change and review of policy statements and plans.

Section 1A – Mana Whakahono a Rohe, requires that a proposed policy statement or plan must be prepared in accordance with any applicable Mana Whakahono a Rohe.

At the time of preparing this plan change, Auckland Council had not entered into any Mana Whakahono a Rohe with iwi. One request had been received however from Nga Tai Ki Tāmaki and a Mana Whakahono a Rohe is in the process of being developed.

During the preparation of a proposed policy statement or plan, the local authority concerned shall consult—

*(a) the Minister for the Environment; and*

*(b) those other Ministers of the Crown who may be affected by the policy statement or plan; and*

*(c) local authorities who may be so affected; and*

*(d) the tangata whenua of the area who may be so affected, through iwi authorities; and*

*(e) any customary marine title group in the area.*

*(2) A local authority may consult anyone else during the preparation of a proposed policy statement or plan.*

*(4) In consulting persons for the purposes of subclause (2), a local authority must undertake the consultation in accordance with section 82 of the Local Government Act 2002.*

Section 82 of the Local Government Act outlines the principles of consultation. These are:

*82(1) Consultation that a local authority undertakes in relation to any decision or other matter must be undertaken, subject to subsections (3) to (5), in accordance with the following principles:*

*(a) that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons:*

*(b) that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the local authority to present their views to the local authority:*

*(c) that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local authority concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented:*

*(d) that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons:*

*(e) that the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration:*

*(f) that persons who present views to the local authority should have access to a clear record or description of relevant decisions made by the local authority and explanatory material relating to the decisions, which may include, for example, reports relating to the matter that were considered before the decisions were made.*

(2) A local authority must ensure that it has in place processes for consulting with Māori in accordance with subsection (1).

Section 4A Further pre-notification requirements concerning iwi authorities

*(1) Before notifying a proposed policy statement or plan, a local authority must—*

*(a) provide a copy of the relevant draft proposed policy statement or plan to the iwi authorities consulted under clause 3(1)(d); and*

*(b) have particular regard to any advice received on a draft proposed policy statement or plan from those iwi authorities.*

*(2) When a local authority provides a copy of the relevant draft proposed policy statement or plan in accordance with subclause (1), it must allow adequate time and opportunity for the iwi authorities to consider the draft and provide advice on it.*

## **8.2 Consultation with Mana whenua / iwi authorities**

*Clause 3(1)(d) of Schedule 1 to the RMA, states that local authorities shall consult with tangata whenua of the area who may be so affected, through iwi authorities, during the preparation of a proposed policy statement or plan.*

*Due to the nature and scale of PPC83 and the fact that it affects the entire region, all iwi were consulted with on the content of the plan change.*

*Clause 4A of Schedule 1 to the RMA states that local authorities must:*

- Provide a copy of a draft proposed policy statement or plan to iwi authorities to consider
- Have regard to feedback provided by iwi authorities on the draft proposed policy statement or plan
- Provide iwi authorities with sufficient time to consider the draft policy statement or plan.

And in addition to the above, recent legislation changes to the RMA introduced section 32(4A):  
(4A) *If the proposal is a proposed policy statement, plan, or change prepared in accordance with any of the processes provided for in Schedule 1, the evaluation report must—*

*(a) summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of Schedule 1; and*

*(b) summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice.*

*(c) a summary of all advice received from iwi authorities on the PC (section 32 (4)(a) of the RMA).*

Mana whenua were informed the proposal to include trees in Schedule 10 at the Mana Whenua forum on the NPS UD on 19 May 2022. A draft of the plan change, along with the draft s32 evaluation report, will be provided to iwi authorities on 23 June 2022. Any responses will be incorporated into this section 32. (Placeholder for responses)

### **8.3 Auckland Council elected members, Local Boards and Community Engagement**

Given the broad nature of the amendments proposed in PPC83 it is considered that all local boards are affected by this proposed plan change.

The views of these local boards will be sought through their business meetings in June 2022, as part of a report seeking local board views for other plan changes associated with the response to the NPS UD but that were not being notified through the IPI plan change.

Local boards were generally supportive of the proposed plan change with specific views discussed in section 8.3.2.

In the context of the existing nominations database, inaccuracies/inconsistencies in Schedule 10 and limited resourcing, a resolution was made at Planning Committee November 2020 (PLA 2020/96) that enables the Council to review or make changes to the notable tree schedule in the AUP and the Auckland District Plan (Hauraki Gulf Islands Section) when resources permit. As a result, as resources (particularly in relation to staff resources) become available, this work is being progressed. PPC83 is in part a response to this resolution.

The Planning Committee on 1 July 2021 endorsed the identification of notable trees as a qualifying matter – which in turn through ongoing survey work resulted in ten individual trees and one group of ten trees being identified as exhibiting similar values worthy of being a qualifying matter. A further resolution was made at the Planning Committee meeting on 4 August 2022 (PLA/2020/93) approving the notification of PPC83.

#### **8.3.1 Landowners**

Landowners were sent letters on 13 and 20 July 2022 to inform them of the notable trees evaluations and the eligibility status of their trees to be included in Schedule 10, or deletion of the trees from Schedule 10. Landowners were advised of the proposed plan change, including proposed notification date and provided a Frequently Asked Questions sheet on notable trees. They were also advised

submissions could be made once the plan change was notified. A copy of the evaluation was also available to be provided, where requested.

As of 20 July 2022, three landowners have contacted Council. Copies of the evaluations were provided where requested. Landowners had questions on the implications of the scheduling on their property and how to make a submission once the plan change is notified. Discussions with landowners are continuing.

### **8.3.2 Formal feedback from June 2022 Local board Business meetings**

PPC83 was reported to all local board business meetings in June 2022, with local views from boards sought.

Given the broad geographic nature of the changes proposed to Schedule 10 text and maps it has been determined that the proposed plan change directly affects all local boards. These local boards gave the following feedback on the proposed plan change to amend Schedule 10:

- Generally support the proposed plan change
  - Albert-Eden (AE/2022/108)
  - Devonport-Takapuna (DT/2022/93)
  - Henderson-Massey (HM/2022/84)
  - Howick (HW/2022/82)
  - Kaipatiki (KT/2022/132)
  - Māngere-Ōtāhuhu (MO/2022/93)
  - Manurewa (MR/2022/90)
  - Ōtara-Papatoetoe (OP/2022/98)
  - Puketāpapa (PKTPP/2022/113)
  - Waitākere (WTK/2022/79)
  - Waitematā (WTM/2022/116)
  - Whau (WH/2022/72)
- Request Auckland Council advocate to central government for the restoration of general tree protection
  - Albert-Eden (AE/2022/108)
  - Devonport-Takapuna (DT/2022/93)
- Request the addition of nominated notable trees are addressed in a timely manner and that adequate resource is provided for the process

- Devonport-Takapuna (DT/2022/93)
- Kaipatiki (KT/2022/132)
- Waitākere (WTK/2022/79)
- Requests an education campaign to inform the public about nominating trees for inclusion on the Schedule
  - Manurewa (MR/2022/90)

Other local boards provided general support for the proposed plan change to amend Schedule 10 and specific comments, including requests to add additional trees within their local board area.

Local boards have a further opportunity to provide views on the proposed plan changes once they are notified and submissions have been received. Boards will be given a copy of the summary of decisions requested in submissions. Any views provided by local boards will be considered alongside submissions as part of the hearing and decisions process on the proposed plan change.

## 9 Evaluation of Provisions

This part of the report evaluates the provisions contained within PPC83. The evaluation that follows relates to the key themes arising from the plan change.

### 9.1 Effect of scheduling

The inclusion of a notable tree on Schedule 10 means provisions of the Notable Trees Overlay apply to that tree.

As outlined above, the Notable Trees Overlay is based on a management approach where activities anticipated to have a greater effect on the values of a notable tree on Schedule 10 are subject to more rigorous management. The identification of a notable tree is the basis of this management approach, ensuring the management of a notable tree is specific to its values.

The intent of the AUP is to ensure that unnecessary consent activity is not generated, while protecting notable trees from inappropriate subdivision, use and development. The scheduling of notable trees is a method by which more than minor alterations will require resource consent. The requirement for consent ensures that the values of a tree will be taken into account by both landowners and decision makers.

### 9.2 Reasonable use

All trees included in PPC83 have been evaluated as having notable tree value to warrant ongoing protection and appropriate management under the AUP.

The majority of the notable trees are in private ownership. The scheduling of a tree in the AUP imposes restrictions on the use of the land. These restrictions can cause tension between the need to protect notable trees and the public benefits of this, and the ability of landowners, both private and public, to use their land.

The Act recognises that a rule or other provision can have one effect on how landowners use their land. Section 85 of the Act allows landowners to challenge a provision on the basis that it would render incapable of reasonable use<sup>21</sup> and that it would place an unfair or unreasonable burden on the landowner<sup>22</sup>. Section 85 states that 'reasonable use':

*includes the use or potential use of land for any activity whose actual or potential effects on any aspect of the environment or any person other than the applicant would not be significant<sup>23</sup>.*

The ability exists for applications for resource consents for significant alteration or removal of trees included in this plan change.

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<sup>21</sup> RMA s85(2)

<sup>22</sup> RMA s85(3)

<sup>23</sup> RMA s85(6)

The AUP provisions seek to recognise and provide for the reasonable alteration of notable trees. As previously discussed, a flexible management regime is used, based on the values of the tree, and whether the proposed use and/or development will effect the ongoing protection of the tree. The RPS seeks to provide for appropriate subdivision, use and development and consideration for where it will not negatively impact the values of the notable tree. It also takes into account the effects of the tree or group of trees on human health, public safety, property, amenity values and biosecurity<sup>24</sup>.

Policies in D13 also support the use and development of sites where notable trees are present, where it does not detract from the values of the tree and will not have significant adverse effects. Pruning and alteration of notable trees is a permitted activity (subject to standards).

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<sup>24</sup> AUP B4.5.2(2)

# 10 Conclusion

The objectives of this evaluation are to determine the most appropriate methods for achieving the following outcomes:

The purpose of PPC83 is to ensure the continued identification, management and protection of notable trees across the region and recognition of their section 6<sup>25</sup> and section 7<sup>26</sup> values.

The purpose of PPC83 is achieved by:

- Additions to Schedule 10
  - the addition of 24 individual trees and four groups of trees to Schedule 10
  - the introduction of an automatic update clause
- Addressing inaccuracies/inconsistencies in Schedule 10 Notable Tree Schedule and Chapter D13 Notable Trees Overlay
  - the amendment of a further 64 listings in Schedule 10
  - the removal of 51 trees in Schedule 10 where the trees are no longer present
  - the removal of reference in Chapter D13 Notable Trees Overlay to diagrams which have been removed

Section 32 of the Act requires that before adopting any objective, policy, rule or other method, the Council shall carry out an evaluation to examine:

- The extent to which each objective is the most appropriate way to achieve the purpose of the Act, and
- Whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objective.

The evaluation must also take into account:

- The benefits and costs of policies, rules, or other methods; and

The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.

A section 32 analysis of options has been undertaken in accordance with section 32(1)(b) and (2) of the RMA. A number of options have been analysed. At a high level, these include:

- *Option 1: Status Quo/Do Nothing*
- *Option 2: Rely on other regulatory and non-regulatory methods*
- *Option 3: Plan change to amend errors and make additions to Schedule 10*
- *Option 4: Expands on Option 3 but calling for further nominations*

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<sup>25</sup> RMA s6

<sup>26</sup> RMA s7

Option 3 is the recommended option.

The main conclusions of the evaluation under Part 2 and Section 32 of the Act are summarised below:

- (1) PPC83 is consistent with the purpose of sustainable management in Section 5 and the principles within Section 6, 7, and 8, and within Part 2 of the Act.
- (2) PPC83 assist the Council in carrying out its functions set out in Sections 30 and 31 of the Act
- (3) Pursuant to Section 75(3)(c) of the Act, PPC83 is consistent with the objectives and policies of the Auckland Regional Policy Statement
- (4) The evaluation undertaken in accordance with Section 32 concluded:
  - a. The use of the existing objectives of the AUP would be the most appropriate way to achieve the purpose of the Act.
  - b. The plan change to add 24 individual trees, four groups of trees, an automatic update clause and make amendment to Schedule 10 is the most appropriate means of achieving the objectives identified in section 3 of this report.



