
REPORT 3
(1215/52/IM)

PROPOSED DISTRICT PLAN CHANGE – HERITAGE PROVISIONS

1. Purpose of Report

The purpose of this report is to present to the Committee a draft District Plan Change for the targeted review of the Heritage Chapters of the District Plan (Chapter 21 and 22). Endorsement of the proposed change is sought to provide the basis for consultation with key groups before public notification.

2. Recommendations

It is recommended that the Committee:

- 1. Receive the information.*
- 2. Agree to adopt the draft provisions outlined in Appendix 1 to this report, as the basis for consultation with key stakeholders in accordance with the Consultation and Communication Plan attached as Appendix 2 to this report.*
- 3. Agree that a report on the results of consultation including a Proposed Plan Change ready for public notification be presented to the Strategy and Policy Committee by the end of March 2006.*

3. Background

3.1 Current provisions

When the District Plan was notified in 1994 a significant advance was made in respect of the measures to protect and conserve the heritage of Wellington City. A comprehensive approach involving financial incentives and advice on the one hand and enhanced regulatory measures on the other was adopted.

In terms of regulation the District Plan provided for a vastly expanded list of items for protection together with specific objectives, policies and rules aimed at ensuring the retention and conservation of the listed items.

The Council's approach was opposed by some property owners and others through the submission and hearing process but the plan provisions were eventually adopted.

Environment Court appeals were lodged on various matters and all were resolved through negotiation or mediation.

The current heritage provisions in Chapters 20 and 21 of the District Plan are broadly structured as follows:

• Repairs and maintenance	Permitted activity
• Any work on interiors (except specific interiors listed in the plan)	Permitted activity
• Additions and alterations (including where the work involves removal and replacement of part of the building)	Controlled activity
• Demolition (total or partial)	Discretionary (unrestricted)

3.2 Reasons for this review

3.2.1 Existing District Plan provisions

The heritage provisions were structured as above to provide a reasonable balance between restrictions on private property rights to protect and conserve heritage and the freedom of owners to maintain or enhance the use of their property. Central to this was the classification of additions and alterations to heritage buildings as a Controlled Activity.

The Controlled Activity class of consent was initially seen as a useful regulatory mechanism that would provide an appropriate level of control while minimising compliance costs for owners and developers. Although Controlled Activities cannot be refused it was originally believed that conditions could be imposed on resource consent applications that might significantly alter a proposed development or have the effect of declining consent.

However, over time this proved not to be the case. The Council has been severely constrained in terms of processing Controlled Activity applications. This has been manifested in proposals under the heritage provisions (mainly rooftop additions) that, in terms of effects, go beyond what is believed appropriate for listed buildings. The limitations of the Controlled Activity approach has provided the primary impetus for reviewing the heritage chapters of the Plan.

In addition, other specific issues have been highlighted regarding the operation of the rules, such as:

- The relationship between the Heritage Chapters and the area based rules, and
- The application of the rules to heritage areas (in particular, the application of the 'demolition rule' to heritage areas which vary widely from protecting structures such as steps and gun emplacements through to residential areas such as Tarikaka Street in Ngaio).

3.2.2 Resource Management Act amendments

In 2003 an amendment to the Resource Management Act 1991 (RMA) provided stronger recognition for the protection of heritage. The protection of historic heritage was elevated to a matter of national importance under section 6, from section 7 where the 'recognition and protection of the heritage values of sites, buildings, places or areas' was a matter that persons exercising functions and powers under the Act 'shall have particular regard to'. Section 6(f) specifically requires the Council to recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development. Historic heritage is defined to include a wide range of qualities including architectural, cultural, historic, scientific and technological.

3.2.3 Built Heritage Policy

Partly in response to this legislative change and also as a result of the Council's desire to provide greater heritage protection, a review was undertaken of the Council's heritage policy. The existing policy had been in place for some ten years and was in need of updating. After an extensive consultation process the new Built Heritage Policy was adopted in June 2005. One of the key initiatives in the new policy is to provide greater statutory protection for the City's built heritage through changes to the District Plan. The Policy recommends a range of actions including:

- *Recognise those places with significant heritage value through listing in the District Plan, either individually or as part of a heritage area.*
- *Updating the objectives and policies in the Heritage Chapters in the District Plan that pertain to the built heritage to ensure they deliver on this policy and meet the requirements of section 6(f) of The Resource Management Act 1991.*
- *Undertake a District Plan Change to amend the heritage rules in the District Plan so that additions and alterations to a listed heritage item would become a discretionary activity and the demolition of a listed heritage item a non-complying activity.*
- *Re-examine other rules in the District Plan to ensure they take into account the heritage value of listed items and the heritage significance of areas.*
- *Extending the protection of heritage values to suburban areas through identifying more heritage areas and other mechanisms.*

3.2.4 District Plan monitoring

As part of the ongoing monitoring of the District Plan, specific consideration has also been given to the operation of the heritage provisions. A monitoring report was presented to the Strategy and Policy Committee on 9 June 2005. This report concluded that the existing heritage rules were not as effective as they need to be to protect the values associated with listed items. In particular it was found that heritage outcomes

were not being achieved where a resource consent involved development of a listed heritage building. While success in some areas was acknowledged the overall conclusion was that good heritage outcomes cannot be achieved with the current rule structure in place. It was noted however the current rules have enabled the Council to achieve better results through the resource consent process than would have resulted otherwise.

In response to the 2005 Heritage Policy and the monitoring results, the District Plan heritage provisions have been reviewed and a draft plan change prepared. The draft proposals are attached as Appendix 1. The review has not addressed the listing of new heritage buildings or areas. This is a matter that is the subject of a separate project and will be reported back to the Strategy and Policy Committee in 2006.

3.3 Relationship to other District Plan projects

Work is currently continuing on the Central Area review and the Newtown/Berhampore/Mt Cook character review that has raised various issues relevant to the protection of heritage including the creation of new heritage areas. These issues were discussed at Councillor workshops on 16 and 17 November 2005.

The development of new area based heritage proposals will not compromise the updating of the existing heritage provisions as proposed in this report as the over-arching regulatory framework provided under the heritage chapters of the Plan will apply to any area based provisions.

4. Discussion

There are five key features of the proposed changes to the District Plan's Heritage Chapters:

1. Objectives and Policies

The heritage objective and related policies have been redrafted and expanded to emphasise the protection of historic heritage in accordance with section 6(f) of the RMA. This also reflects the direction of the Built Heritage Policy which recommends greater protection of the City's built heritage.

2. Removal of Controlled Activities

The Controlled Activity provisions have been deleted and additions and alterations made a Discretionary Activity (Restricted or Unrestricted, depending on the extent of the modification of the building). The elevation of control for additions and alterations to discretionary status enables the effects of proposed new development to be assessed and provides greater 'teeth' in that resource consent applications may be refused. It is proposed that both Discretionary (Restricted) and (Unrestricted) Rule categories apply. Discretionary Activities (Restricted) would apply to modifications, additions and alterations of a more minor nature and the rules would include an express provision for the non-notification and non-service of affected parties. This would not prevent applications being declined, nor does it detract from the full assessment of the

application. However, it will allow for a more streamlined process for smaller scale modifications, additions and alterations and will reduce the costs for building owners.

3. *Demolition*

The Built Heritage Policy signalled that demolition of listed heritage buildings would be a Non-Complying Activity. However, during the course of assessing the proposed rule framework in light of specific Resource Management Act matters it was considered that a new Non-Complying rule could not be supported by a full section 32 analysis (consideration of alternatives, benefits and costs). The following matters are relevant to a section 32 assessment:

- A Non-Complying status is the most stringent of the activity classes available under the RMA (apart from “Prohibited Activities”). Promotion of it by the Council must be supported by a section 32 analysis. Under section 32 the Council must carry out an evaluation to examine the extent to which each objective is the most appropriate 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 objectives.
- The policy provisions of the District Plan. If Non-Complying status is pursued the objectives and policies would need to be amended to provide for the situations where applications may be made for demolition or removal. Without amendments the Non-Complying activity status would in effect be a Prohibited Activity because the Council’s ability to grant a consent is restricted by section 104 D of the Act (Particular restrictions for Non-Complying activities).
- The monitoring undertaken by the Council. Over the 10 years that the current rules have been in place very few resource consents have been granted for complete demolition. Further, in this time, consent has been declined for some proposed demolitions.

In light of the above it is therefore recommended at this time that the Discretionary (Unrestricted) status remain. It is believed that the more clearly prescribed Discretionary (Unrestricted) provisions linking to the District Plan policies still meets the intent of the Built Heritage Policy.

4. *Heritage Areas*

The rules relating to “heritage areas” have been drafted in anticipation of the inclusion of new and expanded areas in the Plan comprising a mixture of listed buildings and other character buildings that collectively constitute a distinct heritage identity. It is proposed that for listed buildings the specific rules for listed buildings will apply. Non-listed buildings would be subject to the Heritage Area provisions.

5. *General reformatting*

The rules have been reformatted to relate to the different types of listing in the Plan i.e. Buildings and Objects, Areas, Trees and Maori Sites. The control of signs on heritage buildings or sites or within heritage areas has also been included under a separate rule.

This reformatting is proposed largely for administrative reasons, to clarify and simplify the operation of the Plan.

6. *Listed Trees*

No changes are proposed to existing provisions relating to listed trees except for the introduction of a policy for trees. Listed trees were not part of the Built Heritage Policy review and to date there has been no separate review of the measures for protecting listed trees. The existing rules for listed trees have been operating satisfactorily. It is proposed therefore that the rules remain in their existing form. A review of these provisions will need to be undertaken as part of the Council's obligation to review the District Plan by 2010.

7. *Maori Sites*

No changes are proposed to the existing provisions for Maori sites. The listed Maori sites are currently subject to the composite rule for heritage areas which requires that the partial or total demolition of a site is a Discretionary Activity (Unrestricted). It is known that there are difficulties in administering this rule for Maori sites because the listed sites do not necessarily relate to any identified feature and are generally not defined by survey or property title boundaries. However, the provisions were originally prepared in close consultation with the Tenth Trust and Ngati Toa and were seen as providing a useful first step in addressing development that might affect these areas of cultural significance. Any change at this stage would require further consultation with iwi. There is no evidence to suggest that any sites are being lost or damaged. The Tenth Trust has an ongoing project to identify additional sites in the city and it is anticipated that at some future time there will be a request to extend the listing of sites through a District Plan change. It would be appropriate to consider any changes to the rules affecting Maori sites as part of a future change. In the meantime it is proposed that the existing rule be retained.

4. Consultation

Although considerable consultation was undertaken as part of developing the Built Heritage Policy, this was at a 'high' level and not directly applicable to the consideration or assessment of changes to the District Plan. The proposed changes to Chapters 21 and 22 affect all owners who are covered by a listed building, object or area in the Plan. Although consultation is not mandatory, except for the limited number of statutory organisations identified in the Act, best practice dictates that it should be undertaken. This is particularly so in respect of heritage provisions if more stringent regulation is to be imposed. In addition there will be other key interest groups such as the New Zealand Historic Places Trust who should desirably be involved.

The primary risk associated with consulting on the introduction of more stringent heritage provisions is that owners or developers might be inclined to advance redevelopment proposals so that they are considered solely under the current rules. New provisions only have effect from the date that they are publicly notified under the Act. The risks in this regard would be reduced by targeting consultation and providing a short but reasonable deadline for feedback. The risk of an application rush would also

be mitigated in respect of proposals requiring heritage consent because there are no permitted activities for significant work and certificates of compliance under section 139 of the Act could not be issued.

A consultation plan has been prepared (see attached as Appendix 2) that outlines the proposed action. Given the number of property owners involved it is proposed to mail-out the proposed change provisions with a request for a written response. Meetings will be arranged if required. An analysis of the feedback from parties will be undertaken, adjustments made to the draft and reported back to the Committee. The consultation period is proposed between mid January and late February 2006.

5. Conclusion

It is acknowledged that the existing heritage rules in the District Plan are in need of review to better protect the City's heritage. Proposed changes have been prepared to strengthen the provisions. The changes respond to the Council's new responsibilities under the Resource Management Act and take account of the policy direction of the Built Heritage Policy. It is recommended that the proposals be 'tested' through a targeted consultation programme before the public notification of a plan change in mid 2006.

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Supporting Information

1) Strategic Fit / Strategic Outcome

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

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

Project C533 – District Plan

3) Treaty of Waitangi considerations

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

4) Decision-Making

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

5) Consultation

a) General Consultation

Specific consultation has not been undertaken. A Consultation Programme is appended to the report.

b) Consultation with Maori

As above.

6) Legal Implications

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

7) Consistency with existing policy

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