

**PROPOSAL - Additions and amendments to Schedule 10 Notable Trees Schedule) to the Auckland Unitary Plan - Operative in part (AUP)**

This plan change is **Approved**. The reasons for this are set out below.

<b>Plan Change number:</b>	83 - Additions and Amendments to Schedule 10 – Notable Tree Schedule
<b>Hearing commenced:</b>	Tuesday 2 May 2023, 9.30 a.m.
<b>Hearing panel:</b>	Greg Hill (Chairperson) Juliane Chetham Kitt Littlejohn Richard Knott
<b>Appearances:</b>	<u>For the Submitters:</u> John Mackay The Tree Council <ul style="list-style-type: none"> <li>• Dr Mels Barton</li> </ul> <u>For Council:</u> Felicity Wach, legal counsel Lucy Rossiter, planning Ruth Andrews, planning West Fynn, arborist <u>Hearings Advisor</u> Cate Mitchell
<b>Hearing adjourned</b>	Tuesday 2 May 2023

## INTRODUCTION

1. This decision is made on behalf of the Auckland Council (“**the Council**”) by Independent Hearing Commissioners Greg Hill (Chairperson), Juliane Chetham, Kitt Littlejohn and Richard Knott, 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 83 (“PC 83”) to the Auckland Council Unitary Plan Operative in Part (“AUP”) after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence presented to us.
3. PC 83 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 18 August 2022 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 the 29 September 2022. A summary of submissions was notified for further submissions on 5 December 2022. A total of 25 submissions (none of which were late) and 3 further submissions were received.

## **SUMMARY OF PLAN CHANGE**

6. The proposed plan change was described in detail in the section 42A hearing report. We have not repeated that in any detail, but a summary of key components is set out below.
7. PC 83 was one of five plan changes and two variations notified<sup>1</sup> on the 18 August 2022. The following was notified in PC 83:
  - 22 line-items (30 individual trees and 3 groups of trees) to be added into Schedule 10 Notable Trees Schedule (Schedule 10) of the AUP and the plan maps to recognise their values and make them subject to the provisions of the D13 Notable Trees Overlay (**Overlay**).
  - 26 line-items to be deleted in Schedule 10 and the plan maps where there was evidence that they had been physically removed as a result of consents (often development or subdivision-related), emergency works and/or deteriorated health.
  - 62 line-items (that are already in Schedule 10) to be amended to address inconsistencies and inaccuracies.
8. Under Clause 8D of Schedule 1 of the RMA, the following were withdrawn from PC 83 by the Council:
  - three of the proposed additions;
  - six of the proposed deletions; and
  - 27 of the proposed amendments.
9. As a result of this withdrawal, the final numbers that PC 83 addresses are:
  - 19 line-items (20 individual trees and 3 groups) to be added into Schedule 10;
  - 20 line-items to be deleted from Schedule 10; and
  - 35 line-items (that are already in Schedule 10) to be amended.

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<sup>1</sup> Plan change 79: Amendments to the transport provisions, Plan change 80: RPS Well-Functioning Urban Environment, Resilience to the Effects of Climate Change and Qualifying Matters, Proposed Plan Change 81: Additions to Schedule 14 Historic Heritage Schedule, Proposed Plan Change 82: Amendments to Schedule 14 Historic Heritage Schedule, Proposed Plan Change 83: Additions and amendments to Schedule 10 Notable Trees Schedule, Variation 4 to PC60: Open Space and Other Rezoning Matters and Variation 5 to PC66 (Private): 57 and 57A Schnapper Rock Road.

10. PC 83 also proposed:
  - To remove redundant diagrams from Chapter D13; and
  - Include an automatic update clause to enable Schedule 10 to remain accurate should the underlying property legal description or address change through subdivision, or if a scheduled tree is removed through the resource consent process, emergency works or other reasons without needing to use a Schedule 1 process.
11. PC 83 does not seek to amend any objectives and policies in the AUP. Nor does it introduce any new objectives, policies, rules or zoning to the AUP. The AUP policy approach and its purpose and function are not changed by PC 83.
12. Section 4 - Background to and Development of the Plan Change and section 5 – Summary of Plan Change 83 addressed those matters – and we have not repeated them further here.

### **MAIN ISSUES RAISED BY SUBMISSIONS**

13. The main issues or topics raised in the submissions included:
  - Support the plan change (general or no specific place);
  - Support the plan change (specific places);
  - Oppose the plan change (general or no specific place);
  - Oppose the inclusion of specific trees or groups of trees;
  - Amend scheduling information to make it more accurate;
  - Oppose the deletion of trees from the schedule proposed in error;
  - Submissions which raise issues of reasonable use and compensation;
  - Some submissions have raised issues that are out of scope of PC 83.

### **LOCAL BOARD VIEWS**

14. The section 42A Report provided<sup>2</sup> the feedback from the Local Boards. We do not repeat the Local Board comments here, and to the extent we are able, we have taken them into account in making our decision.

### **PARTIAL WITHDRAWAL OF PC 83**

15. As set out at section 11 of the section 42A report, following notification of PC 83, a number of issues were found which related to the accuracy of some of the amendments to the Schedule. We understand most of these errors were picked up because of a process issue, namely that those owners or occupiers of land on, or next to, trees that were the subject of PC 83 were not notified. In addition, there were also accuracy errors in the text and/or maps that were included in PC 83 as publicly notified on 18 August 2022.

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<sup>2</sup> Section 42A Report at section 10

16. Due to the errors/inaccuracies the following items were formally withdrawn from PC 83 under Clause 8D of Schedule 1 of the RMA:
- three proposed additions;
  - six proposed deletions; and
  - 27 proposed amendments.

## THE HEARING PROCESS AND EVIDENCE

17. The hearing was held on the 2 May 2023.
18. Prior to hearing from submitters, the Hearing Panel asked clarification questions of the Council's legal counsel and reporting officers. This included the 'automatic update' clause and scope issues. We address these matters below.
19. Two submitters attended that hearing and presented to us. Mr Mackay provided written evidence supporting the Plan change and Dr Barton, spoke to The Tree Council's supporting submission. Both submitters were generally supporting the Plan Change.
20. Kāinga Ora – homes and communities (Kāinga Ora) submitted a Memorandum<sup>3</sup> stating:

*Kāinga Ora has reviewed the Section 42A Report and agrees with the following recommendations of the reporting officer:*

- (a) 41 Inkerman Street, Onehunga (ID 508): Support removal of this tree from Schedule 10 as it has been removed following the grant of consent;*
- (b) 37 Notley Street, Westmere (ID 2989): Support removal of this tree from Schedule 10 as the amended tree score does not meet the threshold for scheduling;*
- (c) Automatic Update Clause: Support inclusion of the automatic update clause; and*
- (d) London plane trees in Selbourne Street, Browning Street, Castle Street and Francis Street: Reject the submissions requesting that these trees are added to Schedule 10 as they are out of scope.*

*In light of the recommendations in the Section 42A Report, Kāinga Ora will not be submitting expert evidence....*

21. The Ministry of Education – Te Tāhuhu o te Mātauranga (MoE) filed a letter<sup>4</sup> stating:

*The Ministry's submission requested that that the listing of Notable Totara trees - ID 2148 was amended to reflect the precise location of the Totara trees at View Road School.*

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<sup>3</sup> 14 April 2023

<sup>4</sup> 1 May 2023

*We have reviewed the s42A report prepared by the Auckland Council Planning Officers (dated 5 April 2023). All the Ministry's submission points were accepted.*

*Submission point 12.3, sought that the text and map be amended to reflect the precise location of the group of Totara trees. The s42A report recommended that this submission point is accepted, confirmed that this was an error and identified the precise location of the group of Totara trees. The Ministry supports these recommendations.*

*Overall, the Ministry agrees with the assessment and recommendation in regard to Notable Totara trees - ID 2148 provided by the s42A reporting officer.*

22. No other submitters tabled or presented evidence to us at the hearing.
23. On the 26 June 2023 the Hearing Panel issued a Direction - 'Out-Of-Scope' Submissions Plan Change 83 - Additions and Amendments to Schedule 10 Notable Trees Schedule (PC 83).
24. Paragraph 2 of that Direction stated:

*The hearing of PC 83 has been held; with the Council and all submitters (who requested to be heard) having been heard. The hearing has subsequently been adjourned. However, the Hearing Panel has become aware that some submitters may have chosen not to appear and present evidence at the hearing due to the Council's section 42A report advising that their submissions were 'out of scope'.*

25. The Direction provided an opportunity for two submitters to provide evidence and/or appear before the Hearing Panel given the Council's section 42A report stated that the submissions were out of scope; and that this may have deterred submitters in addressing their submissions before the Hearing Panel. Neither submitter opted to provide evidence and/or appear before the Hearing Panel.
26. In the absence of any evidence or further information, we have largely accepted the recommendations of the expert planners as set out in the section 42A report, including their section 32AA evaluations. Where we have disagreed with the Council's view (legal and planning) e.g., in relation to scope, we have addressed that below – but note we have still agreed with the planner's recommendations, but for different reasons than those expressed in the section 42A report.

## **SCOPE**

27. Prior to addressing the statutory provisions, the submissions and our decisions on them, we address the issue of scope. The Council's position on scope was addressed in its opening legal submissions. We do not fully agree with the Council, and set out our position on scope below.
28. The issue of the scope of submissions (if they are "on" the plan change) has been well canvassed in legal submissions and evidence before the Hearing Panel, from both the Council and various submitters. While the Council (and submitters) can have a view on scope, it is the Hearing Panel that determines if a submission (or part of a submission) is in scope or not.

29. The legal principles relevant to determining whether a submission is “on” a plan change (in scope) are well-settled. They are not repeated here in any detail<sup>5</sup>. Very briefly, determining the issue of scope involves addressing the following two questions (also referred to as ‘limbs’):
- (a) Whether the submission addresses the change to the status quo advanced by the plan change; and
  - (b) Whether there is a real risk that persons potentially affected by such a change have been denied an effective opportunity to participate in the plan change process.
30. Determining the first question requires an understanding of the status quo affected by the plan change. This must be derived from a review of the relevant section 32 report and the changes actually proposed to the plan. Although local authorities promoting discrete changes to their plans invariably focus on the specific changes proposed, with the objective of limiting the scope of the plan change and thus submissions that are permissible under the first limb, the actual status quo that is being addressed must be determined by reference to the nature and context of the notified change. In the case of each of PC 81, 82 and 83, where the proposed changes are to add, delete or amend line items to, from or within specific AUP schedules, it is those actions undertaken to or within that component of the AUP that set the status quo being changed and the nature of the changes. Submissions seeking relief of a similar kind (add, delete or amend), to the same part of the plan, will be “on” the plan change for the purposes of the first test in the Hearing Panel’s view.
31. Whether or not the submission relief passes the second limb, involves other ‘natural justice’ factors. That is, on a case-by-case basis, the potential for a ‘*submissional sidewind*’, i.e., a without notice impact on a third party’s rights, may nonetheless render an otherwise fairly and reasonably made submission point unable to be accepted.
32. For the purposes of PC 83, we have considered the submission points listed in the section 42A report as ‘out-of-scope’. Some we have found to be ‘in-scope’ and therefore within the scope of the status quo change proposed by PC 83<sup>6</sup>. Because those changes only relate to adding, deleting or amending notable tree items and do not therefore give rise to ‘submissional sidewind’ concerns, we are also satisfied that they pass the second scope limb. We have addressed them below.

## RELEVANT STATUTORY PROVISIONS CONSIDERED

33. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. We do not need to repeat the contents of the Plan Change Request and the section 32 Evaluation Report in any detail, as they were set out in the section 42A report. We address the merits of those below. We accept the appropriate requirements for the formulation of a plan change has been appropriately addressed in the material before us.
34. We also note that the section 32 Evaluation Report, and the section 32AA Evaluation Report prepared by the council planners clarifies that the analysis of efficiency and

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<sup>5</sup> Refer to our PC 78 Interim Guidance on this matter

<sup>6</sup> See “Submissions Considered Out of Scope of PC 83 by the Council - but In Scope by the Hearing Panel

effectiveness of the plan change 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 (noting we have a different view on the scope of PC 82 than the Council, which we address in this decision). Having considered the plan change and the evidence, we are satisfied that PC 83 has been developed in accordance with the relevant statutory requirements.

35. Clauses 10 and 29 of Schedule 1 require that this decision must include the reasons for accepting or rejecting submissions. We address these matters below, as well as setting out our reasons for accepting or rejecting the submissions. As stated, for the most part, these are largely those that were set out in the section 42A report.
36. We also note that we must include a further evaluation of any proposed changes to the Plan Change arising from submissions; with that evaluation to be undertaken in accordance with section 32AA of the RMA<sup>7</sup>. With regard to that section, the evidence presented by the Applicant, Submitters and Council Officers, including the section 32AA evaluations included by the council's planner officers (which we adopt), and this report, including the changes we have made, effectively represents that assessment.

## **OUR DECISIONS/FINDINGS**

### **Submission and our decisions**

37. We address the submissions below – with any amendments we have made to the AUP in light of PC 83 set out in the Attachments.
38. The amendments to PC83 that we have made are in Attachment 1 (Amendments to D13 Notable Trees Overlay), Attachment 2 (Amendments to Schedule 10) and Attachment 3 (Amendments to plan maps).
39. With respect to further submissions, they can only support or oppose an initial submission. Our decisions on the further submissions reflects our decisions on those initial submissions having regard, of course, to any relevant new material provided in that further submission. For example, if a further submission supports a submission(s) that opposes the Plan Change and we have determined that the initial submission(s) be rejected, then it follows that the further submission is also rejected.

### Minor Errors

40. Some amendments (see the next paragraph) have been made to Schedule 10 to fix minor errors. These amendments could have been made after PC 83 was made operative through the RMA process to correct minor errors,<sup>8</sup> but the Council determined that the amendments should be made as part of PC 83 for completeness and clarity. We have accepted this and have made the correction as part of this decision.

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<sup>7</sup> RMA, section 32AA(1)(c)

<sup>8</sup> Clause 20a of Schedule 1 – Preparation, change, and review of policy statements and plans

41. The text amendments are set out in Attachment 2 and plan map amendments are set out in Attachment 3.

- Amendments are made to Schedule 10 to clarify the locality for ID 3004.
- Amendments are made to Schedule 10 to clarify the street address for ID 2995.
- Amendments are made to Schedule 10 to correctly amend the legal description for ID 1534.
- Amendments are made to Schedule 10 to correct a spelling error and amend the locality for ID 2953.
- Amendments are made to Schedule 10 to correctly amend the street address and legal description for ID 3001.

Automatic Update Rule

42. In addition to making additions and amendments to Schedule 10, PC 83 proposes to make changes to the text of AUP Chapter D13 to include the following:

The legal description associated with a notable tree or group of trees in Schedule 10 Notable Trees Schedule (including on lots which qualify as an urban allotment under s76(4C) of the RMA) can be updated to refer to the new legal description of a lot where the following has occurred:

(a) the lots contains any part of the Notable Trees Overlay; and

(b) a subdivision of the site has occurred; and

(c) any part of a subdivided lot contains any part of the Notable Trees Overlay.

The Notable Trees Schedule rules cease to have effect and Schedule 10 Notable Trees Schedule and the maps can be updated accordingly where:

(d) a tree or group of trees has been physically removed as a result of consent processes; or

(e) a tree or group of trees has been physically removed as a result of emergency works;

and the following has occurred:

(f) the council has sighted the resource consent authorising the physical removal of the tree or group of trees

(g) the council has given written notice to the owners of the property from which the overlay will be removed

In circumstances where a new tree or group of trees is proposed to be included in Schedule 10 Notable Trees Schedule, a plan change under Schedule 1 of the RMA will be required.



43. These changes were described as an “automatic update” clause. The introduction of the clause was identified in the section 32 Report for PC 83 as one of the ways in which the purpose of the plan change would be achieved.<sup>9</sup> It was also noted in the section describing the scope of the changes proposed by PC 83 that:<sup>10</sup>

*The introduction of an automatic update clause ensures all future subdivisions are captured and amendments as a result of removals can be undertaken outside the Schedule 1 process.*

44. Similarly, in the rationale section of the section 32 Report it was noted:<sup>11</sup>

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

45. While no submissions were received opposing this aspect of PC 83, submissions from Kāinga Ora (11.4) and The Tree Council (14.3) supported the automatic update clause.

46. The section 42A report for PC 83 described the rationale and purpose for the proposed automatic update clause in similar terms. However, no analysis as to the lawfulness of the provision, which essentially authorises a plan to change itself without compliance with the Schedule 1 process, was provided in the report (nor in the section 32 Report), and this issue was raised at the hearing by the Hearing Panel.

47. In response, and by way of support for the proposed addition to Chapter D13, the Hearing Panel was directed to AUP Chapter D26 National Grid Corridor Overlay, D26.4 Activity table, which includes the following, similar, automatic update clause:

*The National Grid Corridor Overlay rules cease to have effect and the maps can be updated accordingly where:*

- (a) a National Grid line or part of a line is dismantled, undergrounded or moved;*  
*or*
- (b) a National Grid substation is dismantled, or the site boundary of a National Grid substation reduces in size;*

*and the following has occurred:*

- (c) Transpower New Zealand Limited has advised the Council in writing; and*
- (d) The council has advised owners of the property from which the overlay will be removed in writing;*

*That the National Grid Corridor Overlay provisions are no longer required for that line or part of that line, or for that substation or that part of that substation.*

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<sup>9</sup> Albeit erroneously identified under the sub-heading “Additions to Schedule 10”.

<sup>10</sup> PC83, Section 32 Report, page iii

<sup>11</sup> Ibid, page iv

*In circumstances where the National Grid Corridor Overlay is proposed to apply to a new area or location, then a plan change under Schedule One of the RMA will be required.*

48. An operative district plan may only be lawfully changed in the manner set out in the relevant Part of Schedule 1 of the RMA (s73, RMA). Under Schedule 1, a public process is required to be followed to make that change. On its face, there is no ability in the RMA or in Schedule 1 for a plan to include a rule that authorises its own amendment outside of the Schedule 1 process. The administrative law principle *delegare non potest delegare*<sup>12</sup> comes immediately to the Hearing Panel's mind in this regard. The fact that AUP Chapter D26 already includes such a provision does not, with respect, make it a lawful provision.
49. Despite the Panel's discomfort with the legality of a plan provision that purports to allow the promulgator of the plan to amend the plan contrary to section 73 of the RMA, we are satisfied that such a provision can be contemplated as coming within the scope of the power in clause 20A of Schedule 1, namely to amend an operative plan "to correct any minor errors". We raised this provision and its apparent usefulness to address the issues the automatic update clause had been crafted to address with counsel for the Council at the hearing, but were told that Council did not see clause 20A as appropriate for use in these circumstances.
50. In our view, when the factual 'real-world' circumstances upon which the application of a provision in a plan relies change, the plan is clearly, from that point in time, in error in relation to its continued application of that provision. As such, we disagree with the Council that clause 20A cannot be used to correct this error.
51. The upshot of this is that we consider that the proposed automatic update clause can remain as a valid provision in the AUP. However, we have determined that the following minor amendments to the proposed provision for clarity:

*The legal description associated with a notable tree or group of trees in Schedule 10 Notable Trees Schedule (including on lots which qualify as an urban allotment under s76(4C) of the RMA) will ~~can~~ be corrected and updated to refer to the new legal description of a lot where the following has occurred:*

- (a) *the lots contains any part of the Notable Trees Overlay; and*
- (b) *a subdivision of the site has occurred; and*
- (c) *any part of a subdivided lot contains any part of the Notable Trees Overlay.*

*The Notable Trees Schedule rules cease to have effect and Schedule 10 Notable Trees Schedule and the maps will ~~can~~ be corrected and updated accordingly where:*

- (a) *a tree or group of trees has been physically removed as a result of consent processes; or*
- (b) *a tree or group of trees has been physically removed as a result of emergency works;*

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<sup>12</sup> No delegated powers can be further delegated

and the following has occurred:

- (c) the council has sighted the resource consent or other approval authorising the physical removal of the tree or group of trees; and
- (d) the council has given written notice to the owners of the property from which the overlay will be removed.

In circumstances where a new tree or group of trees is proposed to be included in Schedule 10 Notable Trees Schedule, a plan change under Schedule 1 of the RMA will be required.

### **SUBMISSIONS SUPPORTING PC83 (GENERAL OR NO SPECIFIC PLACE)**

<b>Sub. No.</b>	<b>Name of Submitter</b>	<b>Summary of the Relief Sought by the Submitter</b>	<b>Further Submissions</b>
4.1	Simon Nicolaas Peter Onneweer	Approve the plan change without any amendments	None
4.2	Simon Nicolaas Peter Onneweer	Continue to protect notable trees due to the positive contributions they make	None
8.1	John Mackay	Support use of notable trees schedule	None
10.1	Auckland Council	Auckland Council supports the plan change and seeks that it be approved subject to the amendments	None
11.1	Kāinga Ora	Accept the plan change with amendments	FS02 The Tree Council Oppose
11.4	Kāinga Ora	Supports the proposed addition of an automatic update clause (as it is written)	FS02 The Tree Council Oppose
14.1	The Tree Council	Accept the plan change without amendments	None
14.2	The Tree Council	Supports the addition of qualifying trees to Schedule 10 – Notable Trees	FS01 Amy Parlane Support
14.3	The Tree Council	Supports the proposed automatic update feature	FS01 Amy Parlane Support
14.4	The Tree Council	Supports proposed amendments to schedule 10	None
15.1	Pest Free Kaipatiki	Accept the plan change with amendments	None
15.2	Pest Free Kaipatiki	Support keeping the schedule updated and historic nominations processed	None
19.2	Keith Vernon	Support the proposed amendments (in particular the requirement of a plan change to make additions to Schedule 10)	None
20.3	Pip Mules	Maintain the accuracy of the Notable Trees Schedule	None
22.2	Michael Lowe	Increase the number of heritage/notable trees listed across Auckland	None

### Evaluation

52. The submissions in the table above support, or support in part, the plan change without referring to a specific notable tree or notable group of trees, or support the automatic update clause being included in Chapter D13. They generally noted the importance of notable trees, including in the context of urban intensification.
53. As indicated earlier, submission 11.4 (Kāinga Ora) and submission 14.3 (The Tree Council) support the automatic update clause. We have addressed this matter earlier in this decision.
54. Where a notable tree or notable group of trees had been evaluated and found to meet the AUP eligibility criteria to be identified in Schedule 10, this is considered to be the most appropriate way of managing the values of those notable trees. The updating of information for notable trees or notable groups of trees in Schedule 10 and the plan maps is the most appropriate way to identify and protect notable trees or notable groups from inappropriate subdivision, use and development.

### Decisions on submissions

55. Submissions 4.1, 4.2, 8.1, 10.1, 11.1, 11.4, 14.1, 14.2, 14.3, 14.4, 15.1, 15.2, 19.2, 20.3 and 22.2 be **accepted** or **accepted in part**, subject to other submissions seeking specific amendments to specific notable trees or notable groups of trees in PC83.

### **SUBMISSIONS SUPPORTING PC83 (SPECIFIC PLACES)**

<b>Sub. No.</b>	<b>Name of Submitter</b>	<b>Summary of the Relief Sought by the Submitter</b>	<b>Further Submissions</b>
3.1	Roger William Leitch	Approve the plan change with amendments	None
3.2	Roger William Leitch	Remove Pōhutukawa (ID 197, 11 Woodford Road, Mt Eden) from Schedule 10 as this has been removed	None
5.1	S & G Three Kings Ltd	Approve the plan change without any amendments	None
5.2	S & G Three Kings Ltd	Approve the plan change [ID 3001 560 Mount Albert Road]	None
11.2	Kāinga Ora	Support the removal of this line item (41 Inkerman Street ID 508) as the tree has been removed via consent process.	FS02 The Tree Council  Oppose

### Evaluation

56. **Submission 3.1 and 3.2** (Roger William Leitch), who is the owner, supports the deletion of the listing (ID 197) at 11 Woodford Road, Mt Eden.
57. **Submission 5.1 and 5.2** (S & G Three Kings Ltd) seek that PC 83 be accepted and refer to the group of Pōhutukawa and Kermadec Pōhutukawa (ID 3001) at 560 Mount Albert Road, Mount Albert. The content of this submission refers to visual amenity to the wider area that the group of trees provide generally and the indirect benefit to Three Kings Mall. The submission does not seek any further or additional decisions or amendments.

58. **Submission 11.2** (Kāinga Ora) supports the deletion of (ID 508) at 41 Inkerman Street, Onehunga.

Decision on submissions

59. That **submission 3.1** be **accepted in part**.
60. That submissions **3.2, 5.1, 5.2 and 11.2** be **accepted**.

**SUBMISSIONS OPPOSING PC83 (GENERAL OR NO SPECIFIC PLACE)**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
9.1	Geoffrey John Beresford	Auckland Council should withdraw the [plan] changes	None
13.1	Kathryn leGrove	Decline the plan change	None
20.1	Pip Mules	Decline the plan change, but if approved, make the amendments requested	None
24.1	Grey Lynn Residents Association	Decline the plan change, but if approve, make the amendments requested	FS01 Amy Parlane Support  FS02 The Tree Council Support

Evaluation

61. **Submission 9.1** (Geoffrey John Beresford) seeks that plan change be declined without referring to a specific notable tree or notable group of trees. It is a generic submission that has been made to this plan change as well as plan changes 78, 79, 80, 81 and 82.
62. One of the general reasons given by Mr Beresford is that there are insufficient provisions for new trees and for the protection of existing trees, and the purpose of creating well-functioning urban environments in Auckland will need to be supported by provisions which result in more trees being protected. The submission seeks specific changes to Plan Change 80<sup>13</sup> but not to PC83.
63. **Submission 13.1** (Kathryn leGrove) seeks that plan change is declined, without referring to a specific notable tree or notable group of trees.
64. **Submission 20.1** (Pip Mules) and **Submission 24.1** (Grey Lynn Residents Association) seek that plan change is declined, but if approved make the amendments requested without referring to a specific notable tree or notable group of trees.
65. While the submitter's views are acknowledged, we do not find it is necessary or appropriate that PC83 be withdrawn<sup>14</sup>. We find that PC 83 is appropriate as it seeks to amend Schedule 10 and the planning maps to ensure information is up to date, while also adding in new notable trees and notable groups of trees to Schedule 10 and the planning maps in recognition of their values so they are appropriately managed.

<sup>13</sup> To which Mr Beresford appeared and presented submissions.

<sup>14</sup> Noting it is only the Council who may withdraw the Plan change and not the Hearing Panel.

Decision on submissions

66. That **submissions 9.1, 13.1, 20.1 and 24.1** be rejected.

**SUBMISSIONS ON ID 2989- 37 NOTLEY STREET, WESTMERE**

<b>Sub. No.</b>	<b>Name of Submitter</b>	<b>Summary of the Relief Sought by the Submitter</b>	<b>Further Submissions</b>
11.3	Kāinga Ora	Decline the proposed scheduling of an Oak at 37 Notley Street (ID 2989)	FS02 The Tree Council  Oppose

Evaluation

67. **Submission 11.3** (Kāinga Ora), the landowner opposed the addition of the oak tree at 37 Notley Street (ID 2989). Kāinga ora opposed the inclusion of the oak tree in PC 83 for the following reasons:
- Kāinga Ora’s arborist argues that the tree has suffered at least three large, socket-type failures where large limbs have torn off at the trunk, leaving large wounds. The limb from the last failure is hanging in a titoki tree within 37 Notley Street. The failed limb is approximately 40cm diameter at the point of attachment, i.e. of substantial size.
  - Kāinga Ora’s arborist opined that the tree is suffering failures due to rapid growth, i.e. the weight of branch wood and seasonal foliage is such that entire limbs are being torn off due to sheer leverage and considers it inevitable the tree will continue to suffer large limb failures of this type.
68. Mr Fynn, Council’s Senior Heritage Arborist, reviewed Kāinga Ora’s submission, and as a result amended the tree’s score to a total of 18 and the size category had been amended from 10 to 5 due to the other trees of similar size locally. As set out in the section 42A report (in summary):
- The amended score of 18 does not pass the threshold of 20 for scheduling;
  - The only basis for it to pass is the stand-alone category of historic association and value which has been investigated and cannot be verified;
  - Mr Fynn agrees with the other comments from the submitter in terms of there being potentially greater maintenance issues with the underground services below the tree and concerns over the possible arboricultural management options for the tree in terms of its structural integrity with historic failures and possible pruning options that are somewhat onerous; and
  - Overall, scheduling is not considered to be an appropriate approach.
69. We agree with the Council and Submitter’s experts, and agree that the tree not be retained on the Schedule.

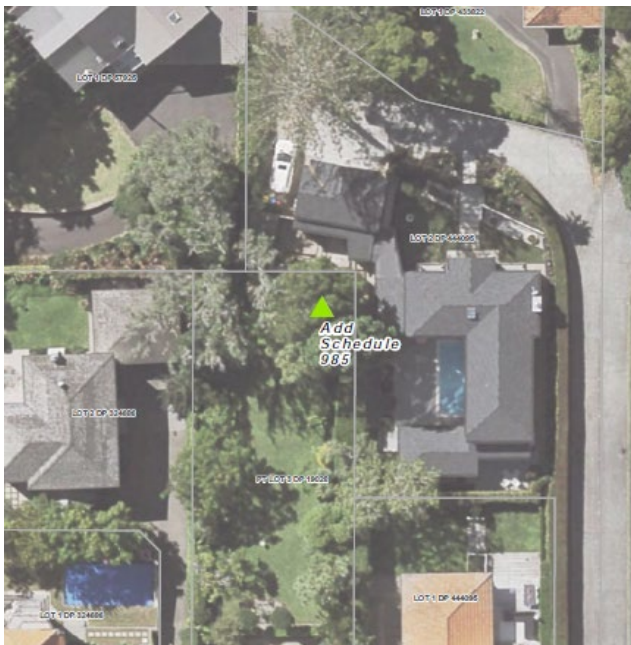
Decisions on submissions

70. That **submissions 11.3** be **accepted**.
71. These amendments are shown in **Attachment 2** and **Attachment 3**.

**SUBMISSIONS ON ID 985- 728 REMUERA ROAD, REMUERA**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
7.1	Furong Pan	Objection to add the pūriri tree to ID 985 at 728 Remuera Road to Schedule 10	FS02 (Tree Council)  Oppose
7.5	Furong Pan	The tree does not meet the criteria for nomination and the Council erred in awarding an overall score of 22 for the tree	FS02 (Tree Council)  Oppose

72. PC 83 seeks to add the Puriri tree at 728 Remuera Road, Remuera to in Schedule 10 to the existing listing ID 195, as well as the following information to Schedule 10:
- the botanical name is identified as *Vitex lucens*
  - the common name is identified as Puriri
  - the number of trees is identified as 2
73. The verified position of the tree addition to the schedule is identified in the photo below (as set out in the section 42A report).



Notable Trees Overlay verified position of Puriri tree shown by a green triangle

**Evaluation**

74. **Submission 7.1** (Furong Pan) opposes the inclusion of the Puriri at 728 Remuera Road to Schedule 10 for a number of reasons. **Submission 7.5** (Furong Pan) also opposes the inclusion and stated that the tree doesn't meet the AUP criteria and the Council had erred in awarding an overall score of 22 for the tree. The submission included an arborist

evaluation from arborist Gerard Mostert at Peers Brown Miller, Arboricultural & Environmental Consultants.

75. The arborist report by Mr Mostert opined that the tree has an overall score of 18 points and states the following:
- The Council assessed the tree to be over 100 years old and awarded the Tree a score of 10 for “vigour and vitality”. However, this is inconsistent with the historic aerial photographs taken by the Council in 1940, which shows that the tree was not in existence when the photograph was taken (see: paragraph 9 of the report). The tree does not appear to be in existence when aerial photographs were next taken by Council in 1959 (copy aerial photograph annexed marked “C”).
  - The tree is not of exceptional form. In fact, it is structurally defective in that it has multiple trunks arising from compressed unions (see paragraph 10 of the report).
76. In response to the submitter’s evaluation, Mr Fynn maintained his opinion that the Puriri tree meets the threshold for scheduling with an amended score of 23. He confirmed that there was an error in the original evaluation and the scoring total should have totalled 27.
77. Mr Fynn revised the score based on the exceptional health of the tree. He also stated that the *“subject tree is in exceptional health, but I am happy to amend the vigour vitality scoring to reflect the more conservative age of 60-80 years and therefore be 6.”*
78. Mr Fynn states that *“under the category of character or form I agree that the subject tree is a multi-stemmed specimen which may not be ideal in terms of a tree’s structure but it is a still a tree of exceptional form, locally, in my professional opinion. Form can be described as the overall shape of the tree when considered from a medium to longer distance.”*
79. He also maintained that *“the subject tree is of more than >25% greater than the average for the species within the area” and that “it is also correct to consider that the tree is within the rear yard in terms of amenity.”*
80. We note that neither the submitter nor their arborist attended the hearing or provide any further evidence or analysis and answer any questions the Hearing Panel may have had.
81. It is our finding that scheduling is the most appropriate approach and consistent with the section 32 evaluation undertaken by the Council and the evidence it presented in the section 42A report and at the hearing.

Decision on submissions

82. That **submissions 7.1 and 7.5 be rejected.**



**SUBMISSIONS ON ID 3000- 11 CROWN STREET, ROYAL OAK**

<b>Sub. No.</b>	<b>Name of Submitter</b>	<b>Summary of the Relief Sought by the Submitter</b>	<b>Further Submissions</b>
19.4	Keith Vernon	Oppose the addition of these avocado trees because it likely they will be pruned heavily to ensure fruit can be reached	None
25.1	B W (2004) Limited	Approve the plan change with the amendments requested	None
25.2	B W (2004) Limited	Remove the proposed addition of Avocado trees at 11 Crown Street, Royal Oak (Proposed ID 3000) as the group of trees have been removed.	None

83. PC 83 seeks to include the Avocado tree group at 11 Crown Street, Royal Oak to Schedule 10 as ID 3000. It also proposes to add the following information to Schedule 10:

- the botanical name is identified as *Persea americana*
- the common name is identified as Avocado tree
- the number of trees is identified as Group
- the location/street address is identified as Crown Street 11
- the locality is identified as Royal Oak
- the legal description is identified as Lot 23 DP 8185

84. The verified position of the tree addition to the schedule is identified (as set out in the section 42A report):



Notable Trees Overlay verified position of Avocado Tree Group by a green polygon

**Evaluation**

85. **Submission 19.4** (Keith Vernon) opposes the inclusion of the Avocado tree group at 11 Crown Street, Royal Oak (ID 3000). He considered that the normal practice with avocado trees is to prune them each year to ensure fruit can be reached. He further considered that these trees are large for their species in the local area because they have not been pruned.

86. **Submission 25.1** (B W (2004 Limited) is from the landowner. B W 2004 Limited opposes the inclusion of the Avocado tree group as it has been removed. The removal of the tree was unverified by council officers at the time of the finalisation of the section 42A report, but has since been confirmed.
87. Mr Fynn’s initial evaluation of the group (noting that he had not undertaken another site visit at the time of the writing of this s42A report), was that *“I am happy for it to be deleted from the possible inclusions as a fruiting tree and one that will have its values compromised by heavy pruning that is apparently going to occur before the tree would become protected.”*
88. The Hearing Panel heard no contrary evidence to the scheduling of the Avocado tree group. On this basis it is the Hearing Panel’s view that the submitters concerns support the deletion of the Avocado tree group from PC 83. We find accordingly.

Decision on submissions

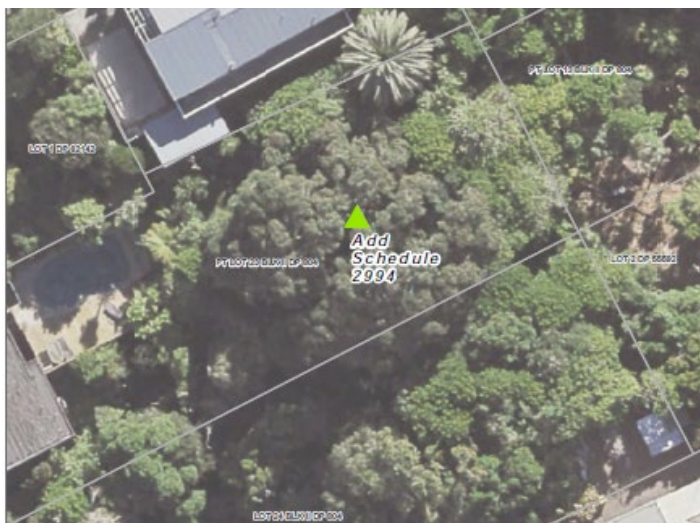
89. That **submissions 19.4, 25.1 and 25.2** be accepted.

**SUBMISSIONS ON ID 2994 – 3A MAUNGANUI ROAD, BIRKENHEAD**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
6.1	Nicole Erin Duran	Approve the Plan Change with the amendments requested	None
6.2	Nicole Erin Duran	Decline the proposed scheduling of the Pōhutukawa	FS02 The Tree Council  Oppose

90. PC 83 seeks to include the Pōhutukawa at 3A Maunganui Road, Birkenhead to Schedule 10 as ID 2994. It also proposes to add the following information to Schedule 10:
- the botanical name is identified as *Metrosideros excelsa*
  - the common name is identified as Pōhutukawa
  - the number of trees is identified as 1
  - the location/street address is identified as Maunganui Road 3A
  - the locality is identified as Birkenhead
  - the legal description is identified as Pt Lot 23 Blk II DP 804

91. The verified position of the tree addition to the schedule is identified (as set out in the section 42A report):



Notable Trees Overlay verified position of Pōhutukawa by a green triangle

### Evaluation

92. **Submission 6** (Nicole Erin Duran) opposes the scheduling of the Pōhutukawa at 3A Maunganui Road, Birkenhead (ID 2994) for a number of reasons. We record that a discussion below addresses the issue of ‘reasonable use and compensation’.
93. Mr Fynn has reviewed this submission and maintained that the subject tree satisfies the notable tree assessment criteria. He also stated that factors such as potential subdivision or development, ownership of neighbouring sites or the current site layout are not a relevant consideration as part of this assessment. We agree.
94. Furthermore, it is Mr Fynn’s view that the most relevant component of the scoring is in terms of the Pōhutukawa’s relative value to the surrounding trees locally, and it is, in his opinion, an exceptional example of its species.
95. The submitter did not attend the hearing or provide any further evidence or analysis.
96. It is our finding that scheduling of the Pōhutukawa at 3A Maunganui Road, Birkenhead is the most appropriate approach and consistent with the section 32 evaluation undertaken by the Council and the evidence it provided to the Hearing Panel.

### Decision on Submissions

97. That submissions **6.1** and **6.2** be **rejected**.

### **SUBMISSIONS ON ID 2992- 20 GILLS ROAD (ROAD RESERVE)**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
10.4	Auckland Council	Amend the listing for 20 Gills Road, Albany Heights (ID 2992) to correctly identify the relevant location	None

98. PC 83 seeks to include the Kahikatea Group at Gills Road 20 (Road Reserve) to Schedule 10 as ID 2992. It also proposes to add the following information to Schedule 10:
- the botanical name is identified as *Dacrycarpus dacrydioides*
  - the common name is identified as Kahikatea
  - the number of trees is identified as 'Group'
  - the location/street address is identified as Gills Road 20 (Road Reserve)
  - the locality is identified as Albany Heights
  - the legal description is identified as Lot 1 DP 111418

The position of the tree addition to the schedule is identified (as set out in the section 42A report):



Notable Trees Overlay mapped position of the Kahikatea group by a green polygon

### Evaluation

99. **Submission 10.4** (Auckland Council) seeks to amend the address to 20 Gills Road (Reserve). The group is within the reserve, but not the road reserve.
100. Following investigation by the Council officers, we were advised that additional text errors had been found:
- The address should have been R 20 Gills Road (Reserve), Albany Heights.
  - The legal description should have been Lot 3 DP 172031, Lot 2 DP 145012, Lot 5 DP 151093, Lot 3 DP 14501.
101. A notified mapping error had also been found (being the identification of the group within the R20 Gills reserve site) and sufficient work to map the exact extent of the group of the Kahikatea within the reserve area had not been undertaken.
102. The submitter did not attend the hearing or provide any further evidence or analysis.

103. As the group of trees has not been mapped correctly, we agree with the Council officers' recommendation that the group of trees be deleted from Schedule 10. This is due to the scheduling not being the most appropriate approach nor consistent with the section 32 evaluation undertaken by the Council, at this time.

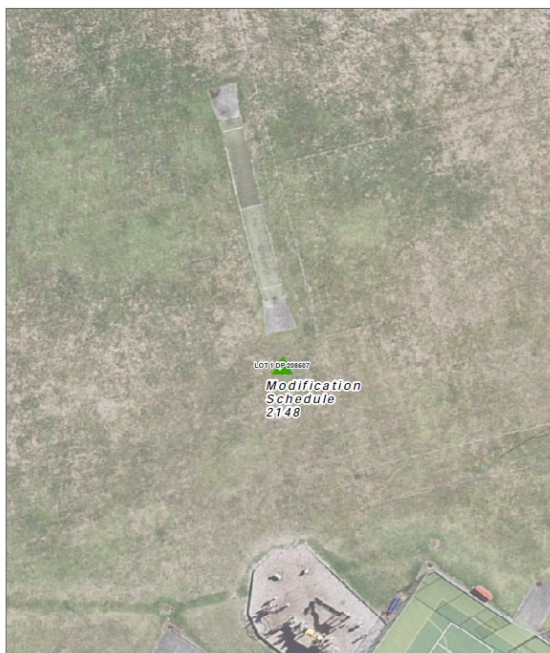
Decision on Submissions

104. That **submission 10.4** (Auckland Council) be **rejected**.

**SUBMISSIONS ON ID 2148- 16 VIEW ROAD, WAIUKU**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
12.1	Te Tāhuhu o Te Mātauranga Ministry of Education	Accept the plan change with amendments	FS02 (The Tree Council) Oppose
12.2	Te Tāhuhu o Te Mātauranga Ministry of Education	Opposes the inclusion of the group of Totara with in the View Road School property (ID 2148) as they have been mapped incorrectly	FS02 (The Tree Council) Oppose
12.3	Te Tāhuhu o Te Mātauranga Ministry of Education	Amend ID 2148 at 16 View Road, Waiuku [text and map] to reflect the precise location of the group of Totara	FS02 (The Tree Council) Oppose

105. PC 83 seeks to amend listing ID 2148 at 16 View Road, Waiuku. It also proposes to amend the following information to Schedule 10:
- The legal description is identified as PT ALLOT 312 Parish WAIUKU EAST, PT ALLOT 312 Parish WAIUKU EAST, Pt Lot 3 DP 29591, Lot 1 DP 208507, PT ALLOT 312 Parish WAIUKU EAST, PT ALLOT 312 Parish WAIUKU EAST, Pt Lot 3 DP 29591, Lot 6 DP 395885
106. The verified position of the tree addition to the schedule is mapped and identified (as set out in the section 42A report):



Notable Trees Overlay verified position of Totara shown by a green triangle



## Evaluation

107. **Submission 12** (Te Tāhuhu o Te Mātauranga Ministry of Education) (MoE) is the landowner. MoE oppose the amendment as they state that it has been mapped incorrectly (submission 12.2). **Submission 12.3** seeks that the text and map be amended to reflect the precise location of the group of Totara.
108. As set out earlier MoE filed a letter in relation to its submission and the recommendations set out in the section 42A report. Part of the letter stating:
- Overall, the Ministry agrees with the assessment and recommendation in regard to Notable Totara trees - ID 2148 provided by the s42A reporting officer.*
109. Mr Fynn, has reviewed the submission. He confirmed the mapping is an error and has identified the actual location of the group of Totara.
110. The Hearing Panel heard no contrary evidence to the 'correct' scheduling of the trees. On this basis the Hearing Panel agrees with the submitter and the Council's experts.

## Decision on Submissions

111. That **submissions 12.1, 12.2 and 12.3** be **accepted in part**.

### **SUBMISSIONS ON ID 663- 41 GOLF AVENUE, OTAHUHU**

<b>Sub. No.</b>	<b>Name of Submitter</b>	<b>Summary of the Relief Sought by the Submitter</b>	<b>Further Submissions</b>
10.5	Auckland Council	Retain the entire listing for 41 Golf Avenue, Otahuhu (ID 663) and amend the wording under the common name column to reflect the removal of a single tree in the avenue	None
13.2	Kathryn leGrove	Retain the listing for ID 633 at 41 Golf Avenue, Otahuhu as it is currently written as the trees are still present	None

112. PC 83 seeks to: remove in full listing ID 663 at 41 Golf Avenue, Otahuhu; remove in full the listing (ID 663) to Schedule 10; and to remove the following information to Schedule 10:
- the botanical name identified as *Quercus robur*
  - the common name identified as English Oak (Avenue of 28)
  - the number of trees identified as Group
  - the location/street address identified as Golf Avenue 41
  - the locality identified as Otahuhu
  - the legal description identified as Pt Land Claim 269A Fairburns Grant
113. The position of the tree to be removed is identified (as set out in the section 42A report):



Notable Trees Overlay/ tree proposed to be removed from schedule shown by a red triangle

Evaluation

- 114. **Submission 10.5** (Auckland Council) and **submission 13.2** (Kathryn leGrove) seek to retain the entire listing (ID 663) and instead amend the wording under the common name column to reflect the remove of a single tree in the avenue.
- 115. Mr Fynn, has identified the location of the group of trees.
- 116. The Hearing Panel heard no contrary evidence in relation to the scheduling of the trees. On this basis the Hearing Panel agrees with the submitter and the Council’s experts.

Decision on Submissions

- 117. That **submissions 10.5 and 13.2** be **accepted**.

**SUBMISSIONS WHICH SEEK AMENDMENTS TO THE PROPOSED TEXT FOR CHAPTER D13 NOTABLE TREES OVERLAY**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
10.2	Auckland Council	Minor amendments to the text of D13.4 Activity Table pre-amble	None
10.3	Auckland Council	Minor amendments to the text of D13.4 Activity Table pre-amble	None

Evaluation

- 118. **Submission 10** (Auckland Council) has identified some minor errors in some of the text proposed by PC 83 for inclusion in Chapter D13. Specifically:

- Submission 10.2 - Amend numbering in the activity table preamble so that the list of subclauses starting with paragraph (d) are renumbered as a new list; and
- Submission 10.3 - Amend the second group of clauses in the activity table preamble so that subclause (f) includes “and”: “(f) the council has sighted the resource consent authorising the physical removal of the tree or group of trees; and...”

119. We accept the text is in error and should be corrected.

120. The Hearing Panel heard no contrary evidence to these minor amendments. On this basis the Hearing Panel agrees with the submitter and the Council’s experts.

#### Decision on Submissions

121. That submissions **10.2** and **10.3** be **accepted**.

### **SUBMISSIONS RELATING TO REASONABLE USE, COMPENSATION OR NEGATIVE EFFECTS**

<b>Sub. No.</b>	<b>Name of Submitter</b>	<b>Summary of the Relief Sought by the Submitter</b>	<b>Further Submissions</b>
1.1 & 1.2	Pete Tashkoff	Decline the plan change or compensate landowners for any dilution or diminution of property rights (no specific tree(s) identified in the submission)	FS02 (Tree Council)  Oppose
6.2	Nicole Erin Duran	Do not add the pōhutukawa tree at 3a Maunganui Street, Birkenhead to the Schedule as it will impact the use of flat land	FS02 (Tree Council)  Oppose
7.2, 7.3, & 7.4	Furong Pan	Do not add the puriri tree at 728 Remuera Road to the Schedule as the nomination is vexatious/made for ulterior purpose, will render the property incapable of reasonable use, will impact on the health of the landowner	FS02 (Tree Council)  Oppose

#### Evaluation

122. All of these submitters consider that the scheduling of trees on their, or their neighbours’ property, unreasonably limits their ability to use their land, or in some way negatively effects their health or their properties.

123. Section 85 of the RMA provides that (our emphasis):

- (1) An interest in land shall be deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for in this Act.
- (2) Notwithstanding subsection (1), any person having an interest in land to which any provision or proposed provision of a plan or proposed plan applies, and who considers that the provision or proposed provision would render that interest in land incapable of reasonable use, may challenge that provision or proposed provision on those grounds-
  - (a) in a submission made under Schedule 1 in respect of a proposed plan or change to a plan; or



(b) in an application to change a plan made under clause 21 of Schedule 1.

124. Section 85 provides two mechanisms for challenging a provision on the basis of reasonable use. In situations where a person considers that a provision has an impact that renders the land incapable of reasonable use, section 85 provides that the provision or proposed provision can be challenged by way of a submission seeking to amend or revoke the provision.
125. We accept that the scheduling of trees is a long-standing planning approach; specifically provided for in the RMA (Sections 76(4A) – 76(4D)) as the only mechanism by which a District Plan can legally protect trees on an urban environment allotment (as urban environment allotment is defined in that section). The AUP uses this scheduling technique to protect notable trees.
126. All of the trees that are the subject of these submissions have been assessed against the factors or criteria set out in the RPS, as elaborated on in the assessment sheet.
127. Two submitters raise questions about the accuracy of the assessment of trees, as well as issues relating to reasonable use. These aspects of the submissions (accuracy of the assessment) were set out in sections 17 and 19 of the section 42A report.
128. Furthermore, the regulatory approach in the AUP that gives protection to notable trees enable for some trimming or alteration of trees as a Permitted Activity, with any trimming/alteration beyond the permitted thresholds requiring a Restricted Discretionary Activity consent. Any proposal to remove a notable tree will generally be considered a Discretionary Activity. Accordingly, applications to trim or alter a tree beyond the permitted activity standards, and remove any scheduled tree, can be lodged and considered, including in relation to any development proposals.
129. Furong Pan raises concerns about the health impact of the proposed notable tree. It is noted that the restricted discretionary assessment criteria (applicable to any proposals to alter the trees beyond the Permitted Activity standards, and relevant considerations for any Discretionary Activities) explicitly provide for the consideration of impacts on human health or damage to property.
130. We further note that none of the submitters attended the hearing or provided any further evidence or analysis in respect to this issue.
131. Having had regard to the submissions and the material before us in the section 42A report, and evidence before us we do not find the proposed scheduling of the trees renders the relevant properties incapable of reasonable use.

#### Decision on submissions

132. That **Submissions 1.1, 1.2, 6.2, 7.2, 7.3 and 7.4** be **rejected**.

**SUBMISSIONS CONSIDERED OUT OF SCOPE OF PC 83 BY THE COUNCIL - BUT IN SCOPE  
BY THE HEARING PANEL**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
13.3	Kathryn leGrove	Remove ID 1694 at 82 Great South Road [inferred] as the tree has been removed.	None
24.3	Grey Lynn Residents Association	Add the avenues of London plane trees in Selbourne Street, Browning Street, Castle Street and Francis Street to the schedule as notable groups of trees	FS01 Amy Parlane Support

Evaluation

133. With respect to Ms leGrove’s submission (13.2 - Remove ID 1694 at 82 Great South Road [inferred] as the tree has been removed), she stated:

*“The notable magnolia tree at 83 Great South Road Papatoetoe was illegally removed in February this year because it was mistakenly listed on the map as being at 83 Great South Road Manurewa. I don’t see that one on the list to be deleted from the schedule”.*

134. We have no evidence from Ms leGrove about the magnolia tree. Nor did the Council address it given it was their position the submission was out of scope. On this basis we have not accepted the submission, and the Council can investigate the removal of the magnolia tree, and if it has been removed can address that in a subsequent plan change.
135. In terms of the Grey Lynn Residents Association’s submission (24.3 - Add the avenues of London plane trees in Selbourne Street, Browning Street, Castle Street and Francis Street to the schedule as notable groups of trees) we have no evidence from the Association about the nature and value of the trees. Nor did the Council address it given it was their position the submission was out of scope. On this basis we have not accepted the submission, and the Council can investigate these trees and can address them in a subsequent plan change if it determines they warrant scheduling.

Decision on submissions

136. That **Submissions 13.3** and **24.3** be rejected.

**SUBMISSIONS OUT OF SCOPE OF PC 80**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
9.2	Geoffrey John Beresford	“There are insufficient provisions for new trees and for the protection of existing trees.”	None
9.3	Geoffrey John Beresford	“The purpose of creating well functioning urban environments in Auckland will need to be supported by provisions which result in more trees.”	None
14.5	The Tree Council	“TTC proposes the addition of interim protection for trees nominated to be scheduled but in the process of being assessed and processed by Auckland Council”	FS01 Amy Parlane support

<b>Sub. No.</b>	<b>Name of Submitter</b>	<b>Summary of the Relief Sought by the Submitter</b>	<b>Further Submissions</b>
14.6	The Tree Council	Nominate, assess and protect more trees worthy of scheduling	FS01 Amy Parlane support
14.7	The Tree Council	Allocate more resources to the assessment of nominations so that these trees can be protected as soon as possible	FS01 Amy Parlane support
15.3	Pest Free Kaipatiki	Seeks additional changes to enable the addition of new nominated trees to Schedule 10	None
15.4	Pest Free Kaipatiki	Seeks additional changes to strengthen the provisions which protect notable trees and annually review and add nominated trees	None
16.1	Diana Coleman	Accept the plan change with amendments	None
16.2	Diana Coleman	Seeks that the addition of notable trees or groups of trees be made at any time.	None
16.3	Diana Coleman	Seeks that notable trees have a provision to allow the addition of the provision to schedule blanket areas of trees.	None
16.4	Diana Coleman	Seeks that scheduled trees, groups of trees and urban forest areas are genuinely protected and any nearby development must be designed to preserve those recorded on the schedule	None
18.1	Amy Margaret Parlane	Approve the plan change with the amendments I requested	None
18.2	Amy Margaret Parlane	Seeks that the system for notable trees is streamlined	None
18.3	Amy Margaret Parlane	Seeks that the GPS coordinates of notable trees are included in the plan	None
18.4	Amy Margaret Parlane	Seeks that a plaque or some other identifier is attached to trees	None
18.5	Amy Margaret Parlane	Seeks a new mechanism that ensures the protection of notable tree root systems and canopies during subdivision processes	None
18.6	Amy Margaret Parlane	Seeks that more nominations are invited from the public across different avenues and venues	None
18.7	Amy Margaret Parlane	Seeks to prohibit the removal or destruction of notable trees	None
18.8	Amy Margaret Parlane	Seeks to expand notification for notable tree consent applications	None
18.9	Amy Margaret Parlane	Seeks that the criteria are expanded to address habitat of other species	None
18.10	Amy Margaret Parlane	Seeks that more information is included about the removal of trees from the schedule	None

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
18.11	Amy Margaret Parlane	Seeks a hotline for notable tree concerns	None
18.12	Amy Margaret Parlane	Seeks that property owners are given more advice and education regarding the best practice for care of notable trees	None
19.3	Keith Vernon	That the criteria seem flawed -don't differentiate between exotics and natives	None
20.2	Pip Mules	That the Council strengthen its commitment to promoting new nominations to Schedule 10, and maintaining the accuracy of the Notable Trees register	None
21.2	Colleen Brown	Enable the addition of new nominated trees to Schedule 10	None
22.2	Michael Lowe	Increase the number of heritage/notable trees listed across Auckland	None
23.1	Munro Homestead trust	Amend the name of the two Rimu at 120 Monument Rd in the listing to Kaikawaka (misnamed trees) * <sup>15</sup>	None
23.3	Munro Homestead trust	Decline the plan change, but if approved, make the amendments requested*	None
24.2	Grey Lynn Residents Association	Retain notable trees and notable groups of trees as qualifying matters	FS01 Amy Parlane Support

### Evaluation

137. A submission must be within the scope of a plan change to be considered. We have addressed the issue of scope earlier in this decision.
138. As set out in the section 42A report - PC 83 has a purpose which is “relatively confined”; it is limited to:
- The addition to Schedule 10 and associated plan maps of 19 line-items (20 individual trees and 3 groups of trees) found to meet the Notable Tree criteria;
  - The correction of 35 existing line-items in Schedule 10 Notable trees and associated planning maps, mainly property description; tree names, numbers, and locations; minor spelling and grammar errors; improved symbology on the planning maps;
  - The deletion of 20 line-items in Schedule 10 and associated plan maps where there is evidence the trees have been removed through consented or emergency works or their health has significantly.
  - The inclusion of an automatic update clause to ensure the Schedule can be updated without use of the RMA Schedule 1 process where the legal description or address of a property with a notable tree(s) is amended through subdivision or where trees have been removed through a resource consent or emergency works;

<sup>15</sup> The submission was made to PC 82, and the Submitter was heard, and presented evidence at that hearing.

- The deletion of reference to redundant diagrams in Chapter D13 Notable Trees
139. The Section 32 Report makes it clear that the plan change does not seek to alter any of the objectives, policies, rules or other methods for managing and protecting notable trees.
140. While the Hearing Panel's view on scope is wider than that of the Council, we nevertheless agree that PC 83 is relatively confined. Submissions seeking, for example, broader, additional or different approaches to tree protection, blanket tree protection or interim protection for trees nominated and being assessed for protection, than currently provided for in the RMA and/or the AUP or are not "on" PC 83. Nor are those seeking changes or alteration to any of the objectives, policies, rules or other methods for managing and protecting notable trees.

#### Decisions on submissions

141. That submissions **9.2, 9.3, 14.5, 14.6, 14.7, 15.3, 15.4, 16.1, 16.2, 16.3, 16.4, 18.1, 18.2, 18.3, 18.4, 18.5, 18.6, 18.7, 18.8, 18.9, 18.10, 18.11, 18.12, 19.3, 20.2, 21.2, 22.2, 23.1, 23.3, 24.2**, be **rejected**.

#### **OVERALL DECISION**

142. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, that Proposed Plan Change 83 to the Auckland Unitary Plan (Operative in Part) is approved, subject to the modifications as set out in this decision - amendments to the text and plan maps of the Unitary Plan as set out in the **Attachments** to this decision.
143. Submissions on the plan change are accepted, accepted in part, or rejected in accordance with this decision. The reasons for the decision are that Plan Change are those addressed above in the body of the decision report.
144. The adoption of PC83, with its amendments:
- Is consistent with the Auckland Unitary Plan (Operative in part) Regional Policy Statement; and
  - Is the most appropriate way to achieve the overall purpose of the Resource Management Act 1991.



**Greg Hill**

**Chairperson**

**Date:** 31 July 2023

## **Attachment 3 – Amendments to Chapter D13 Notable Trees Overlay**

### **D13. Notable Trees Overlay**

#### **D13.1. Background**

The purpose of the Notable Trees Overlay is to protect notable trees and notable groups of trees from danger or destruction resulting from development.

Individual trees and groups of trees that have been scheduled as notable trees are considered to be among the most significant trees in Auckland. These trees have been specifically identified to ensure that the benefits they provide are retained for future generations.

The legal description of sites on which a notable tree or group of trees in Schedule 10 Notable Trees Schedule are located will be updated automatically (without a plan change under Schedule 1 of the RMA) where a subdivision occurs and where any part of a subdivided lot contains any part of the Notable Trees Overlay, including any lots which qualify as an urban environment allotment under s76(4C) of the Act.

Similarly, where there is evidence that a tree or group of trees has been physically removed as a result of consent processes or emergency works, the notable tree or group of trees will be automatically removed from Schedule 10 Notable Trees Schedule without a plan change under Schedule 1 of the RMA.

If a new tree or group of trees is proposed to be included in Schedule 10 Notable Trees Schedule, a plan change under Schedule 1 of the RMA will be required.

#### **D13.2. Objective**

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

#### **D13.3. Policies**

(1) Provide education and advice to encourage the protection of notable trees and notable groups of trees in rural and urban areas.

(2) Require notable trees and notable groups of trees to be retained and protected from inappropriate subdivision, use and development, by considering:

(a) the specific attributes of the tree or trees including the values for which the tree or trees have been identified as notable;

(b) the likelihood of significant adverse effects to people and property from the tree or trees;

(c) the degree to which the subdivision, use or development can accommodate the protection of the tree or groups of trees;

(d) the extent to which any trimming, alteration or removal of a tree is necessary to accommodate efficient operation of the road network, network utilities or permitted development on the site;

- (e) alternative methods that could result in retaining the tree or trees on the site, road or reserve;
- (f) whether minor infringements of the standards that apply to the underlying zone would encourage the retention and enhancement of the tree or trees on the site;
- (g) whether the values that would be lost if the tree or trees are removed can be adequately mitigated;
- (h) whether the proposal is consistent with best arboricultural practice;
- (i) methods to contain and control plant pathogens and diseases including measures for preventing the spread of soil and the safe disposal of plant material; and
- (j) the provision of a tree management or landscape plan.

#### **D13.4. Activity table**

Table D13.4.1 Activity table specifies the activity status for land use activities related to tree management in the Notable Trees Overlay pursuant to section 9(3) of the Resource Management Act 1991.

- The rules that apply to network utilities and electricity generation are located in Section E26 Infrastructure.

Reference to 'trees' includes trees, groups of trees and the protected root zone.

The legal description associated with a notable tree or group of trees in Schedule 10 Notable Trees Schedule (including on lots which qualify as an urban allotment under s76(4C) of the RMA) will be corrected and updated to refer to the new legal description of a lot where the following has occurred:

- (a) the lots contains any part of the Notable Trees Overlay; and
- (b) a subdivision of the site has occurred; and
- (c) any part of a subdivided lot contains any part of the Notable Trees Overlay.

The Notable Trees Schedule rules cease to have effect and Schedule 10 Notable Trees Schedule and the maps will ~~can~~ be corrected and updated accordingly where:

- (a) a tree or group of trees has been physically removed as a result of consent processes; or
- (b) a tree or group of trees has been physically removed as a result of emergency works; and the following has occurred:
- (c) the council has sighted the resource consent or other approval authorising the physical removal of the tree or group of trees; and
- (d) the council has given written notice to the owners of the property from which the overlay will be removed.

In circumstances where a new tree or group of trees is proposed to be included in Schedule 10 Notable Trees Schedule, a plan change under Schedule 1 of the RMA will be required.

**Table D13.4.1 Activity Table**

<b>Activity</b>		<b>Activity status</b>
(A1)	Biosecurity tree works	P
(A2)	Dead wood removal undertaken by a qualified arborist	P
(A3)	Dead wood removal not undertaken by a qualified arborist	C
(A4)	Emergency tree works	P
(A5)	Tree trimming or alteration	P
(A6)	Tree trimming or alteration that does not comply with Standard D13.6.1	RD
(A7)	Tree removal	D
(A8)	Works within the protected root zone to enable trenchless methods at a depth greater than 1m below ground level	P
(A9)	Work within the protected root zone not otherwise provided for	RD

### **D13.5. Notification**

(1) An application for resource consent for a controlled activity listed in Table D13.4.1 above will be considered without public or limited notification or the need to obtain written approval from affected parties unless the Council decides that special circumstances exist under section 95A(9) of the Resource Management Act 1991.

(1) Any application for resource consent for an activity listed in Table D13.4.1 Activity table and which is not listed in D13.5(1) will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.

(2) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

### **D13.6. Standards**

All permitted, controlled and restricted discretionary activities in Table D13.4.1 must comply with the following standards.

#### **D13.6.1. Tree trimming or alteration**

- (1) The maximum branch diameter must not exceed 50mm at severance.
- (2) No more than 10 per cent of live growth of the tree may be removed in any one calendar year.
- (3) The works must meet best arboricultural practice.



- (4) All trimming or alteration must retain the natural shape, form and branch habit of the tree.

#### **D13.6.2. Works within the protected root zone to enable trenchless methods at a depth greater than 1m below ground level**

- (1) Excavation must be undertaken by hand-digging, air spade, hydro vac or drilling machine, within the protected root zone at a depth of 1m or greater.
- (2) The surface area of a single excavation must not exceed 1m<sup>2</sup>.
- (3) Works involving root pruning must not be on roots greater than 35mm in diameter at severance.
- (4) Works must not disturb more than 10 per cent of the protected root zone.
- (5) Any machines used must operate on top of paved surfaces and/or ground protection measures.
- (6) Any machines used must be fitted with a straight blade bucket.
- (7) All works must be undertaken under the direction of a qualified arborist.

#### **D13.7. Assessment – controlled activities**

##### **D13.7.1. Matters of control**

- (1) The Council will reserve its control to all the following matters when assessing a controlled activity resource consent application:
  - (2) for deadwood removal not undertaken by a qualified arborist:
    - (a) the extent of the alteration of the tree; and
    - (b) the method to be employed.

##### **D13.7.2. Assessment criteria**

The Council will consider the relevant assessment criteria for controlled activities from the list below:

- (1) for deadwood removal not undertaken by a qualified arborist:
  - (a) the extent of the alteration of the tree and the method to be employed:
    - (i) the tree will not be unduly damaged or its health endangered through removal of deadwood;
    - (ii) the timing of the deadwood removal;
    - (iii) the size of the wounds; and
    - (iv) the position of the wounds.

## **D13.8. Assessment – restricted discretionary activities**

### **D13.8.1. Matters of discretion**

The Council will restrict its discretion to all the following matters when assessing a restricted discretionary resource consent application:

- (1) all restricted discretionary activities:
  - (a) consideration of alternatives available to avoid trimming or alteration of the tree;
  - (a) any effect on the values of the tree or trees for which they were scheduled;
  - (b) any tree works plan, reserve management plan, or landscape plan relevant to the tree or groups of trees;
  - (c) any loss or reduction of amenity values provided by the tree or trees;
  - (d) consistency with best arboricultural practice;
  - (e) methods to control plant pathogens;
  - (f) any mitigation proposed;
  - (g) the risk of damage to people or property;
  - (h) the functional and operational needs of infrastructure;
  - (i) the benefits derived from the infrastructure;
  - (j) for tree trimming or alteration not meeting Standard D13.6.1:
    - (i) the methods proposed to reduce any adverse effects; and
    - (i) the extent of the alteration of the tree or trees.
  - (k) for work within the protected root zone not meeting Standard D13.6.2:
    - (i) the methods proposed to reduce any adverse effects of the works, including the depth of the works; and
    - (ii) the extent of area of the protected root zone or zones that is affected.

### **D13.8.2. Assessment criteria**

The Council will consider the relevant assessment criteria for restricted discretionary activities from the list below:

- (1) all restricted discretionary activities:
  - (a) the extent to which alternative methods that could result in avoiding alteration of the tree or trees have been considered;
  - (b) the specific values of the tree or trees including any ecological values with respect to water and soil conservation, ecosystem services, stability, ecology, habitat for birds and amelioration of natural hazards;

- (c) the extent to which effects on the values of the tree or trees including any effects on the natural shape, form and branch habit and the root network can be minimised;
- (d) the extent to which any impact on the immediate or long-term health and stability of the tree or trees is able to be minimised or avoided;
- (e) the loss of any amenity values that the tree or trees provided;
- (f) the risk of actual damage to people and property from the tree or trees including the extent to which adverse effects on the health and safety of people have been addressed;
- (g) the degree to which any proposed mitigation adequately responds to the effects on the tree or trees;
- (h) the degree to which the proposal is consistent with best arboricultural practice guidelines for tree management;
- (i) methods to contain and control plant pathogens and diseases including measures for preventing the spread of soil and the safe disposal of plant material;
- (j) the provision of a tree works plan, to address:
  - (i) the effects on the tree or trees;
  - (ii) the proposed methods to be used;
  - (iii) the extent to which the proposed works are consistent with best arboricultural practice;
  - (iv) for tree alteration, the methods proposed to reduce any adverse effects and the extent of the alteration of the tree or trees; and
  - (v) for works within the protected root zone, the methods proposed to reduce any adverse effects on the tree or trees, including the depth of the works, and the extent of area of the protected root zone or zones that is affected.
- (k) the need for the direction and supervision of a qualified arborist while the works are being carried out;
- (l) the functional and operational requirements of infrastructure; and
- (m) the benefits derived from infrastructure.

### **D13.9. Special information requirements**

There are no special information requirements for the Notable Tree Overlay.