

## BACKGROUND REPORT

### Introduction

- [1.] Proposed District Plan Change 4 – Demolition and Relocation of Heritage Buildings and Structures came about in response to concern expressed by some members of the public of the adequacy and appropriateness of the provisions in the District Plan. Those provisions only related to the alteration, repair or modification of external facades of listed heritage buildings. There were no rules governing the demolition or relocation of heritage buildings and structures.
- [2.] As a result of this concern initial non-statutory consultation was undertaken with the public and all known individuals and organizations with an interest in heritage. In response to this initial consultation, 101 submissions were received. It was the strong desire of those responding to the initial public consultation to see provision made in the District Plan of a rule addressing the demolition and relocation of listed heritage buildings. The findings from these submissions were reported to the Strategy and Policy Committee meeting of 18<sup>th</sup> February 2004. As a result, Proposed District Plan Change 4 was publicly notified on 23 March 2004 and submissions closed 30 April 2004.

### Statutory Provisions

- [3.] A review of the provisions in the District Plan also arose from the Resource Management Amendment Act 2003 (No.2) elevating the protection of “historic heritage” as a matter of national importance [Section 6(f)].

*“S6 Matters of National Importance*

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

*(a)...*

*...*

*(f) The protection of historic heritage from inappropriate subdivision, use and development.”*

- [4.] It might be considered by some that as the Resource Management Amendment Act No2 has elevated heritage to a matter of national importance that under no circumstances can heritage buildings be demolished and that Council must have rules in its District Plan to

prevent the demolition of heritage buildings and structures. It is considered that this view is not correct. While a Council is under an obligation within the meaning of section 6(f) to protect heritage buildings and structures in the City, section 6 is still subject to section 5 and it is still necessary for a Council under section 32 to evaluate the costs, benefits and alternatives, to show that the rule relating to demolition is the most appropriate in achieving the purpose of the Act and that it is the most effective and efficient.

- [5.] Section 5 is fundamental to any assessment. The approach in section 5 is to weigh the matters in section 5(2) in order to reach a broad judgement as to whether a policy or rule would promote the sustainable management of natural and physical resources. The values in section 5 have been variously referred to as “indicators”, “guidelines”, “directions” or “touchstones” for promoting the goal of sustainable management. It is considered that the “enabling” and “management” functions of section 5(2) are of equal importance. The circumstances of each case determine the level of management that is required to promote sustainable management of natural and physical resources.
- [6.] Section 7 matters are also relevant to the matters at hand:
- (a) The efficient use and development of natural and physical resources [section 7(b)];
  - (b) The maintenance and enhancement of amenity values [section 7(c)]; and
  - (c) Maintenance and enhancement of the quality of the environment [section 7(f)].
- [7.] It should be pointed out that even with the proposed change to the District Plan to make the demolition and relocation of listed heritage buildings a Discretionary Activity, private property owners of heritage buildings can still apply to Council for consent to demolish buildings and if refused consent, appeal to the Environment Court. Hence there is no guarantee that heritage buildings will necessarily be retained and protected.
- [8.] Sections 75 and 76 are also important. Section 75 requires the District Plan to state (among other things):
- (a) the significant resource management issues of the district; and
  - (b) the objectives sought to be achieved by the plan; and
  - (c) the policies in regard to the issues and objectives, and an explanation of those policies; and
  - (d) the methods being or to be used to implement the policies, including any rules; and

- (e) the principal reasons for adopting the objectives, policies, and methods of implementation set out in the plan.

[9.] Section 76 enables the Council to include rules in the District Plan, for the purpose of carrying out its functions under the Act, and to achieve the objectives and policies of the Plan. In making a rule the Council:  
*"...shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect;...."*

The following passage from the Environment Court decision *Wakatipu Environmental Society v Queenstown Lakes District Council* (2000, NZRMA 59) is applicable to a District Plan in general:

*"A district plan must provide for the management of the use, development and protection of land and associated natural and physical resources. It must identify and then state (inter alia) the significant resource management issues, objectives, policies and proposed implementation methods for the district. In providing for those matters the territorial authority (and on any reference to the Environment Court) shall prepare its district plan in accordance with:*

- its functions under section 31;*
- the provisions of Part II;*
- section 32;*
- any regulations;*

*and must have regard to various statutory instruments."*

[10.] The following passage from the Planning Tribunal's decision *Nugent v Auckland City Council* (1996, NZRMA 481) summarises the requirements derived from section 32(1):

*"...a rule in a proposed district plan has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are defined); it has to assist the territorial authority to carry out its functions of control of actual or potential effects of the use, development or protection of land in order to achieve the purpose of the Act; it has to be the most appropriate means of exercising that function; and it has to have a purpose of achieving the objectives and policies of the plan."*

### The Plan Change

[11.] This proposed District Plan Change introduces to Chapter 14F – Heritage Buildings and Structures, provisions and a rule that the demolition or relocation of listed heritage buildings and structures be a Discretionary Activity.

1. Amend 14F Introduction by adding to the third sentence of (c) as follows:

For those buildings and structures listed in Appendix Heritage 1 and 2, rules have been developed **relating to demolition and relocation**, to manage work to the exterior facades and to provide the opportunity for a greater range of activities to be considered to assist in the retention of buildings.

2. Amend 14F 1.1. Objective as follows:

To ensure that the heritage values of identified heritage buildings and structures are not **unnecessarily lost through demolition or relocation, or** compromised by any additional work.

3. Add an additional Policy to 14F 1.1

**To ensure that where the demolition or relocation of listed heritage buildings and structures is proposed, a thorough assessment and determination is made of the need for that demolition or relocation and the alternatives available are investigated.**

4. Add a new activity to 14F 2.3 Discretionary Activities as follows:

Demolition or relocation of part or all of a building or structure listed in Appendix Heritage 1 or 2.

#### Scope of Plan Change

- [12.] The scope of the proposed plan change is limited to the objective, policy and rule associated to the demolition or relocation of heritage buildings or structures listed in the District Plan. The proposed plan change does not have scope to include new heritage buildings and structures. This would require a separate plan change. Similarly, the proposed plan change cannot deviate from the provisions of the RMA for example, on notification procedures.
- [13.] As there have previously been no rules relating to the demolition or relocation of listed heritage buildings and structures, some may have been relocated or demolished. As a result, it is considered important that an inventory of heritage buildings and structures be completed for the City. The outcome of this inventory would result in a separate plan change to update the District Plan heritage lists. The Heritage Advisory Committee is currently undertaking a heritage inventory of the City and the results of this could form part of a future plan change.

#### Existing funding available

- [14.] Currently \$20,000 is available for strengthening of earthquake risk buildings, promoting and increasing public awareness of heritage issues and providing support for heritage groups. There are also other avenues that could be used such as rates relief to property owners of heritage buildings and structures.

#### Notification of Discretionary Activities

- [15.] The proposed plan change makes the demolition and relocation of listed heritage buildings and structures a discretionary activity. As a discretionary activity the demolition or relocation of a listed heritage building or structure will be publicly notified unless the Council considers that the adverse effects on the environment will be minor. There is an assumption in the RMA that all applications will be notified unless the application is for a controlled activity or the Council is satisfied that the adverse effects of the activity on the environment are minor (section 93). If adverse effects on the environment are minor the Council has the option of not publicly notifying the application and processing it on a non-notified basis but must serve notice on all persons who may be adversely affected by the activity (i.e. the demolition or relocation of the heritage building). In practice it is unlikely that such an approach will be adopted for demolition of heritage buildings unless the demolition related to only a small and insignificant part of the building or structure. For discretionary activities, all matters can be taken into account, objectives and policies need to be evaluated and assessed and the consent can be granted or declined.

- [16.] Consequently, discretionary status was considered to be the most appropriate activity status for the demolition and relocation of heritage buildings and structures. The other options were controlled, restricted discretionary, non-complying or prohibited and are outlined below.

#### Other Types of Activity

- [17.] *Controlled*  
For controlled activities Council must grant consent and there is generally no public notification. However, Council can impose conditions on the consent granted based on appropriate standards and terms specified in the District Plan.
- [18.] *Restricted Discretionary Activity*  
This option is similar to that of a Controlled Activity as no consent from any party is required and generally the application is not publicly notified, unless there are special circumstances or if the applicant requests that it be notified. However, Council can refuse to grant

consent for the demolition or relocation of any heritage building or structure. The District Plan must specify appropriate standards and terms as these are the only matters that Council can take into account and impose conditions.

[19.] *Non-complying Activity*

This option is similar to a discretionary activity though the activity is also subject to section 104D of the RMA.

[20.] *Prohibited Activity*

Under this option Council can never grant consent for the demolition of any heritage building or structure. It should be pointed out there are no Prohibited Activities listed in the District Plan.

### Submissions

- [21.] The period of consultation for Proposed Plan Change 4 attracted 26 submissions followed by 6 further submissions. The main themes of the submissions concerned notification (nine submitters seek for all applications to demolish or relocate a heritage building or structure to be publicly notified) and the need for a current heritage inventory (6 submitters). Two submissions opposed the plan change. These were from Church groups in Lower Hutt, seeking demolition to be a controlled activity or exempting churches and other places of worship from the proposed provisions.

### Conclusion

- [22.] This Background Report should be read in conjunction with the officers report responding to submissions received. The Background Report provides information on how Proposed Plan Change 4 was initiated. It provides an outline of the statutory obligations of Council under the RMA and the limitations in scope of this Plan Change. The report also identifies and explains a number of recurring issues in the submissions such as notification and the need of a current heritage inventory.