
DECISION ON DISTRICT PLAN CHANGE 43: HERITAGE PROVISIONS

1. Purpose of Report

To report to Council the recommendations of the District Plan Hearing Committee concerning District Plan Change 43 – Heritage Provisions.

2. Recommendation

It is recommended that Council:

- 1. Approve the recommendations of the District Plan Hearing Committee in respect of District Plan Change 43 – Heritage Provisions as set out in Appendix One, of this report.*

3. Background

Proposed District Plan Change 43 (DPC 43) was initiated by the Council and publicly notified on 1 May 2006. It introduced a revised set of heritage provisions, except for the rules relating to listed trees and Maori sites.

The primary purpose of the change was to ensure that the District Plan dealt with heritage issues more effectively.

Three key factors prompted the initiation of DPC 43:

1. Monitoring of the District Plan had shown that the current rules were not achieving the desired heritage outcomes in all cases.
2. The 2003 amendment to the Resource Management Act had raised the status of heritage protection to a matter of national importance and it was appropriate that the District Plan reflect this.
3. The Council's Built Heritage Policy (2005) recommended that strengthened District Plan provisions be introduced.

The most significant change under DPC 43 was the removal of the Controlled Activity status for works affecting heritage buildings and the elevation of the rule classifications to Discretionary (Restricted) or (Unrestricted). Under the Controlled Activity class, applications could not be refused and this had led to some unsatisfactory heritage outcomes. The Discretionary consent processes, on the other hand, enabled applications to be declined.

Other key components of the plan change included enhanced objectives and policies to emphasise the protection of historic heritage, new rules to control the setting of listed heritage buildings and specific rules for heritage areas and signage.

Plan Change 43 was heard in conjunction with Plan Change 48 (Central Area Review) because of the interrelationship between the rules for heritage areas under DPC43 and the new heritage areas and related provisions included in District Plan Change 48.

Plan Change 43 was also amended by Variation 4 which changed the definition of “Identified Contributing Buildings or Structures” to “Identified Non-Heritage Buildings or Structures”. This variation received no submission and will be adopted.

The hearing of submissions for both District Plan Changes 43 and 48 were held at various times between 16 and 30 May 2007.

4. Comment

A total of 85 main submissions and 14 further submissions were received on proposed District Plan Change 43. Of these, 14 main submitters (of which 9 were also further submitters) and 5 other further submitters appeared before the Committee, either in person or represented by their consultants or counsel.

The submissions traversed all aspects of the plan change including introductory section, objectives, policies and rules. The tenor of the submissions ranged from full support to the total opposition to the proposals. Those generally supportive of DPC 43 were in agreement that the rules should be strengthened (subject to the amendment of various provisions) but there was a body of support for even more restrictive provisions. Those in opposition argued that the proposals were unduly restrictive, focussed too narrowly on heritage protection and would render land incapable of reasonable use.

After carefully considering all of the issues raised by the submitters and the legislative requirements, the Committee was of the view that the Plan change (as recommended to be amended) would provide a balanced and acceptable approach to the management of historic heritage in the city. Many of the recommendations propose amendments of a relatively minor nature focused largely on improving the clarity, application and general effectiveness of the heritage provisions. However, more substantive changes have been recommended in several areas.

Firstly, various changes have been made as a consequence of amending the wording of the main objective to accord with the wording of section 6(f) of the Resource Management Act, i.e. *‘the protection of historic heritage from inappropriate subdivision, use and development’*. In the Committee’s view, reflecting the wording of section 6(f) would better align The District Plan provisions with the purpose of the Act.

Secondly, activities initially included as Discretionary Activities (Unrestricted) in respect of heritage buildings, objects and areas have been made Discretionary Activities (Restricted). This was not done with any intention of ‘watering down’ the provisions but explicitly to ensure that the future assessment of development applications under the rules would focus specifically on heritage issues. The Committee was satisfied that the ability to decline Discretionary (Restricted) applications provided the necessary ‘teeth’ to ensure that the rules would work to achieve the objectives and policies of the Plan.

Appropriate explanations to the policies have also been included to dispel any argument that the Discretionary (Restricted) classification creates a ‘lesser consent hurdle’ for applicants. In support of this, a presumption for the non-notification of applications has not been applied to those activities transferred from the Discretionary (Unrestricted) class. The presumption for notification would continue, subject to the usual tests prescribed in the Act.

Thirdly, changes to the sign provisions have been made to clarify that the sign controls under Plan Change 48 (as recommended to be amended) would apply to all heritage areas in the Central Area. This was to recognize the greater commercial nature of activities within these heritage areas.

The Hearing Committee therefore recommends that Council endorse District Plan Change 43 with the changes and amendments detailed in the decision report.

Once approved by Council the decision will be publicly notified and served on the submitters. Submitters then have the option of appealing the matter to the Environment Court within 30 working days. If no appeals are made, DPC 43 will become operative.

***Report of: Alick Shaw, Chair of the District Plan Hearing Committee - Plan Change 43
– Heritage Provisions***

Supporting Information

1) Strategic Fit / Strategic Outcome

The Proposed Plan Change supports the Urban Development Strategy by promoting a more liveable and sustainable city with a stronger sense of place.

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

Relates to the updating of the District Plan. Project C533 and related budget.

3) Treaty of Waitangi considerations

There are no specific Treaty of Waitangi implications

4) Decision-Making

The Proposed District Plan Change is in accordance with the requirements of section 6(f) of the Resource Management Act 1991.

5) Consultation

a) General Consultation

Consultation on the proposed amendments has followed the notification, submissions and further submissions process set out by the Resource Management Act. All submitters and further submitters were invited to speak to a Hearing Committee and elaborate on the issues raised in their submissions.

b) Consultation with Maori

Statutory consultation with iwi has been completed.

6) Legal Implications

Advice on the Plan Change was received from the Council's legal advisors.

7) Consistency with existing policy

The Proposed Plan Change is consistent with an agreed direction included within the District Plan and the Urban Development Strategy.