

Decision following the hearing of a Plan Change to the Auckland Unitary Plan under the Resource Management Act 1991



Proposal

The plan change proposes the addition of a tree at 8 Eglinton Avenue to Schedule 10 Notable Tree Schedule in the Auckland Unitary Plan.

This plan change is **GRANTED**. The reasons are set out below.

Plan Change number:	68 - 8 Eglinton Ave, Mt Eden
Hearing commenced:	Tuesday 8 March 2022, 9.30 a.m.
Hearing panel:	Peter Reaburn (Chairperson) Bridget Gilbert
Appearances:	<u>For Council:</u> Teuila Young, Planner West Fynn, Arborist Sidra Khan, Hearings Advisor <u>For the Submitters:</u> Mike Lloyd, Tree Council (Legal Counsel) Saatyesh Bhana represented by Sue Simons and Olivia Manning (Legal Counsel) Margi Watson, Deputy Chair Albert - Eden Local Board Jianhua Zheng represented by Aidan Cameron (Legal Counsel)
Hearing adjourned	Tuesday 8 March 2022
Commissioners' site visit	Thursday 3 March 2022
Hearing Closed:	Tuesday 8 March 2022

Introduction

1. This decision is made on behalf of the Auckland Council ("**the Council**") by Independent Hearing Commissioners Peter Reaburn (Chairperson) and Bridget Gilbert appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("**the RMA**").
2. The Commissioners have been given delegated authority by the Council to make a decision on Plan Change 68 ("**PC 68**") to the Auckland Council Unitary Plan Operative in Part ("**the Unitary Plan**") after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence and submissions presented at the hearing.

3. PC 68 is a Council-initiated plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).
4. The plan change was publicly notified on 23 September 2021 following a feedback process involving Iwi, as required by Clause 4A of Schedule 1. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the changes.
5. The submission period closed on 21 October 2021. 160 submissions were received, with 159 in support and one in opposition. Further submissions were notified on 18 November 2021 and closed on 2 December 2021. Three further submissions were received.

SUMMARY OF PLAN CHANGE

6. PC 68 introduces a single additional tree (a pōhutukawa – referred to in this Decision as “**the tree**”) to the Notable Trees Schedule in the Unitary Plan (Schedule 10), and the application of the Notable Tree overlay to one additional property in the Unitary Plan maps showing the location of the tree. Once recorded in the Schedule and planning maps the tree would become subject to
7. PC 68 does not seek to alter the outcomes of any of the objectives and policies of the AUP. Neither does it seek to introduce any new objectives, policies, rules or zoning beyond the proposed specific recording of the tree at 8 Eglinton Avenue.

HEARING PROCESS

8. To expedite the hearing process the Panel issued a Direction requiring the pre-circulation of expert evidence. Pre-circulated evidence was provided as directed.
9. The Hearings Panel conducted a site visit on Thursday 3 March 2022.
10. The hearing was held remotely, using the TEAMS platform, on Tuesday 8 March 2022.
11. The Hearing's Panel directed the plan change be explained by the s42A authors, Council officers Teuila Young, Planner and West Fynn, Arborist, at the commencement of the hearing. Legal submissions were then presented by Mike Lloyd on behalf of the Tree Council and Sue Simons and Olivia Manning on behalf of Saatyesh Bhana (submitters in support of PC 68). We also heard a presentation in support from Margi Watson, Deputy Chair of the Albert- Eden Local Board. Aidan Cameron gave legal submissions on behalf of the submitter in opposition, Jianhua Zheng. Council advisors provided comments after hearing the submitters.
12. The hearing was adjourned at the conclusion of the hearing and closed the same day, Tuesday 8 March 2022, with no further information sought.

PROCEDURAL MATTERS AND LATE SUBMISSIONS

Late Submissions

13. One submission was received by the Council, one day late. Pursuant to section 37 of the RMA,

RELEVANT STATUTORY PROVISIONS CONSIDERED

14. We are to make decisions on the submissions, and on the plan change. Clause 10 of Schedule 1 to the RMA sets out the requirements for decisions:

- (1) *A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.*
- (2) *The decision –*
 - (a) *must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to –*
 - i. *the provisions of the proposed statement or plan to which they relate; or*
 - ii. *the matters to which they relate; and*
 - (ab) *must include a further evaluation of the proposed policy statement or plan undertaken in accordance with section 32AA; and*
 - (b) *may include -*
 - i. *matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and*
 - ii. *any other matter relevant to the proposed statement or plan arising from the submissions*
- (3) *To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.*
- (4) *The local authority must –*
 - (aaa) *have particular regard to the further evaluation undertaken in accordance with subclause (2) (ab) when making its decision; and*
 - (a) *Give its decision no later than two years after notifying the proposed policy statement or plan under Clause 5; and*

(b) *Publicly notify the decision within the same time;*

(5) *On and from the date the decision is publicly notified, the proposed policy statement or plan is amended in accordance with the decision.*

15. Details of relevant RMA and planning instruments are given in the s42A report and we do not repeat them here. PC 68 does not change any objectives or policies in the Unitary Plan and is further confined to one tree that proposed to be added to the existing tree schedule and maps. We record our assessment of the relevant existing provisions later in this Decision.
16. In this Decisions report, the Panel has focused on the key issues raised in the submissions, the s32 analysis carried out for PC 68, Council's reporting on the plan change and submissions, and representations made at the hearing. To the extent that the Panel has seen to be necessary, this Decision includes a further evaluation of PC 68 pursuant to s32AA of the RMA.
17. Submissions are not individually assessed. Rather, the submissions and further submissions which support the proposed plan change and/or seek further changes to the plan change are accepted to the extent that the plan change is approved as described in this Decision. All other submissions, including that opposing the plan change, are rejected.

PLANNING HISTORY

18. We were advised that the tree was previously listed in the corresponding Schedule of the legacy plan, the Auckland Council District Plan – Operative Auckland City – Isthmus Section 1999. The s32 report on PC 68 states the following:

The intention was that all existing legacy scheduled trees worthy of being protected, including the pōhutukawa located at 8 Eglinton Avenue, be transferred into the PAUP. Unfortunately, this tree was omitted from the DAUP, PAUP and subsequently from the AUP. A consequence of this omission is that the tree is not provided any protection under Schedule 10. Had the notable status of the tree been included in the AUP, the landowner would be directed to avoid development that destroys or significantly adversely affects the tree. The removal of a notable tree is a discretionary activity, and is subject to policies relating to the retention and protection of notable trees from inappropriate subdivision, use and development.

19. The s32 report further records that:

On 30 April 2021, the Tree Council lodged an application with the Environment Court to request that council correct its plan in regard to this tree under section 292 of the Act. This application also requested an urgent interim enforcement order be put in place to prevent any damage to, or removal of, the tree. The Environment

Court issued the interim enforcement order on the same day. The tree was then protected from damage, injury or removal on an interim basis (Attachment 1). Before the hearing of the substantive application, which was set down for 24 May 2021, the parties (the property owner, the Council and the Tree Council) reached an agreement on an alternative proposal that removed the need for a hearing in the Environment Court (Attachment 1). The agreement is that if the Council's Planning Committee approves and Council notifies a plan change to add the tree to Schedule 10 before 1 October 2021, then the interim enforcement order to protect the tree will remain in place until this plan change is made operative.

20. We discuss this background later in the Decision.

SUMMARY OF EVIDENCE AND LEGAL SUBMISSIONS

21. The Council planning officer's report was circulated prior to the hearing and taken as read. No expert evidence was pre-circulated and, apart from Council officers, there was no expert evidence given at the hearing. We record our appreciation to the parties for the legal submissions and lay evidence that was provided before the hearing. That assisted in our preparation and the efficient conduct of the hearing itself.

Council Officers

22. **Teuila Young** was the Council planner who had prepared the s42A report and she has the qualifications listed in Attachment 6 to the s42A report. Ms Young presented a summary of her s42A report. In response to a question from the Panel she confirmed that the Regional Policy Statement ("RPS") policies in B4.5.2 contained the relevant criteria for identifying and evaluating a tree as a notable tree. She confirmed that, apart from other contextual provisions, there were no other specific criteria that applied in the Unitary Plan. Ms Young had not carried out her own evaluation of the B4.5.2 criteria but had instead relied on the advice given by Council's Heritage Arborist Mr Fynn.
23. In respect of matters raised in the opposing submitter's (Jianhua Zheng) submission not addressed in the s42A report, Ms Young advised that the discrepancies in the tree assessment identified in the submission would be addressed by Mr Fynn.
24. **West Fynn** is a qualified arborist and holds the position of Senior Heritage Arborist at Auckland Council. In response to a question from the Panel, Mr Fynn gave his qualifications as an expert. These included a Higher National Diploma in Forest Management from Newton Rigg College, University of Lancashire and a Bachelor of Science in Forest Management from Aberdeen University. His experience as a Senior Heritage Arborist has included 11 years dealing exclusively with notable/scheduled trees in all aspects of policy, advice, compliance and regulatory. His qualifications and experience included making visual assessments of trees. In response to questions from the Panel Mr Fynn confirmed that he had not engaged any other expert advice in reaching his conclusions.

25. Mr Fynn's assessment of the tree used a methodology that has been developed by Auckland Council that contains a number of criteria. He said that the general basis for the methodology was the STEM method, although the particular process used by Auckland Council was different than that used by other councils. We discuss the methodology in more detail later in this Decision, but note that, in part, it utilises a points system as one means of ascertaining a tree's significance. The Jianhua Zheng submission had identified what appeared to the submitter to be discrepancies in the assessment that had been conducted. Mr Fynn explained that the assessment included a preliminary guidance sheet and a final analysis. It was the final analysis that was used for the assessment.
26. In response to questions from the Panel, Mr Fynn acknowledged that he did not have specific expertise in historic heritage matters, however considered that, with his long experience in tree assessments, that he did have expertise in assessing the contribution a tree (or trees) had to community amenity.
27. In respect of the criteria used in the Council's assessment methodology, and again in response to questions from the Panel, Mr Fynn confirmed that they related to the RPS B4.5.2 criteria. Ms Young also provided some clarification on that matter, advising us that all the assessment methodology criteria were related to the RPS B4.5.2 criteria.
28. Mr Fynn emphasised that his primary assessment was that the tree was intrinsically notable for a range of reasons including the tree's size, age, condition, shape and its visual contribution to the amenity of the area. He also considered that the tree was relatively rare in that it was located over a cave system.
29. In respect of the tree's historical associations Mr Fynn advised that the croquet and bowling pavilions on the adjoining Mt Eden Bowling Club site were listed in the Unitary Plan Schedule 14.1 - Historic Heritage and he thought that the bowling club and the tree were likely of similar age. Ms Young said that the pōhutukawa had been used by the bowling club as a backdrop in their photos.

Albert - Eden Local Board

30. **Margi Watson**, Deputy Chair Albert - Eden Local Board, delivered a slide presentation. She advised that the Board unanimously supported the retention of the tree and referred to the substantial support that had been indicated in submissions received on PC 68. She believed the tree to be up to 150 years old and it was clearly visible from the bowling club and further afield, including from Maungawhau. Retention of the tree was consistent with the Albert - Eden Local Board Plan 2020 which aims to protect existing trees and advocates for increased tree protection.

Submitters in Support

31. **Mike Lloyd**, counsel for the Tree Council, spoke to his written submissions. He said that the appropriate Council experts had assessed the tree as being a notable tree and there was no other assessment that it wasn't notable. The Tree Council's submission (prepared by an arborist) had also assessed the tree as being notable and there were overlaps between the Council's assessment methodology and the RPS criteria. With regard to the National Policy Statement on Urban Development ("**NPS-UD**") and whether a cost-benefit analysis of the plan change was required, Mr Lloyd noted that the site could be further developed with the tree remaining, and the opportunity remained to apply for a consent to remove the tree. The Auckland Council Urban Ngahere (Forest) Strategy, while not mandatory, was relevant in promoting the retention of, and increased canopy cover of, trees in the urban area and seeking no net loss of notable trees.
32. **Sue Simons** was counsel on behalf of a submitter in support, Saatyesh Bhana, a neighbouring property owner. Ms Simons referred to the previously circulated submissions.
33. Ms Simons submitted that there was no evidence that the tree should not be listed. She observed that the assessment methodology used by the Council was appropriate as a means to achieve consistency and objectivity in tree assessments. Retention of the tree had been supported by submissions that represented neighbourhood, local and regional interests. The tree was intrinsically connected to the bowling club site – documented proof of a connection was not necessary.
34. **Saatyesh Bhana** provided pre-circulated evidence. He reiterated his view that the tree was an important landmark in the area, contributing to the leafy neighbourhood feel and visible from a wide area, including Poronui Street. He had been surprised to find that the tree was not still on the tree schedule. In response to a question from the Panel Mr Bhana advised that the bowling club was used (in addition to bowls activities) for corporate events and private functions. The tree was also visible from the nearby tennis club which was used by more people.

Submitter in Opposition

35. **Aidan Cameron** appeared as legal counsel for **Jianhua Zheng** who owns the property on which the proposed notable tree is located and is the opposing submitter to PC 68. Mr Zheng was present at the hearing but did not speak.
36. Mr Cameron presented verbal submissions, including via reference to Mr Zheng's detailed submission in opposition. Mr Cameron raised a concern that Mr Zheng considered PC 68 had been presented as something of a *fait accompli*, as correcting an error in the tree scheduling not being retained through to the Unitary Plan. It was a concern to the submitter that the submission had been treated with a broad brush. While Mr Cameron acknowledged the history was relevant as context there needed to be an element of rigour in ensuring that the evidence justified the proposed scheduling. Mr Cameron submitted that the PC 68 s32 did not adequately assess the plan change in relation to the cost-benefit analysis that

is required under s32. He considered that it was not a safe argument to rely on the opportunity to later apply for removal of a tree given the strong protection focus of the Unitary Plan provisions relating to scheduled trees. Those protection matters, needed to be weighed against the NPS-UD provisions, and the other enabling provisions of the Unitary Plan – at the RPS and district level. The NPS-UD had also not yet been given effect to in the Unitary Plan which led to some uncertainty, and this in his submission therefore required greater attention to be given to RMA Part 2 matters, which included section 7(b) - the efficient use and development of natural and physical resources. Mr Cameron acknowledged that there was undeniable community support for the retention of the tree, however the number of submissions for and against PC 68 was not in itself relevant.

37. In response to questions for the Panel in relation to the RPS criteria Mr Cameron observed that the tree was not within an identified heritage area in the Unitary Plan and had not been protected for its historical significance under the legacy plan. He also referred to matters that needed to be taken into account under Policy B4.5.2.(2), and in particular taking into account the effects of a tree or group of trees on property. He submitted that no weight should be given to the resource consent application that has been submitted for the site.

Council Officer's Comments in Reply

38. In response to Mr Cameron's submissions Ms Young acknowledged the heritage assessment was not complete. However emphasis had been placed on the intrinsic value of the tree – the assessment did not rely on heritage. The entirety of Mr Fynn's assessment was in relation to criteria drawn from the relevant RPS provisions. In respect to the NPS-UD and the urban growth provisions of the Unitary Plan Ms Young's view was that the scheduling of the tree did not make the site unavailable for intensification.
39. In respect of historic heritage Mr Fynn identified differences between the legacy criteria and the Unitary Plan criteria. The latter, in addition to matters from the legacy plan, referred to association with a heritage feature. Mr Fynn maintained his view that the tree was associated with a heritage feature – the bowling club. In relation to effects on property, Mr Fynn was of the view that relevant negative effects were confined to direct physical effects a tree was having on property – they did not relate to matters such as leaf fall or shading or affecting further development of property. He noted that the tree affected about one third of the subject site, with the remainder of the site available for more intensive development. In relation to visual significance, Mr Fynn noted that it was not difficult to assess that matter against the tree assessment criteria, which simply related to how broad the visual audience was. While the tree was in a back yard it was clearly visible from the wider neighbourhood and busy roads.

PRINCIPAL ISSUES IN CONTENTION

40. Having considered the submissions and further submissions received, the hearing report, the evidence presented at the hearing and the Council officers' response to questions, the following principal issues in contention have been identified:

- What is the relevant methodology for assessment of notable trees?
- Does the tree qualify as a notable tree?
- To what extent is the history of the tree being scheduled / not schedule relevant?
- Other relevant matters

FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION

What is the relevant methodology for assessment of notable trees?

41. The relevant RPS provisions are operative. We must have regard to them and be satisfied the plan change is consistent with them.
42. Part B4 of the RPS addresses Natural Heritage matters and Part B4.5 specifically addresses Notable Trees. Policies in B4.5.2 contain provisions that are directly relevant to identifying and evaluating a tree or group of trees as notable. We record those policies below.

B4.5.2. Policies

- (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;*
 - (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.*
- (2) *Evaluation of the factors in policy B4.5.2(1) above is to take into account the effects of the tree or group of trees on all of the following:*
- (a) *human health;*
 - (b) *public safety;*
 - (c) *property;*
 - (d) *amenity values; and*
 - (e) *biosecurity.*
- (3) *Include a notable tree or group of trees in Schedule 10 Notable Trees Schedule.*
- (4) *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.*
43. The factors listed in Policy B4.5.2(1) must be considered when assessing whether the tree is notable. Ms Young confirmed that these are the only relevant factors listed in the Unitary Plan.
44. We spent some time at the hearing clarifying this matter with the Council officers because of our concern that the RPS criteria received only limited mention in the material we had reviewed. The s32 Report, under Section 4 Reasons for the proposed plan change, identifies by reference the policies in B4.5.2. However the policies themselves are not individually assessed. Nor is there a specific evaluation contained in the s42A report. Instead, Ms Young advised us that she had relied on the assessment that had been undertaken by Mr Fynn. In that respect, Auckland Council has developed a methodology for assessing whether a tree or group of trees is notable (“**the Council Methodology**”). That methodology, and the assessment under it made by Mr Fynn, appears as an attachment to the s32 Report¹. Part 6.1 of the s32 Report refers to Mr Fynn’s assessment as being an evaluation of the tree against AUP criteria, however Ms Young confirmed that the Council Methodology was not part of the Unitary Plan. It was therefore necessary

¹ See Pages 180 – 191 of the Hearings Agenda – the Factors appear on Page 183

for the Panel to clarify whether the Council Methodology was sufficiently related to the RPS factors for us to be satisfied the RPS had been fully evaluated.

45. Factors A – E of the Council Methodology are worded differently, but closely align with factors (a) – (e) in RPS Policy B4.5.2(1). Factor F (Negative Effects) appears to cover matters addressed in RPS Policy B4.5.2(2). Factors G – J were explained to us by Ms Young as being a more detailed basis for assessing RPS factor B4.5.2(1)(e) – Intrinsic value matters.
46. On balance we are satisfied that the Council Methodology used for the assessment and relied on in the s32 and s42A reporting, together with the further clarification provided at the hearing, adequately addresses the basis for evaluation required under the specific policies relating to identifying the subject tree as a notable tree under the RPS. Where there may be any residual doubt, the Panel has carefully drawn its attention to the specific RPS provisions, including their exact wording, in reaching its decision. In that respect the Panel notes that the RPS makes no reference to a points system being adopted for an assessment of factor B4.5.2(1)(e). We appreciate, as commented on by Ms Simons, that the Council has attempted, through the Council Methodology, to introduce some objectivity and consistency into its assessments, however we find that is not determinative in relation to whether, or not, a tree is finally assessed as a notable tree under the RPS criteria. As Mr Fynn advised us, a tree may be assessed as being notable regardless of a points allocation process under one or more of the RPS factors.

Does the tree qualify as a notable tree?

47. Factors A – E of the Council Methodology and, by implication, factors (a) – (e) in RPS Policy B4.5.2(1) were originally assessed by Mr Fynn and appear as part of the s32 Report². Three of the five factors were seen as being relevant.
48. In respect of the Heritage factor, Mr Fynn identified it as being potentially relevant, given the strong visual link with the bowling club, that the tree was “*strongly associated with a local historic feature and now forms a significant part of that feature*”.
49. The exact wording of RPS factor B4.5.2(1) (a) is:

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;
50. It will be noted from the record of evidence given at the hearing that Mr Fynn maintained his view that there was an association between the tree and the bowling club, including the tree being clearly visible from the club and the club building and the tree being of apparently similar age. We give no weight to Ms

² Page 190 of the Hearings Agenda

Young's comment about photos of the bowling club, as we received no evidence of those.

51. It was apparent from our site visit that the tree is clearly visible from the bowling club and we can appreciate that the tree adds amenity to the club and its surrounds. However we are less confident that the evidence shows the tree has a strong link that could be described as a heritage or historical association. In that respect we acknowledge a point made by Mr Cameron, that the identified (by overlay map in the Unitary Plan) bowling club feature is confined to the bowling club site.
52. Mr Fynn acknowledged that he was not an historic heritage expert and there was no such expert that gave evidence. Ms Young, in her closing comments, also acknowledged that the historic heritage assessment was not as robust as it could have been.
53. The tree is identified in the arborist assessment as having historic heritage value as Mr Fynn advised that the tree is growing over a volcanic cave system and is one of only 21 known such examples. He considered therefore that the tree is therefore part of a rare ecosystem, and its retention will also ensure retention of the cave system, which may be beneficial in terms of geological values. While this may be so, we have difficulty associating this value with the heritage or historical association factor. The cave system is more a geologic feature than an historical one. We note that another factor in B.4.5.2 is scientific importance or rarity, however Mr Fynn had not recorded, nor gave any evidence about any significance against that factor. There was also no ecological evidence to support Mr Fynn's view that this was a rare ecosystem.
54. We accordingly find that, while there may be some historic heritage association, the evidence is not sufficiently strong with regard to the Heritage factor to justify notable tree status under that factor alone. There is also insufficient evidence to find that RMA Section 6(f) (the protection of historic heritage from inappropriate subdivision, use and development) is relevant.
55. In respect of the Cultural factor Mr Fynn identified the tree as having "*an important role in defining the communal identity and distinctiveness of the community through having special symbolic, spiritual, commemorative, traditional or other cultural value or represents important aspects of collective memory, identity or remembrance, the meanings of which should not be forgotten*"; and as being "*a landmark, or marker that the community identifies with*". The reasons given were that the tree is potentially older than any living resident or development, that the tree is highly prominent and appears to be part of the neighbouring bowls club.

56. The exact wording of RPS factor B4.5.2(1)(d) is:

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.

57. We find that there was no evidence to confirm that the tree demonstrated a custom, way of life or process once common but now rare or in danger of being lost or have been lost; or had an important role in defining the community identity and distinctiveness of the community though having special symbolic, spiritual, commemorative, traditional or other cultural value. While we accept Mr Fynn's opinion that the tree may be potentially older than any living resident or development, and for similar reasons discussed above in respect of historic heritage association, we find that there was insufficient evidence to confirm that the tree represents important aspects of collective memory, identity or remembrance, the meanings of which should not be forgotten. We accordingly find that, while there may be some cultural association and accessibility, the evidence is not sufficiently strong to justify notable tree status under that factor alone.

58. In respect of the Intrinsic factor Mr Fynn identified the tree as being "*intrinsically notable because of a combination of factors including the size, age, vigour and vitality, stature and form or visual contribution of the tree or group of trees*". The reasons given were that the tree had a strong visual contribution being the largest solitary specimen for some distance and due to a growing location.

59. The exact wording of RPS factor B4.5.2(1)(e) is very close to the wording in the Council Methodology Mr Fynn used for his assessment.

60. As previously noted, the Council Methodology factors G – J were explained to us as being a more detailed basis for assessment of Intrinsic values. Factors G – J are then used for a scoring mechanism, and a combined score of 20 must be reached for a tree to be assessed as notable. Mr Fynn's analysis reached a score of well over 20 (28) and, while Mr Zheng's submission raised concerns about what appeared to be inconsistencies in that assessment (in our view, understandably), Mr Fynn did not resile from the final points allocation he had made.

61. Notwithstanding the points score, Mr Fynn expressed the view that the Intrinsic factor is a stand-alone factor, i.e. does not rely on a minimum "score". We agree. As we have noted, the Council Methodology is a non-regulatory mechanism and is one we find is not determinative of the assessment that may be made under the policies in B4.5.2.

62. Mr Fynn is a qualified and experienced heritage arborist. We found his evidence as to the size, age, vigour and vitality, stature and form of the tree to be credible, and it was not opposed by any other evidence. The tree is of a prominent size

and, as we could see from our own site visit, impressive stature and form; is relatively old; and is in good health. We find that the tree is intrinsically notable for these reasons.

63. With regard to the visual contribution the tree makes, while Mr Fynn is not a landscape architect, he does have considerable experience in assessing visual matters. There was no expert evidence disputing his view concluding the tree makes a significant visual contribution to the neighbourhood and local and wider area.
64. Mr Bhana is a neighbour and gave evidence supporting the visual amenity value of the tree from his perspective as a neighbour, from the street and the area generally. He also referred to the prominence of the tree from the bowling and tennis clubs. The presentation given by Margi Watson, Deputy Chair Albert - Eden Local Board also raised the visual prominence and amenity value of the tree and she helpfully referenced the Albert - Eden Local Board Plan 2020 which in turn strongly supports retention and scheduling of trees in the local board area.
65. We have carefully read and considered the submissions that were received supporting the plan change. The further submission from the Tree Council specifically assessed the landscape value of the tree and supported Mr Fynn's view that this was visually a significant tree. We note that further submission was prepared by a landscape architect and while have not regarded it as expert evidence it nevertheless aligns with Mr Fynn's views, and also those expressed by a number of the other submissions.
66. Our own site visit confirmed the views expressed by Mr Fynn and submitters in support. The tree is clearly prominent to the local area including major roads and has an attractive form and appearance. We are satisfied that the tree meets all of the combination of factors including size, age, vigour and vitality, stature and form and visual contribution and find that it is a tree of significant intrinsic value.
67. Having regard to the relevant factors for assessment we accordingly find the tree is a notable tree.

To what extent is the history of the tree being scheduled / not schedule relevant?

68. The Panel was advised that the subject tree, which was scheduled in the legacy plan, was not carried over into the notified Unitary Plan schedule. This was described as being an error and no party suggested that it wasn't.
69. That error had not been identified by any party, and accordingly ether was no submission lodged on the Unitary Plan when it was notified.
70. If there had been a submission then an assessment would need to have been made under the Unitary Plan criteria as then proposed. That would also have been the case if the tree had been scheduled and a submission was made in opposition to that scheduling.

71. Mr Cameron accepted that this history has relevance as context, but ultimately the scheduling of the tree under PC 68 needs to be assessed under the Unitary Plan provisions that apply to scheduling. We agree and find that, while an error may have occurred, that has little relevance now to an assessment as to why and if the tree qualifies as a notable tree. We have found that the tree qualifies as a notable tree solely by way of reference to the criteria that apply.

Other relevant matters

72. Mr Zheng's submission raised a concern that there had been no, or no adequate, analysis of costs and benefits of the plan change, and associated concerns that there had been insufficient analysis of the NPS-UD and the urban growth-related provisions of the Unitary Plan³. Mr Cameron submitted that an assessment under s32(1)(b)(ii) of the RMA must include an assessment of the costs and benefits of the environmental, economic, social and cultural and that this includes the opportunities for economic growth and employment that are anticipated to be provided or reduced, including, if practicable, calculating the benefits and costs. The particular concern expressed was that the ability to provide additional housing have not been factored into the Council's assessment of risks and costs. This was also relevant to an assessment under section 7(b) of the RMA - the efficient use and development of natural and physical resources; and a matter that needed to be taken into account under RPS Policy B4.5.2(2) - the effects of the (notable) tree on property.
73. Mr Cameron considered reference to Part 2 of the RMA was appropriate in this case, considering the uncertainties that arose through Auckland Council not having completed its response to the NPS-UD. His focus was on section 7(b) which he considered had not been fully assessed.
74. We received limited evidence on the impact the tree would have on further development of the subject site, and Mr Cameron submitted we should ignore an application that had been lodged in respect of the site. We received sufficient evidence to indicate that some intensification would still be possible, although not to the degree possible if the tree was removed.
75. While Mr Fynn focussed on negative physical or safety effects we are satisfied that effects that may be relevant under RPS Policy B4.5.2(2) may include effects on property development.
76. Ms Young addressed the NPS-UD in her s42A report⁴. We were advised that, through council's work programme on NPS-UD, notable trees have been identified as a qualifying matter, i.e. may influence where or how further intensification is to be provide for. How that plays out is not yet known and, as Mr Cameron

³ The particular provisions of the NPS-UD and RPS are specified in the submission.

⁴ S42A Report, paragraphs 25 - 27

submitted, that introduces some uncertainty as to the final form the Unitary Plan may take in relation to the NPS-UD.

77. What we must assess is how these other matters may affect a decision to schedule the tree as a notable tree in circumstances where, as we have found the tree meets RPS Policy B4.5.2(1) after consideration of the specific factors that apply. Any effect on the efficient use and development of natural and physical resources must be considered alongside the benefits to be achieved in maintaining and enhancing amenity values (section 7(c) of the RMA) and maintaining and enhancing the quality of the environment, both natural and built (section 7(f) of the RMA). On balance, the conclusion that we have reached is that there is no evidence that this plan change, which is confined to one tree on one site, will have more than a negligible effect on the ability of Auckland to achieve the intensification obligations under the NPS-UD and RPS. As to direct effects on the subject site there was no evidence on economic effects. We also received no evidence or submission that scheduling of the tree would prevent reasonable use of the subject site.
78. In respect of other Part 2 matters we have already concluded that there is insufficient evidence to show that section 6 is relevant. In respect of Section 8, we note that feedback was received from Ngāi Tai Ki Tāmaki who supported the proposed plan change⁵. Ngāti Whātua Ōrākei also supported PC 68 in a submission.
79. We note references that were made to the Auckland Plan⁶ and Auckland's Urban Ngahere (Forest) Strategy (2019)⁷ and Auckland Plan and find that PC 68 is generally consistent with those documents.
80. Our overall conclusion after taking into account other relevant matters is that we find scheduling the tree as a notable tree remains appropriate.

STATUTORY PROVISIONS

81. The RMA sets out a range of matters that must be addressed when considering a plan change. These are identified in the section 32 report, the accompanying notified plan change, the s42A report. Further particular matters, focussing on issues raised in submissions, have been addressed in this Decision.
82. We also note that section 32 clarifies that analysis of efficiency and effectiveness is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. We are satisfied that, after considering the section 32 report, the accompanying notified plan change, the s42A report, all submissions and submissions and evidence given at the hearing, that there has been an

⁵ S42A Report, paragraph 43

⁶ S42A Report, paragraphs 33 - 36

⁷ S42A Report, paragraphs 37 -40

adequate level of detail on which to consider the plan change and to make a decision approving PC 68.

83. Having considered the evidence and relevant background documents, we are satisfied, overall, that PC 68 has been developed in accordance with all of the relevant statutory and policy matters. The plan change will assist the Council in its effective implementation and administration of the Unitary Plan.

DECISION

84. That, pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, that Proposed Plan Change 68 to the Auckland Unitary Plan (Operative in Part) be approved, with no modifications.
85. Submissions on the plan change are accepted and rejected in accordance with this decision. In general, these decisions follow the recommendations set out in the Councils section 42A report, and as identified above in relation to matters in contention.
86. The reasons for the decision are that Plan Change 68:
- a. will assist the Council in achieving the purpose of the RMA;
 - b. is consistent with the Auckland Regional Policy Statement;
 - c. is consistent with the provisions of Part 2 of the RMA;
 - d. is supported by necessary evaluation in accordance with section 32; and
 - e. will help with the effective implementation of the plan.



Peter Reaburn
Chairperson

Date: 14 April 2022