



Proposed Plan Change 68

Addition of a tree at 8 Eglinton Avenue to Schedule 10 Notable Tree Schedule in the Auckland Unitary Plan (Operative in part)

SECTION 32
EVALUATION REPORT
23 September 2021

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1. Executive Summary

Purpose

The purpose of this report is to summarise the evaluation undertaken as part of the preparation of Proposed Plan Change 68 (PPC 68) to the Auckland Unitary Plan (Operative in Part)(AUP), as required by section 32 of the Resource Management Act 1991 (the Act).

Scope

The scope of PPC 68 is restricted to the addition of a single pōhutukawa located at 8 Eglinton Avenue, Mt Eden to Schedule 10 – Schedule of Notable Trees in Chapter L of the AUP (the **Schedule**) and the application of the Notable Tree overlay to that property.

The purpose of PPC 68 is:

- to ensure the protection of the section 6 and 7 values (as reflected in the RPS criteria) of a pōhutukawa at 8 Eglinton Avenue, Mt Eden (the **property**) from inappropriate use and development.

The following is out of scope of PPC 68:

- addition of new trees or groups of trees to the Schedule
- addition of any other trees previously scheduled under legacy plans but omitted by error from the Draft Auckland Unitary Plan (the **DAUP**) and/or Proposed Auckland Unitary Plan (the **PAUP**), and accordingly not currently listed in the AUP
- deletion of existing trees or groups of trees on the Schedule
- amendments to the objectives or policy framework or to the rules relating to Notable trees

A future plan change may be prepared to evaluate deletions, other amendments or further additions to Schedule 10 but none of these are included in Plan Change 68.

Scheduling is the most appropriate means to give effect to the purpose of the plan change.

In accordance with Part 5 of Schedule 1 to the Act, and section 32, this evaluation report has been prepared to determine the appropriateness, effectiveness, efficiency as well as the costs and benefits of PPC 68. This report determines that a plan change to the AUP is the most appropriate option for protecting the pōhutukawa located at 8 Eglinton Avenue, Mt Eden. It will result in making a correction to the corresponding viewer/planning map in the AUP. Correcting this error in the Schedule and the corresponding viewer/planning map:

- is effective, as it better aligns with the relevant objectives and policies in the AUP and the purpose of the Act;
- is efficient, as the tree is protected from injury, damage or removal; and
- is appropriate, as the AUP will function as intended by recognising and protecting trees scheduled for their natural heritage values.

2. Introduction

2.1 Purpose and scope

This report is prepared as part of the evaluation required by Section 32 of the Act for PPC 68 to the AUP.

PPC 68 relates to a single pōhutukawa located at 8 Eglinton Avenue, Mt Eden. The purpose of PPC 68 is to ensure the protection of the tree's section 6¹ and 7² values (as reflected in the RPS criteria) from inappropriate use and development.

PPC 68 introduces a single addition to the Schedule, and the application of the Notable Tree overlay to one additional property in the AUP maps showing the location of the tree. The amendments proposed in PPC 68 will assist in the management and protection of the tree.

In-scope changes:

The tree has been the subject of court action, negotiation and agreement by relevant parties (parties include the property owner and Auckland Council) and subsequent Environment Court direction. In accordance with the Court direction (Attachment 1), the scope of this plan change is very narrow and is limited to a single addition. It seeks only to correct an error regarding the omission of a pōhutukawa at 8 Eglinton Avenue from the schedule text and maps (the events that led to this error are discussed in section 4 of this report). This addition will reintroduce protection to the pōhutukawa, as was always intended.

Out of scope changes:

PPC 68 does not propose to add any additional trees beyond the site at 8 Eglinton Avenue to the Schedule or to re-evaluate existing trees in the Schedule. Any inclusions, deletions or re-evaluations of any existing notable tree currently listed in the Schedule are out of scope of the proposed plan change.

Further, PPC 68 does not include an assessment or to re-visit any legacy plan tree schedules to correct any further errors and/or omissions that may exist. The focus of PPC 68 is limited to this single identified and confirmed error.

Finally, PPC 68 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, and its purpose and function, remains unchanged. This report does not evaluate these unchanged provisions in any more detail.

'Opening up' the Schedule to a full review for additions, deletions and re-evaluations would require a significant amount of resources and an overall timeframe of at least 2-4 years, depending on the number of submissions and further submissions received. In the meantime, the pōhutukawa located at 8 Eglinton Avenue would remain unprotected or would rely on Environment Court processes for its protection. It is therefore appropriate that a plan change

¹ RMA s6(f)

² RMA s7(c) and (f)

to add this tree to the schedule, as compared to a full review of the schedule, are treated as two separate issues.

We recognise public interest in this matter and the likelihood of pressure to extend the scope. However, this broader piece of work is currently being scoped for consideration by the council, including in light of potential amendments to the RMA and the introduction of further national direction on indigenous biodiversity. This will likely affect both the policy context and the tools available. It is most efficient to await clarification on the national context before this scoping of changes to the schedule can be finalised, but in the meantime fix this identified error for the tree at 8 Eglinton Avenue.

Evaluation of provisions required by RMA

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.

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

- i. the 'proposal' means PPC 68;
- ii. the 'schedule' means Schedule 10 Notable Trees Schedule of the AUP
- iii. the 'objectives' means the purpose of the proposal/PPC 68; and
- iv. the 'provisions' means the policies, rules or other methods that implement, or give effect, to the objectives of the proposal.

The AUP contains existing objectives, policies, and rules or other methods for the purpose of protecting and managing scheduled trees. PPC 68 does not propose changes to any of these provisions. This evaluation report on PPC 68 relates only to the amendment of the existing Schedule to correct the omission of a single tree at 8 Eglinton Avenue, Mt Eden and the corresponding application of the related overlay. The policy approach remains unchanged, and this report will not evaluate it in any more detail.

Further, PPC 68 is not seeking to add any additionally omitted trees to the schedule, nor is it seeking to re-evaluate any existing tree/s on the schedule.

This section 32 evaluation report will continue to be refined in response to any consultation feedback provided to the council, and in response to any new information received.

2.2 Background to the proposed plan change

Legacy Plan

The principal categories for scheduling this tree, as listed in the Auckland Council District Plan – Operative Auckland City – Isthmus Section 1999 (**Legacy Plan**), are “b” (botanic value) and “c” (visual amenity value). These categories were identified as worthy of recognition and protection.

In determining whether trees were worthy of protection, the following factors were also considered in conjunction with those listed above – size, form, occurrence of the species, indigenous status, useful life expectancy, age, physiological appropriateness, public accessibility, visual appropriateness to the site, visual contribution to the landscape, viewing audience, presence of other trees, contribution of group character, association with a historic event or figure and other factors (such as ecological significance, importance as a birdlife habitat, or social/cultural significance are also taken into account)³.

Under the Legacy Plan, as a scheduled tree, the pōhutukawa was afforded protection from cutting, damage, injury, alteration and destruction or partial destruction (including its roots) by requiring a discretionary resource consent for these works. The removal of scheduled trees was a discretionary activity⁴.

Aerial imagery from Auckland Council’s GIS system confirms the tree's presence on the site in 1940. Further evidence of the tree’s presence is found in photos dated as early as 1925 from the heritage assessment file of the neighbouring Mt Eden Bowling Club.

Development of AUP

As part of the AUP process, council prepared a Draft Auckland Unitary Plan (**DAUP**) which had pre-notification public consultation and then the PAUP was publicly notified. In developing the DAUP, significant work was undertaken by staff to consolidate all legacy schedules. The scale of the exercise in the context of the development of the DAUP meant this was principally a desktop exercise. Reliance was placed on the historic information contained in council’s database with limited ground truthing.

The AUP now protects and retains almost 6000-7000 notable trees or groups of trees regionally with significant historical, botanical or amenity values⁵. It lists those notable trees in Schedule 10 text and the presence of a notable tree or group is identified in the GIS viewer/planning maps by the Notable Tree overlay as:

- a green triangle indicating the confirmed location of a notable tree and
- a green triangle with a red dot in the centre of a property parcel which indicates the exact location of the tree on the site is unverified.

³ Section 5C.7.3.1(A) of the Auckland Council District Plan – Operative Auckland City – Isthmus Section 1999

⁴ Section 5C.7.3.3(A)(c) of the Auckland Council District Plan – Operative Auckland City – Isthmus Section 1999

⁵ AUP Objective B4.5.2(1)

Notable trees are afforded legal protection to ensure their significant heritage, scientific, or intrinsic values are protected and retained. They also make important contributions to a wide array of additional values, including amenity, ecological, environmental, biodiversity and more broadly, what are referred to as ecosystem services including factors such as land stability, improving air quality, removing particulate pollution intercepting rainfall to reduce peak flow of stormwater, and so forth. Identifying and protecting notable trees contributes to Auckland's quality and character.

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 development⁶.

3. The proposed plan change

The purpose of the proposed plan change is to ensure the protection of the tree's section 6 and 7 values (as reflected in the RPS criteria) from inappropriate use and development that would compromise these identified values. The Notable Trees Overlay responds to the section 6 and 7 values by protecting notable trees and notable groups of trees from danger or destruction resulting from development. PPC 68 does this by correcting an error and adding a listing to the schedule text and maps to ensure its protection through time as was originally intended.

PPC 68 introduces an additional listing to Schedule 10 Notable Tree Schedule. PPC 68 also adds the Notable Tree Overlay to 8 Eglinton Avenue and identifies the location of the tree intended for scheduling. The addition of the notable tree overlay to 8 Eglinton Avenue would use a green triangle to identify the tree's verified location.

The scope of the specific amendments to the Schedule and mapped overlay is restricted to these matters:

- the addition of a single tree at 8 Eglinton Avenue to the Schedule
- reflecting this addition in the amended mapped overlay by identifying the verified location of the tree

The plan change documents include:

- marked up Schedule 10 indicating the change made
- mapped PDF location of the tree identified by a green triangle
- Environment Court decision

⁶ AUP Policy D13.3(2)(a)-(i)

- Arborist's evaluation report

4. Reasons for the proposed plan change

AUP approach to natural heritage

The pōhutukawa tree at 8 Eglinton Avenue, Mt Eden, has significant natural heritage values and is not protected under any AUP provision, nor by any other means.

Natural heritage is identified as an issue of regional significance in the AUP's Regional Policy Statement (RPS)⁷.

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 value⁸. These factors are considered in the context of human health, public safety, property, amenity values and biosecurity⁹.

The AUP methods to achieve this protection are primarily focused on the Schedule, which records trees and groups of trees that satisfy the AUP criteria, and the overlay which depicts the location of individual trees and groups of trees that are scheduled. The Schedule contains approximately 3000 line items, equating to between 6000 and 7000 trees, which were rolled over from legacy plan schedules at the time the AUP was drafted.

Section 32 evaluation

An evaluation under section 32 of the Act must examine the extent to which the objectives of PPC 68 are the most appropriate way to achieve the purpose of the Act¹⁰. The objective of PPC 68, or the purpose of the plan change, is to protect the identified RMA section 6 and 7 values of the pōhutukawa at 8 Eglinton Avenue, Mt Eden.

The most appropriate method to achieve the purpose of PPC 68 is addressed in section 4.1 of this report.

The tree located on the eastern side of the property was previously scheduled under Appendix 2 of the Legacy Plan.

The pōhutukawa located at 8 Eglinton Avenue, Mt Eden was previously scheduled in the legacy Auckland Council District Plan – Operative Auckland City – Isthmus Section 1999 but it was not included in the notable tree schedule for the PAUP when it was notified in September 2013, and it is not scheduled in the AUP Notable Tree Schedule (Schedule 10). This means the tree is currently not afforded any protection under the AUP. When the PAUP was being prepared, it was intended that all existing legacy scheduled trees (both notable trees and historic trees) worthy of being protected be transferred into the PAUP.

⁷ AUP B1.4 Issues of regional significance

⁸ AUP B4.5.2(1)

⁹ AUP B4.5.2(2)

¹⁰ RMA s32(1)(a)

An investigation into this discrepancy was unable to provide any evidence that the omission of the pōhutukawa located at 8 Eglinton Avenue, Mt Eden from the notable tree schedule in the PAUP as notified was intentional. It was concluded that the omission was an error, and the tree should have been scheduled in the PAUP as notified as it was in the legacy planning documents.

History of Environment Court proceedings

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.

There is no ambiguity surrounding the tree's significance, hence its original scheduled status under the legacy plan. Legacy plan investigation shows error resulting in high value tree not being provided any protection and thus not achieving settled objectives and policies in the plan. It is important to recognise that this tree should be protected through time, as was originally envisioned/intended. The 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.

4.1 Development of Options

In the preparation of PPC 68, there were two clear options identified:

Option 1: do nothing/retain the status quo and rely on separate external processes to protect the tree

Option 2: prepare a plan change to add the pōhutukawa at 8 Eglinton Avenue to Schedule 10

The assessment of possible options against the selection criteria is outlined in the table below:

Table 1: Assessment of possible options

	Option 1 – Do Nothing	Option 2 – add the pōhutukawa at 8 Eglinton Avenue to Schedule 10
Appropriateness	<p>Requires no action so is easily implemented.</p> <p>There are external processes that could protect the tree (i.e., the interim enforcement order put in place by the Environment Court, though protection is limited in time) if the decision was made not to proceed with a plan change.</p>	<p>The tree at 8 Eglinton Avenue satisfies the AUP criteria for inclusion within the Schedule. Inclusion of the tree means the tree is clearly identified. Any property search utilising the AUP GIS viewer or purchase of a LIM report will identify the tree as scheduled, and subject to the rules of the overlay. This ensures this tree is protected and managed appropriately through the Notable Trees Overlay on a long-term basis.</p>
Effectiveness	<p>Will not achieve the objective of PPC 68, being to ensure the protection of the tree's section 6 and 7 values (as reflected in the RPS criteria) from inappropriate use and development as originally intended by legacy scheduling and carrying forward into AUP.</p> <p>Is not efficient or effective due to increased time and money resulting from Environment Court proceedings.</p> <p>By not adding the tree to Schedule 10 it would remain without the protection of the AUP, and the Environment Court proceedings have no guaranteed outcomes so it is possible the tree would be under threat of removal. Relying on the Environment Court proceedings to protect the tree does not meet the purpose of the AUP.</p>	<p>Greater certainty to landowners and all users of Schedule 10, in terms of how the regulatory controls relate to 8 Eglinton Avenue being correctly and more clearly set out.</p> <p>Utilises established AUP methods for recognising and protecting natural heritage values of trees</p>
Efficiency	<p>No action, so timeliness is not an issue for the 'do nothing' option</p>	<p>Requires a plan change. Can be relatively straightforward to implement.</p>
Costs	<p>Cost of participating in further Environment Court proceedings for council, the landowner and Tree Council.</p>	<p>Cost to the Council of proceeding with a plan change.</p> <p>Cost to the landowner if there is disagreement with the proposed</p>

	Option 1 – Do Nothing	Option 2 – add the pōhutukawa at 8 Eglinton Avenue to Schedule 10
		<p>amendments, through the need to engage with the plan change process.</p> <p>There are opportunity costs, through the property being subject to greater management and protection through the correction of errors, in the application of the Notable Trees Overlay.</p>
Benefits	Short term cost savings to Council, not proceeding with a plan change.	<p>The benefit of this approach is that it would allow the scheduling of the tree in the most immediate timeframe.</p> <p>Social and cultural benefits through the recognition, protection and appropriate management of notable trees.</p> <p>Integrity of the Notable Trees Overlay and of the AUP is protected.</p> <p>No economic growth or employment benefits anticipated.</p>
Risks	<p>There is a greater risk the tree will be lost if it is not protected by the AUP.</p> <p>There is also a reputational risk associated with the 'do nothing' option because this does not meet the requirements of the settlement agreement entered into by the parties (including the council) and it does not correct the error mistakenly made by council and there would be an opportunity missed for council to amend the district plan to give effect to the regional policy statement in relation to the known natural heritage values of the tree.</p>	<p>This plan change would attract submissions about other trees. These will be out of scope of the plan change, but would reinforce the requirement for a further plan change in the future to address other potential errors or omissions.</p> <p>Any further omissions of trees previously scheduled in a legacy plan would continue to be unprotected until they were evaluated and added to Schedule 10 through a separate plan change process. There is reputation risk associated with this approach as council may be seen as not addressing the wider issues related to the management and protection of notable trees.</p>

Of the two options considered in this report, Option 2 has considerable merit. It is the most appropriate, effective and efficient way to recognise the values of the tree and provide for its ongoing protection. The overlay and schedule are existing AUP methods which give effect to the RPS by recognising the tree's section 6 and section 7 values. Given this tree's identified natural heritage values it therefore warrants the same management approach as existing scheduled trees.

The tree has been assessed as meriting inclusion on the Schedule (Attachment 2). Given the Environment Court's timebound direction it is important that an effective and efficient planning response is initiated before 1 October to protect this tree from injury, damage or removal. This plan change, to add the pōhutukawa at 8 Eglinton Avenue to Schedule 10 of the AUP and apply the Notable Tree Overlay to the property, utilises the AUP's established methods for recognising and protecting the section 6 and section 7 identified values of the most significant trees in the Auckland region and is the most appropriate for achieving the purpose of the plan change. The scope of PPC 68 is narrow and limited only to recognising and protecting the section 6 and 7 values of the pōhutukawa at 8 Eglinton Avenue.

4.2 Evaluation of options

See following table for a summary of analysis under section 32(2) of the Act

Table 2: Evaluation of options

Options	Efficiency and effectiveness of provisions in achieving the objectives ¹¹	Benefits	Costs
<p>Option 1</p> <p>Do nothing/retain status quo</p> <p><i>Do not amend Schedule 10 and the overlay, meaning the tree would continue to be unprotected by the AUP.</i></p>	<p>Will not achieve the object of PPC 68, being to recognise and provide for the natural heritage values of the tree at 8 Eglinton Avenue, Mt Eden.</p> <p>It is not efficient or effective due to the increased time and money resulting from the Environment Court proceedings.</p> <p>The tree would remain without the protection of the AUP and would rely on the interim enforcement order for protection in the short term, with no guaranteed outcomes from court proceedings for longer term protection. It is possible the tree would be under threat of removal.</p> <p>By not adding the tree to the schedule it will not have the long-term protection of the AUP provisions. Relying on the Environment Court proceedings to protect the tree does not meet the purpose of the AUP's natural heritage objectives.</p>	<p>Short term cost saving to Council, not proceeding with a plan change.</p> <p>Tree could be removed enhancing the development opportunity for the site and economic benefits to the site owner.</p>	<p>Relying on the existing Schedule 10 would come at no extra cost to the organisation.</p> <p>There is a non-financial cost associated with the potential loss of amenity value should the tree be lost.</p> <p>There is also a reputational cost associated with the 'do nothing' option because this does not meet the requirements of the settlement agreement entered into by the parties (including the council) and it does not correct the error created by council processes.</p>
<p>Option 2 – plan change</p>	<p>Protecting the tree through time will ensure the trees section 6 and 7 values are clearly recognised and identified.</p>	<p>Greater certainty to landowners and all users of Schedule 10, in terms of how the regulatory controls relate to 8</p>	<p>Cost to the Council of proceeding with a plan change.</p>

¹¹ RMA s32(1)(b)(ii)

	This is managed appropriately through the Notable Trees Overlay.	Eglinton Avenue being correctly and more clearly set out.	Risk of challenge to the scope of the plan change and any costs associated with potential legal proceedings.
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4.3 Risk of acting or not acting

Section 32(2)(c) requires this evaluation to assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. There is considered to be sufficient information for PPC 68 to proceed.

The section 32 evaluation will continue to be refined in relation to any new information that may arise following notification, including during hearings on PPC 68.

4.4 Reasons for the preferred option

To ensure the pōhutukawa located at 8 Eglinton Avenue, Mt Eden is protected through time as was originally intended, an amendment to the Schedule and the GIS viewer is required. This is the most appropriate method to ensure the recognition of the section 6 and section 7 values that the tree holds. Therefore the 'do nothing' approach is not considered to be an appropriate option.

The evaluation of options conducted in section 4.2 of this report indicates that the preferred option for meeting the objectives of the proposal, and the most efficient and effective option, is a statutory plan change to the AUP to add the tree to Schedule 10 and GIS viewer.

In accordance with section 32(1)(a), 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 PPC 68. PPC 68 uses the existing objectives, policies and rule framework for the recognition and protection of notable trees.

5. Development of Plan Change

5.1 Overall evaluation against Part 2 of the Act

Section 5 of the Act 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.*

The tree helps support wellbeing, and promotes sustainable use of a resource (notable trees) and helps sustain future generations by protecting this tree through time. This issue addressed by PPC 68 relates to the most appropriate method to manage the protection of the tree at 8 Eglinton Avenue as it merits inclusion on the notable tree schedule and was omitted by error.

Section 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.

Because the values associated with scheduled trees are wide-ranging, the addition of a tree to the notable tree schedule will assist in achieving many of the other matters outlined in Section 7 above. PPC 68 will achieve and have regard to (in particular):

- the efficient use and development of natural and physical resources (the addition of the tree to the schedule is critical to ensuring that any use and development which may affect notable trees is undertaken with appropriate care)
- the maintenance and enhancement of amenity values (the arborists assessment of this notable tree has noted it's significant contribution to local amenity)
- effects of climate change (trees, particularly mature trees, are recognised as providing vital mitigation to the effects of climate change).

Section 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 principles¹² include partnership, reciprocity, active protection, equity and equal treatment.

PPC 68 will assist in achieving, in part, the above principles of the Treaty of Waitangi.

¹² Waitangi Tribunal website, justice.govt.nz

5.2 Other relevant sections of the Act

There are relevant sections of the Act 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 79 – Review of policy statements and plan*
- *Section 80 – Combined regional and district document*
- *Section 86 – When rules in proposed plans have legal effect*

Relevance of PPC 68 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 PPC 68 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 80 of the Act 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 AUP. The AUP contains existing objectives, policies, rules and other methods that are of regional and district significance.

When determining the date on which a plan change takes effect the Act provides in section 86B(3) that:

A rule in a proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified.

The proposed amendments in PPC 68 will not have legal effect until the release of the decision notice on PPC 68. The Environment Court interim enforcement order will remain in force to protect the tree until determination of this plan change.

5.3 National Policy Statements

National policy statements are instruments issued under section 52(2) of the Act and state objectives and policies for matters of national significance. The AUP is required to give effect to any national policy statements.

National Policy Statement on Urban Development 2020

The National Policy Statement on Urban Development 2020 (**NPS-UD**) came into effect on 20 August 2020, replacing the National Policy Statement on Urban Development Capacity 2016. The AUP has not yet given effect to the NPS-UD: Auckland Council is preparing plan changes to be notified by August 2022, as required by that statement.

The statement promotes well-functioning urban environments that meet communities' needs; requires regional policy statements and district plans to enable intensification of urban environments; and requires integrated, strategic and responsive decision-making on urban environments that is informed by robust and updated information¹³.

A decision on a plan change is a "planning decision", as defined in the statement. Although not defined, a "local authority decision" may be akin to a planning decision.

The Environment Court found, in its decision on a private plan change:

*'it is not required to and will not be giving effect in the case of [the plan change under appeal] PC 21 to Objectives and Policies in the NPS-UD that are not requiring 'planning decisions' at this time.'*¹⁴

The intensification policy driver of the **NPS-UD** is irrelevant to the natural heritage values of the tree and decision-making about its scheduling, accordingly the following objectives and policies requiring local authority or planning decisions are of no direct import:

- Objective two: improving housing affordability
- Objective six: integrating infrastructure, being strategic and responsive to development capacity proposals
- Policy one (a) to (d): housing, site sizes, accessibility, and competitive land markets
- Policy six (a) to (d): relating to plans that have already given effect to **NPS-UD** particularly in relation to planned built form and development capacity
- Policy eight: plan changes that add significantly to development capacity

Other NPS-UD objectives and policies requiring local authority or planning decisions

Objective five aligns strongly with decision-makers' duty under section 8 to take into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.

¹³ National Policy Statement on Urban Development 2020, Objectives 1, 3, 4, 6, and 7.

¹⁴ *Eden-Epsom Residential Protection Society Incorporated v Auckland Council* [2021] NZEnvC 082 at [29]

Objective seven requires councils to have robust and frequently updated information about their urban environments and use it to inform planning decisions. Although **NPS-UD** intends this objective to apply through broader assessments like housing and business development capacity assessments, preparation of site-specific PPC68 is consistent with objective seven as information regarding the tree at 8 Eglinton Avenue has been updated.

Several objectives and policies include consideration of climate change: plan provisions that promote retention of trees contribute in a small way in this regard.

Other national policy statements

Other national policy statements are in force, but none are directly applicable to PPC 68.

- National Policy Statement on freshwater management
- National Policy Statement for renewable electricity generation
- National Policy Statement on electricity transmission
- New Zealand Coastal Policy Statement

5.4 National Environmental Standards

There are currently six National Environmental Standards in force as regulations, but none of these relate directly to the management and protection of notable trees.

5.5 National Planning Standards

The purpose of the National Planning Standards (Standards) is to improve consistency in plan and policy statement structure, format and content so they are easier to prepare, understand, compare, and comply with. The Standards will also support implementation of national policy statements and help people observe the procedural principles of the Act.

The first set of Standards were gazetted in November 2019. The plan change is consistent with the Standards as they make provision for lists of scheduled/notable trees and vegetation. No Standard presently applicable to Auckland Council is directly relevant to PPC 68.

5.6 The Auckland Plan

The Auckland Plan includes the following direction 'Ensure Auckland's natural environment and cultural heritage is valued and cared for'¹⁵. The Auckland Plan states that we must actively seek opportunities to protect and enhance these values through our short and long-term decisions.

PPC 68 will assist with the protection of Auckland's natural environment through the protection of the tree at 8 Eglinton Avenue and correction of the schedule omission.

¹⁵ Auckland Plan, Direction 1

5.7 The Auckland Unitary Plan

Regional Policy Statement (RPS) and District Plan Provisions

When preparing or changing a district plan, Council must give effect to any RPS and have regard to any proposed RPS¹⁶. The RPS identifies a number of issues of regional significance and objectives and policies which are relevant to PPC 68, as outlined in the following table:

Table 3: Auckland Unitary Plan RPS and District Plan Objectives and Policies relevant to the PPC:

RPS Chapter	Relevant issue, objective or policy	Relevance to Amendments to Schedule of Notable Trees plan change - i.e. how do the proposed amendments assist in achieving the RPS and district objectives and policies?
B1.4 Issues of Regional Significance	(4) Natural heritage (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 the notable tree at 8 Eglinton Avenue is maintained.
B4.5. Notable Trees	B4.5.1. Objectives (1) Notable trees and groups of trees with significant historical, botanical or amenity values are protected and retained.	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 the tree located at 8 Eglinton Avenue is not adequately protected due to misinterpretation of lack of adequate information will be greatly reduced.
	B4.5.2(2)(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.	Ensuring the inclusion of the tree with relevant data pertaining to it and it is listed in the schedule text and maps will reduce the risk of adverse effects on this resource.
B6.3. Recognising Mana Whenua Values	B6.3.2(6) Require resource management decisions to have particular regard to potential impacts on all of the following: (a) the holistic nature of the Mana Whenua world view;	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.
D13 Notable Trees Overlay	D13.2. Objective (1) Notable trees and notable groups of trees are retained and protected from inappropriate subdivision, use and development. D13.3. Policies	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.

¹⁶ RMA s74(2) and s75(3)

	(2) Require notable trees and notable groups of trees to be retained and protected from inappropriate subdivision, use and development	
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6. Methodology

This section outlines the development of PPC 68 and the consultation undertaken in preparing the plan change.

6.1 Methodology

Background

All legacy district plans contained a schedule of some description which listed heritage/notable trees or groups of trees which were evaluated under a set of criteria at the time they were included in these schedules. These were consolidated as part of the development of the AUP. There was no further evaluation undertaken of the listed trees and they were 'rolled over' as they appeared in the legacy schedules. PPC 68 does not re-visit legacy schedules in terms of their content given that the legacy schedules underwent a Schedule 1 process to include the trees or groups of trees on the lists. The only error 'inherited' from the legacy schedules which is subject to PPC 68 is limited to those related to 8 Eglinton Avenue as described above.

At the time of the AUP hearings, a number of submissions were received seeking additions to and deletions from the PAUP schedule. The AUP Independent Hearings Panel (IHP) directed all submitters seeking additions or deletions to Schedule 10 to provide evidence of the affected landowners they had contacted and evidence to support their submission. Few submitters provided enough information to support the addition or deletion of a tree (or trees) on another person's property. Consequently, few submissions successfully added trees to Schedule 10. The submissions to the PAUP seeking additions do, however, remain in a database together with further unsolicited nominations received since the AUP became operative.

There is no intention as part of PPC 68 to re-evaluate the existing scheduled notable trees or groups of trees, nor to revisit the submissions seeking inclusion of additional trees. Neither is there any intention to address any recent nominations to the schedule. The scope of the PPC has a confined focus which addresses the omission of the single pōhutukawa located at 8 Eglinton Avenue, Mt Eden.

Investigation into the omission

Following the discovery of the omission of the tree from Schedule 10, council staff conducted an investigation into this error by systematically reviewing all current and legacy council records relating to 8 Eglinton Avenue. The process involved checking the following documentation:

- Legacy schedule text and maps (Auckland Council District Plan – Operative Auckland City – Isthmus Section 1999)
- Historical consent documents relating to the property
- Property file for 8 Eglinton Avenue

- Land Information Memorandum report
- Site pack information
- Aerial imagery through time
- Notified DAUP schedule
- PAUP schedule
- PAUP submissions
- IHP evidence reports and decision
- AUP text and maps

The investigation was unable to find any explanation for the omission, and staff concluded that it was an error.

Evaluation of the tree against AUP criteria

A subsequent evaluation of the pōhutukawa against the AUP notable tree criteria undertaken by council's heritage arborist identified the tree as being worthy of scheduling.

The tree is highly prominent in the immediate local area based on its geographically raised position in a relatively flat and open area, its dominant size particularly with no other surrounding vegetation or structures of equal size. It is visible and recognisable from further afield, on surrounding high points, such as near Maungawhau. The arborist has estimated it to be more than 150 years old.

The results of the specialist's assessment (Attachment 2) support the trees reinstatement as a notable tree within the Schedule.

6.2 Consultation undertaken

In accordance with clause 3 of Schedule 1 of the Act, during the preparation of a proposed policy statement or plan, the local authority shall consult with:

- a) *the Minister for the Environment; and*
- b) *those other Minister 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.*

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

Consultation with iwi authorities

In accordance with clause 3B of Schedule 1 of the Act, for the purposes of clause 3(1)(d), a local authority is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under section 35A, if the local authority—

- (a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and*
- (b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and*
- (c) consults with those iwi authorities; and*
- (d) enables those iwi authorities to identify resource management issues of concern to them; and*
- (e) indicates how those issues have been or are to be addressed.*

In addition to the above, recent legislation changes to the Act introduced the following sections in relation to iwi authorities:

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 PPC10 (section 32 (4)(a) of the Act).*

Schedule 1

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.

In accordance with Schedule 1 clause 4A, copies of the draft plan change and draft section 32 report were sent to all iwi authorities of the Auckland region on 18 August 2021. Feedback was received from:

- Ngāi Tai Ki Tāmaki – who support the proposed plan change.
- Waikato Tainui – who support mana whenua to take the lead role in this plan change.

7. Conclusion

The purpose of PPC 68 is to ensure the protection of the section 6 and 7 values of the pōhutukawa (at 8 Eglinton Avenue) through time as originally intended.

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

1. PPC 68 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. PPC 68 assists the Council in carrying out its functions set out in Section 30 and 31 of the Act.
3. Pursuant to Section 75(3)(c) of the Act, PPC 68 is consistent with the objectives and policies of the Auckland Regional Policy Statement.
4. The evaluation undertaken in accordance with Section 32 concluded:
 - i. The use of the existing objectives of the AUP would be the most appropriate way to achieve the purpose of the Act.

Conclusion	This part of the report concludes that the proposed plan change is the most efficient, effective and appropriate means of addressing the resource management issues identified.
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List of Attachments

Attachment	Name of Attachment
A1	Environment Court documentation
A2	Evaluation form and photos - arborist

