

# **Proposed District Plan Change 23**

**AMENDMENTS TO VEGETATION REMOVAL PROVISIONS  
AND REMNANT NIKAU PALM PROTECTION PROVISIONS**

**Publicly Notified:  
Submissions Close:**

**27 September 2011  
28 October 2011 at 5.00PM**

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## Part 1: Introduction

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### 1. What is Proposed Plan Change 23?

The purpose of Proposed Plan Change 23 is to amend the provisions relating to vegetation removal and remnant nikau palm protection in the City of Lower Hutt District Plan (the District Plan).

### 2. Reasons for Proposed Plan Change

The recent changes to the Resource Management Act 1991 (the Act) by the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (RMAA 2009) have brought forward the need for amendments to the vegetation removal provisions found in Residential Chapters 4A (General), 4B (Special), 4D (Hill) and 4E (Landscape Protection) and the remnant nikau palm protection provisions in General Rules Chapter 14G Trees of the District Plan. This is because the RMAA 2009 introduced provisions which only allow councils to protect trees and groups of trees in their district plans if they are specifically identified. Currently the City of Lower Hutt District Plan has provisions relating to vegetation removal in residential areas and the protection of remnant nikau palms; however these are not specifically identified as required by the Act.

This plan change proposes to ensure that these provisions are in line with the Act, continuing the management of vegetation removal and the protection of remnant nikau palms.

### 3. Structure of this document

This document contains five parts:

<b>Part 1</b>	is this introduction
<b>Part 2</b>	contains a copy of the public notice of Proposed Plan Change 23 which was advertised in the Hutt News on Tuesday, 27 September 2011
<b>Part 3</b>	shows the amendments proposed to the District Plan
<b>Part 4</b>	shows how the proposed changes will look within the District Plan if Proposed Plan Change 23 is made operative without any further amendments. Part 4 has been prepared for illustrative purposes only
<b>Part 5</b>	is a copy of the <i>Section 32 Evaluation</i> prepared for Proposed Plan Change 23, as required by section 74 of the Resource Management Act 1991
<b>Part 6</b>	contains a copy of a submission form (Form 5)

This document is publicly available from Hutt City Council as detailed in Part 2 of this document.

#### 4. The Process of Proposed Plan Change 23

The process for preparing Proposed Plan Change 23 to date can be summarised as:

<b>23 June 2010</b>	Council approval to prepare Proposed Plan Change (resolution of Council)
<b>14 July 2011</b>	Statutory consultation In accordance with Clause 1 of Schedule 1 of the Act
<b>6 September 2011</b>	Proposed Plan Change adopted by Council for public notification
<b>27 September 2011</b>	Proposed Plan Change publicly notified

Upon notification, all interested persons and parties have an opportunity to have input into the plan change process by making a submission. The process for public participation in the consideration of this proposal under the Act is as follows:

- After the closing date for submissions, Council must prepare a summary of the submissions and this summary must be publicly notified;
- There must be an opportunity to make a further submission in support of, or in opposition to, the submissions already made;
- If a person making a submission asks to be heard in support of his or her submission, a hearing must be held;
- Council must give its decision on the proposal (including its reasons for accepting or rejecting submissions); and
- Any person who has made a submission has the right to appeal the decisions on the proposal to the Environment Court.

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**Part 2: Public Notice**

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## PUBLIC NOTICE

### Public Notification of Proposed District Plan Change 23 to the City of Lower Hutt District Plan

*Clause 5 of the First Schedule – Part 1 of the Resource Management Act 1991*

Hutt City Council has prepared:

#### **Proposed District Plan Change 23 – Amendments to vegetation removal provisions and remnant nikau palm protection provisions**

Proposed Plan Change 23 amends the vegetation removal and remnant nikau palm protection provisions in the City of Lower Hutt District Plan (the District Plan). The amendments include adding a new definition for the term 'vegetation' and geographically defining the areas where remnant nikau palms are located by adding Appendix Trees 2.

#### **Documentation for Proposed Plan Change 23 can be inspected at:**

- All Hutt City Council Libraries; and
- Customer Services Counter, Council Administration Building, 30 Laings Road, Lower Hutt.

Alternatively, copies of the documentation are available on the Council website:

- <http://www.huttcity.govt.nz/Your-Council/Plans-and-publications/District-Plan/District-Plan-changes/District-Plan-change-23>

Copies can also be requested by contacting Hutt City Council:

- Phone: (04) 570 6666 or
- Email: [district.plan@huttcity.govt.nz](mailto:district.plan@huttcity.govt.nz)

#### **Submissions close on FRIDAY 28 October 2011 at 5.00pm**

Any person may make a submission on Proposed Plan Change 23. You may do so by sending a written submission to Council:

- Post: Environmental Policy Division, Hutt City Council, Private Bag 31912, Lower Hutt 5040;
- Deliver: Council Administration Building, 30 Laings Road, Lower Hutt;
- Fax: (04) 570 6799;
- Email: [district.plan@huttcity.govt.nz](mailto:district.plan@huttcity.govt.nz)

The submission must be written in accordance with RMA Form 5 and must state whether or not you wish to be heard in respect of your submission. Copies of Form 5 are available from all of the above locations and the Council website.

The process for public participation in the consideration of this proposal under the Act is as follows:

- after the closing date for submissions, Hutt City Council must prepare a summary of the submissions and this summary must be publicly notified; and
- there must be an opportunity to make a further submission in support of, or in opposition to, the submissions already made; and
- if a person making a submission asks to be heard in support of his or her submission, a hearing must be held; and
- Hutt City Council must give its decision on the proposal (including its reasons for accepting or rejecting submissions); and
- any person who has made a submission has the right to appeal the decisions on the proposal to the Environment Court.

**Tony Stallinger**  
**Chief Executive**

**27 September 2011**

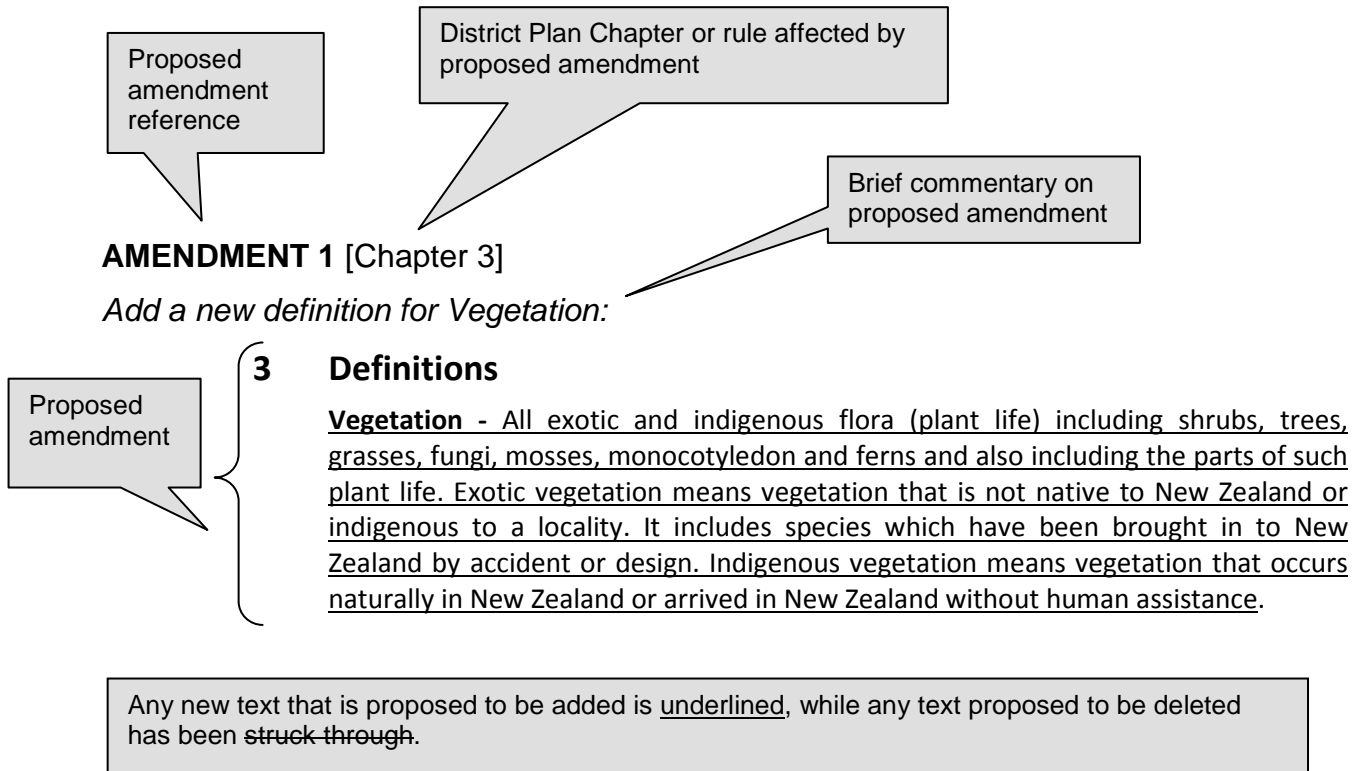
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## Part 3: Proposed Plan Change 23

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The following text identifies the amendments proposed.

A total of 10 amendments to the provisions of the District Plan are proposed. Each of these amendments is listed in the following format:



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## Amendments to Chapter 3

### Definitions

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#### **AMENDMENT 1** [Chapter 3]

*Add a new definition for Vegetation:*

**Vegetation:** All exotic and indigenous flora (plant life) including shrubs, trees, grasses, fungi, mosses, monocotyledon and ferns and also including the parts of such plant life. Exotic vegetation means vegetation that is not native to New Zealand or indigenous to a locality. It includes species which have been brought in to New Zealand by accident or design. Indigenous vegetation means vegetation that occurs naturally in New Zealand or arrived in New Zealand without human assistance.

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## Amendments to Chapter 14G

### Trees

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#### AMENDMENT 2 [14G]

*Amend the Introduction as follows:*

### Introduction

Trees in the City play an important role in providing visual amenity, contributing to health and wellbeing, softening the built environment and acting as buffers to noise and weather. Trees also provide a link to the past, and play a role in stabilising soil and reducing the possibility of erosion. The Plan recognises the important functions of trees and their contribution to the amenity values of the City.

Notable trees to be protected in the City are listed in Appendix Trees 1 of the Plan. A notable tree is recognised as possessing some significance or special value in the City. People are encouraged to offer their significant trees for notable tree protection, however, Council will only protect those trees that meet specific criteria. Criteria for evaluating notable trees has been developed by the Royal New Zealand Institute of Horticulture. These criteria will be used as a basis for evaluating trees in the City. Qualities such as the size, species, age, condition and form or historical significance of the tree are important considerations when determining whether a tree is notable.

Maintenance pruning of notable trees shall be undertaken by Council or a qualified arboriculturist approved by Council. This is to ensure that notable trees are maintained in the condition that first warranted their protection. Where Council considers a notable tree to be a danger to the safety of people or property, Council can uplift the tree protection and give the land owner the opportunity to remove the tree. Except for tree pruning activities, any activity or site development that adversely affects a notable tree shall require a resource consent.

The notable tree list will be updated either through the addition of further notable trees or by the removal of trees. Trees will only be removed from the list when, in the opinion of Council, they have begun to decline and no longer have sufficient value to warrant their protection. An amendment to the notable tree list will require a District Plan change.

In addition to notable trees, all remnant nikau palms ~~in the~~ located on the valley floor and in the Eastern Bays of the City will be protected. Any activity or site development that adversely affects a remnant nikau palm shall require a resource consent.

A heritage protection authority can require Council to place a heritage order on trees that they consider are particularly outstanding, and have national or regional significance. The New Zealand Historic Places Trust has identified a number of karaka trees in the City to be of heritage status. These karaka trees are recognised in the archaeological sites section of the Plan. Beyond the functions of the Plan, trees can be protected through the use of covenants. The onus of such an approach is on the property owner and is outside the jurisdiction of this Plan.



### **AMENDMENT 3 [14G 1.1]**

*Correct a spelling error the Explanations and Reasons for Notable Tree Protection as follows:*

#### **Explanation and Reasons**

Notable trees in the City have been identified and protected in the Plan. They are recognised as being of significance to the community because of their historical, cultural, botanical, recreational or visual amenity values. The determination of notable trees is based upon an evaluation system developed by the Royal New Zealand Institute of Horticulture (Smuts-Kennedy, O., (ed.) (1988) A Tree Evaluation Method for New Zealand, Royal New Zealand Institute of Horticulture, Wellington). Factors such as the health, size, age and occurrence of the species in the locality, region or nation, are considered when evaluating the importance of a tree. Regardless of a tree's recognised value, no notable tree will be protected by the Plan without the consent of the land owner.

When a tree has been identified as notable, it's management and care becomes the responsibility of Council. Pruning work required to retain the health and stability of the tree will be assessed annually, and carried out by Council or a qualified arboriculturist approved by Council. If a tree no longer meets the specified criteria, notable tree protection will be removed. If a tree becomes a danger to the safety of people or property, Council can remove the tree protection, and give the land owner the opportunity to remove the tree. To ensure the protection of notable trees, a resource consent will be required for any activity or site development that may adversely affect any notable tree.

### **AMENDMENT 4 [14G 1.2]**

*Amend the Objective for Remnant Nikau Palm Protection as follows:*

#### **14G 1.2 Remnant Nikau Palm Protection**

##### **Objective**

To provide for the protection of all remnant nikau palms located on the valley floor and in the Eastern Bays of the City as identified in Appendix Trees 2.

### **AMENDMENT 5 [14G 1.2]**

*Amend the Policies (a) and (b) for Remnant Nikau Palm Protection as follows:*

##### **Policies**

- (a)** That any activity or site development shall not have an adverse effect on the health, stability, live expectancy, visual appearance or amenity values (including the canopy and root zone) of a remnant nikau palm located within the areas identified in Appendix Trees 2.
- (b)** That where Council considers a remnant nikau palm located within the areas identified in Appendix Trees 2 to be a danger to the safety of people or property, Council can remove the tree protection, and give the land owner the opportunity to remove the tree.

## **AMENDMENT 6 [14G 1.2]**

*Amend the Explanation and Reason for Remnant Nikau Palm Protection as follows:*

### **Explanation and Reasons**

As scarce remnants of the indigenous valley floor vegetation, the few remaining nikau palms have been recognised as significant tree species in the City- specifically on the valley floor and in the Eastern Bays. Such tree species are protected from activities or site development that may adversely affect their health, stability, life expectancy, visual appearance or amenity values. Where a remnant nikau palm is found to be endangering people or property, Council can remove the protection, and give land owners the opportunity to remove the tree.

## **AMENDMENT 7 [14G 2.1(b)]**

*Amend the Permitted Activity Rule (b) as follows:*

### **14G 2.1 Permitted Activities**

#### **(a) Maintenance Pruning of Notable Trees:**

The need to undertake maintenance pruning in all activity areas will be determined and undertaken by Council officers, or suitable qualified experts approved by Council.

#### **(b) Removal of any Notable Tree or Remnant Nikau Palm:**

In all activity areas, any notable tree listed in Appendix Trees 1 or any remnant nikau palm falling within the areas identified in Appendix Trees 2, where Council has determined that a tree is a threat to the safety of people or property, the land owner will be permitted to remove the tree. This will first require the removal of the protection of the tree by Council.

## **AMENDMENT 8 [14G 2.2(a)]**

*Amend the Discretionary Activity Rule (a) as follows:*

### **14G 2.2 Discretionary Activities**

- (a)** In all activity areas any activity or site development that adversely affects the health, stability, life expectancy, visual appearance or amenity values (including the canopy and root zone) of any notable tree listed in Appendix Trees 1, or any remnant nikau palm falling within the areas identified in Appendix Trees 2.

## **AMENDMENT 9 [14G 3]**

*Amend the Anticipated Environmental Results as follows:*

### **14G 3 Anticipated Environmental Results**

~~(a) Protection of notable trees and all remnant nikau palms in the City.~~

~~(a)~~ Protection of notable trees in the City.

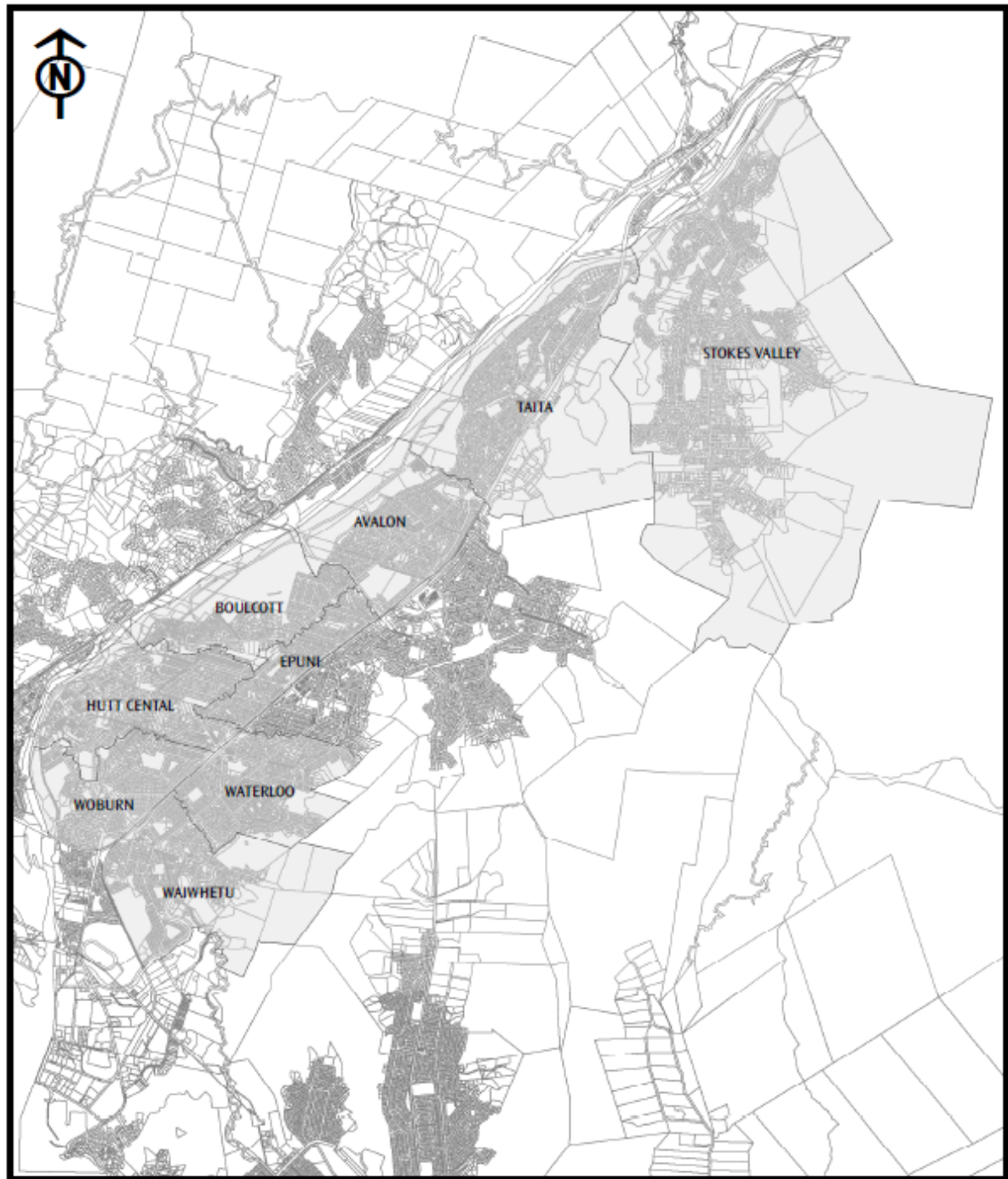
~~(b)~~ Protection of all remnant nikau palms identified on the valley floor and in the Eastern Bays.


~~(b)~~ (c) Maintenance of the amenity values that trees contribute to the City.

**AMENDMENT 10** [14G Appendix Trees 2]

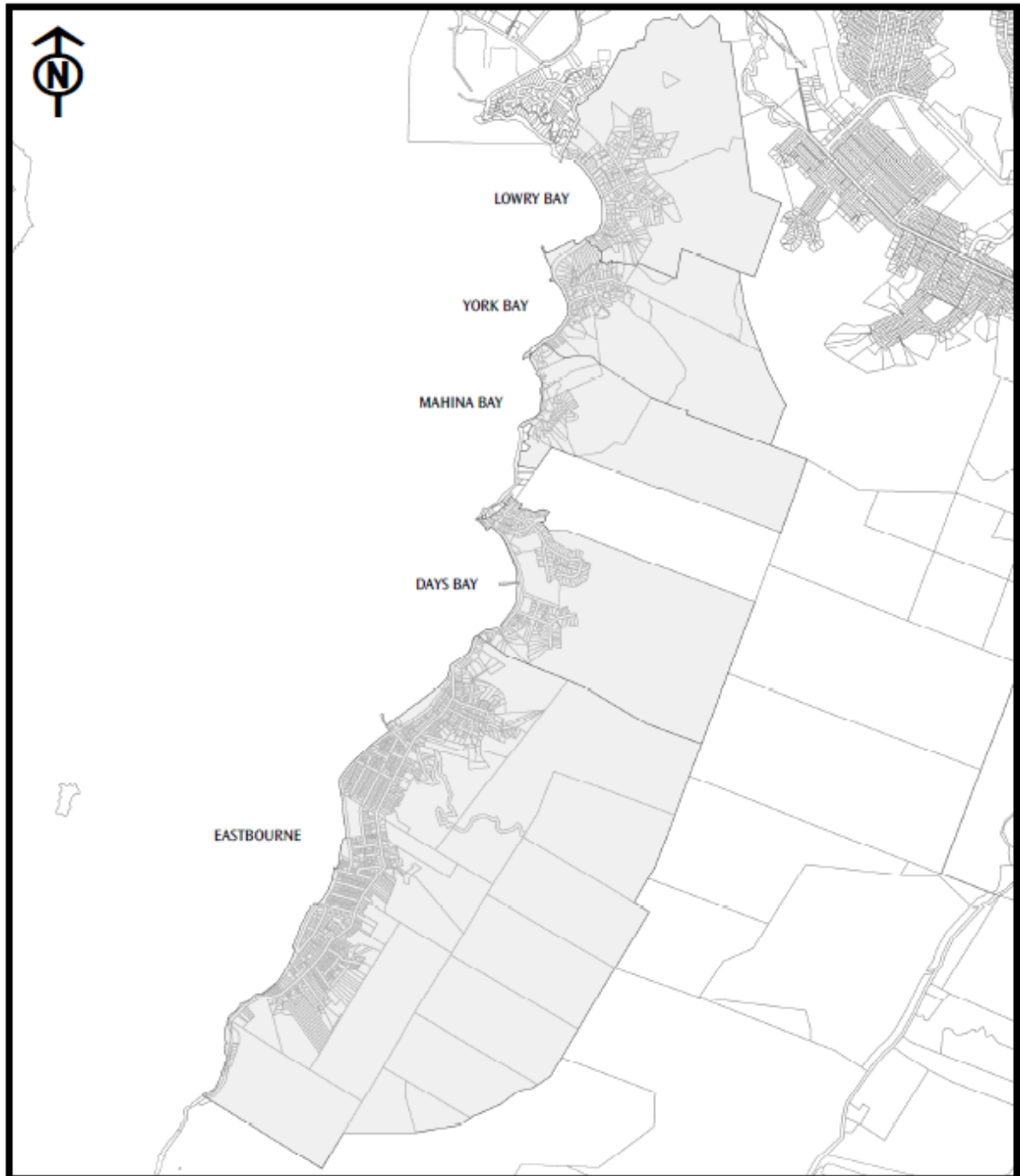
Add new Appendix Trees 2:

**Appendix Trees 2 -**  
**Remnant nikau palm protection areas**




Legend	
	Suburbs that make up the valley floor where remnant nikau palms are protected

## Appendix Trees 2 - Remnant nikau palm protection areas



### **Legend**

 Suburbs that make up the valley floor where remnant nikau palms are protected

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## **Part 4: Proposed Plan Changes within the District Plan**

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The following section indicates how the District Plan will look if the amendments proposed by Proposed Plan Change 23 (detailed in Part 3 of this document) become operative without further change.

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## Proposed Plan Change to Chapter 3

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**Urupa:** burial ground.

**\*Amendment 1**

**Vegetation:** All exotic and indigenous flora (plant life) including shrubs, trees, grasses, fungi, mosses, monocotyledon and ferns and also including the parts of such plant life. Exotic vegetation means vegetation that is not native to New Zealand or indigenous to a locality. It includes species which have been brought in to New Zealand by accident or design. Indigenous vegetation means vegetation that occurs naturally in New Zealand or arrived in New Zealand without human assistance.

**Veterinary Clinic:** any premises used for the medical care, surgery and associated holding of animals; but excludes animal pounds or animal boarding facilities.

**Visitor Accommodation:** any building or buildings offering temporary accommodation and includes (but is not limited to) motels, tourist houses, backpackers accommodation, hostels and youth hostels. It does not include motor camps or camping grounds, and board and lodging facilities for up to and including five people.

**Waahi Tapu:** a place sacred to Maori in the traditional, spiritual, religious, ritual or mythological sense.

**Waahi Tapu Area:** an area of land that contains one or more waahi tapu.

**Warehouse:** any building or part of a building or site used for the storage, distribution and trade sale of goods (but excluding bulk storage of fuel, oils and gases in any form) and ancillary workshops associated with the principal activity.

**Yard:** any part of a net site area which is unoccupied and unobstructed by buildings except as otherwise provided by this Plan. Yards shall be measured from the boundaries of the net site area.

**Front Yard:** an area of land between the road line and a line parallel to and extending the full width of the site; for the purposes of a corner site, there shall be two front yards;

**Rear Yard:** an area of land between the rear boundary of the site and a line parallel to and extending across the full width of the site;

**Side Yard:** an area of land between a side boundary of the site and a line parallel to and extending:

- (a) from the front yard to the rear yard; or
- (b) if there is no front yard, from the front boundary of the site to the rear yard; or if there is no rear yard, from the front yard or boundary, as the case may be, to the rear boundary of the site; or
- (c) if there are two or more front yards, from yard to yard.

For the purposes of a corner site, there shall be one side yard.

# 14G Trees

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## Introduction

Trees in the City play an important role in providing visual amenity, contributing to health and wellbeing, softening the built environment and acting as buffers to noise and weather. Trees also provide a link to the past, and play a role in stabilising soil and reducing the possibility of erosion. The Plan recognises the important functions of trees and their contribution to the amenity values of the City.

Notable trees to be protected in the City are listed in Appendix Trees 1 of the Plan. A notable tree is recognised as possessing some significance or special value in the City. People are encouraged to offer their significant trees for notable tree protection, however, Council will only protect those trees that meet specific criteria. Criteria for evaluating notable trees has been developed by the Royal New Zealand Institute of Horticulture. These criteria will be used as a basis for evaluating trees in the City. Qualities such as the size, species, age, condition and form or historical significance of the tree are important considerations when determining whether a tree is notable.

Maintenance pruning of notable trees shall be undertaken by Council or a qualified arboriculturist approved by Council. This is to ensure that notable trees are maintained in the condition that first warranted their protection. Where Council considers a notable tree to be a danger to the safety of people or property, Council can uplift the tree protection and give the land owner the opportunity to remove the tree. Except for tree pruning activities, any activity or site development that adversely affects a notable tree shall require a resource consent.

The notable tree list will be updated either through the addition of further notable trees or by the removal of trees. Trees will only be removed from the list when, in the opinion of Council, they have begun to decline and no longer have sufficient value to warrant their protection. An amendment to the notable tree list will require a District Plan change.

**\*Amendment 2** In addition to notable trees, all remnant nikau palms ~~in the~~ located on the valley floor and in the Eastern Bays of the City will be protected. Any activity or site development that adversely affects a remnant nikau palm shall require a resource consent.

A heritage protection authority can require Council to place a heritage order on trees that they consider are particularly outstanding, and have national or regional significance. The New Zealand Historic Places Trust has identified a number of karaka trees in the City to be of heritage status. These karaka trees are recognised in the archaeological sites section of the Plan. Beyond the functions of the Plan, trees can be

protected through the use of covenants. The onus of such an approach is on the property owner and is outside the jurisdiction of this Plan.

## **14G 1 Issues, Objectives and Policies**

### **14G 1.1 Notable Tree Protection**

#### **Issue**

**Specific trees in the City have been recognised as having significant value either locally, regionally or nationally. This value is based upon a combination of factors such as cultural, historical, botanical, recreational or visual amenity values. There is a need to protect such notable trees from activities or site development that may harm their health, stability, life expectancy, visual appearance or amenity values.**

**Notable trees are listed in Appendix Trees 1.**

#### **Objective**

To identify and provide for the protection of notable trees.

#### **Policies**

- (a) That the determination of notable trees is based upon the Royal New Zealand Institute of Horticulture evaluation system.
- (b) That notable trees in the City be identified in the Plan and protected appropriately.
- (c) That maintenance pruning of notable trees shall be undertaken by Council or a qualified arboriculturist approved by Council, to ensure the long term health and stability of such trees are maintained.
- (d) That any activity or site development shall not have an adverse effect on the health, stability, life expectancy, visual appearance or amenity values (including the canopy and root zone) of a notable tree.
- (e) That where Council considers a notable tree to be a danger to the safety of people or property, Council can uplift the tree protection, and give the land owner the opportunity to remove the tree.

#### **Explanation and Reasons**

Notable trees in the City have been identified and protected in the Plan. They are recognised as being of significance to the community because of their historical, cultural, botanical, recreational or visual amenity values. The determination of notable trees is based upon an evaluation system developed by the Royal New Zealand Institute of Horticulture (Smuts-Kennedy, O., (ed.) (1988) A Tree Evaluation Method for New Zealand, Royal New Zealand Institute of Horticulture, Wellington). Factors such as the health, size, age and occurrence of the species in the locality, region or nation, are considered when evaluating the importance of a tree. Regardless of a tree's recognised value, no notable tree will be protected by the Plan without the consent of the land owner.

**\*Amendment 3** When a tree has been identified as notable, it's management and care becomes the responsibility of Council. Pruning work required to retain the health and stability of the tree will be assessed annually, and carried out by Council or a qualified arboriculturist



approved by Council. If a tree no longer meets the specified criteria, notable tree protection will be removed. If a tree becomes a danger to the safety of people or property, Council can remove the tree protection, and give the land owner the opportunity to remove the tree. To ensure the protection of notable trees, a resource consent will be required for any activity or site development that may adversely affect any notable tree.

## 14G 1.2 Remnant Nikau Palm Protection

### Issue

Many trees in the City are important even if they do not meet the notable tree status criteria. Remnant nikau palms have been recognised as significant trees in the City. There is a need to protect these remnant nikau palms from activities and site development that may harm their health, stability, life expectancy, visual appearance or amenity values.

### Objective

*\*Amendment 4* To provide for the protection of all remnant nikau palms located on the valley floor and in the Eastern Bays of in the City as identified in Appendix Trees 2.

### Policies

- \*Amendment 5*
- (c) That any activity or site development shall not have an adverse effect on the health, stability, live expectance, visual appearance or amenity values (including the canopy and root zone) of a remnant nikau palm located within the areas identified in Appendix Trees 2.
  - (d) That where Council considers a remnant nikau palm located within the areas identified in Appendix Trees 2 to be a danger to the safety of people or property, Council can remove the tree protection, and give the land owner the opportunity to remove the tree.

### Explanation and Reasons

*\*Amendment 6* As scarce remnants of the indigenous valley floor vegetation, the few remaining nikau palms have been recognised as significant tree species in the City: – specifically on the valley floor and in the Eastern Bays. Such tree species are protected from activities or site development that may adversely affect their health, stability, life expectancy, visual appearance or amenity values. Where a remnant nikau palm is found to be endangering people or property, Council can remove the protection, and give land owners the opportunity to remove the tree.

## 14G 2 Rules

### 14G 2.1 Permitted Activities

(c) **Maintenance Pruning of Notable Trees:**

The need to undertake maintenance pruning in all activity areas will be determined and undertaken by Council officers, or suitable qualified experts approved by Council.

(d) **Removal of any Notable Tree or Remnant Nikau Palm:**

*\*Amendment 7*

In all activity areas, any notable tree listed in Appendix Trees 1 or any remnant nikau palm falling within the areas identified in Appendix Trees 2, where Council has determined that a tree is a threat to the safety of people or property, the land owner will be permitted to remove the tree. This will first require the removal of the protection of the tree by Council.

### 14G 2.2 Discretionary Activities

(b) In all activity areas any activity or site development that adversely affects the health, stability, life expectancy, visual appearance or amenity values (including the canopy and root zone) of any notable tree listed in Appendix Trees 1, or any remnant nikau palm falling within the areas identified in Appendix Trees 2.

*\*Amendment 8*

#### 14G 2.2.1 Assessment Matters for Discretionary Activities

(a) The matters contained in sections 104 and 105, and in part II of the Act shall apply.

## 14G 3 Anticipated Environmental Results

*\*Amendment 9*

~~(b) Protection of notable trees and all remnant nikau palms in the City.~~

(c) Protection of notable trees in the City.


(d) Protection of all remnant nikau palms identified on the valley floor and in the Eastern Bays.

~~(b)~~ (c) Maintenance of the amenity values that trees contribute to the City.

# Appendix Trees 2 - Remnant nikau palm protection areas




**Legend**

 Suburbs that make up the valley floor where remnant nikau palms are protected

# Appendix Trees 2 - Remnant nikau palm protection areas



**Legend**

 Suburbs that make up the valley floor where remnant nikau palms are protected

## **1. INTRODUCTION**

Before a Proposed District Plan Change is publicly notified the Council is required under Section 32 of the Resource Management Act 1991 (the Act) to carry out an evaluation of the proposed change and prepare a report. As prescribed in Section 32 of the Act:

*An evaluation must examine:*

- (a) the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and*
- (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*

*An evaluation must also take into account:*

- (a) the benefits and costs of policies, rules, or other methods; and*
- (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

*Benefits and costs are defined as including benefits and costs of any kind, whether monetary or non-monetary.*

*A report must be prepared summarising the evaluation and giving reasons for the evaluation. The report must be available for public inspection at the time the proposed change is publicly notified.*

This Section 32 report focuses on evaluating the options available to amend the vegetation removal and remnant nikau palm protection provisions in the City of Lower Hutt District Plan (the District Plan).

## **2. BACKGROUND**

### **2.1 Legislation Background**

The Resource Management (Simplifying and Streamlining) Amendment Act 2009 (the RMAA 2009) introduced new provisions stating that district plans must not prohibit or restrict the felling, trimming, damaging or removal of any tree or group of trees in an urban environment unless the trees are identified in a plan or located in a reserve or are subject to a conservation management plan or strategy.

The underlined text below shows the amendments to section 76(4) of the Act:

**76(4) A rule may—**

- (a) apply throughout a district or a part of a district:*
- (b) make different provision for—
  - (i) different parts of the district; or*
  - (ii) different classes of effects arising from an activity:**
- (c) apply all the time or for stated periods or seasons:*
- (d) be specific or general in its application:*
- (e) require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan.*

(4A) However, a rule must not prohibit or restrict the felling, trimming, damaging, or removal of any tree or group of trees in an urban environment unless the tree or group of trees is—  
(a) specifically identified in the plan; or  
(b) located within an area in the district that—  
(i) is a reserve (within the meaning of section 2(1) of the Reserves Act 1977); or  
(ii) is subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.

(4B) In subsection (4A), **urban environment** means an allotment no greater than 4 000 m<sup>2</sup>—  
(a) that is connected to a reticulated water supply system and a reticulated sewerage system; and  
(b) on which is a building used for industrial or commercial purposes, or a dwellinghouse.

The new provisions do not affect other legislation or mechanisms that protect trees outside the District Plan, such as covenants or bylaws, for example – the Hutt City Council Parks and Reserves Bylaw 2007.

When the RMAA 2009 came into effect on 1 October 2009, all District Plan rules relating to the trimming of trees that had not been specifically identified in urban environments became invalid. All other rules referring to the felling, damaging or removing of trees which are not specifically identified in urban environments will remain valid until amended or removed by Council. If they are not amended or removed, they will become invalid on 1 January 2012. Further discussion about the issues arising from the RMAA 2009 is in Section 4 of this report.

## **2.2 District Plan Background**

The City of Lower Hutt District Plan limits vegetation removal in Residential Chapters 4A (General), 4B (Special), 4D (Hill) and 4E (Landscape Protection) for the purpose of maintaining and enhancing amenity values, ensuring soil stability and protecting the intrinsic values of ecosystems. General Rules Chapter 14G – Trees provides an issue, objective and policies which relate to the protection of remnant nikau palms in the City for historic reasons. These provisions have not been reviewed since the District Plan became operative in 2004.

When Council publicly notified the Proposed District Plan in 1995 it received 33 submissions and further submissions to the trees chapter. Some submissions related to specific trees and others were related to the provisions for trees in general. Overall, submissions requested that over 30 more trees be protected by adding them to the notable tree list.

The submissions and further submissions were heard by Council in 1999. The Council decision noted that no new trees were to be added to the notable tree list at that stage. It was also noted that a full review of the provisions for tree protection in the District Plan would take place in the near future. This was due to submissions calling for different criteria to assess 'outstanding' trees in the City and to review the additional need to protect endemic vegetation as opposed to just indigenous. Minor changes to the policies and objectives in the chapter were made along with the removal of blanket protection for Kahikatea trees as a result of submissions. The Council decision also considered it

appropriate for officers to investigate non-statutory procedures that encourage tree protection in the City which would augment the regulatory approach.

General Rules Chapter 14G Trees has remained without review or change since then. No trees have been added or removed from Appendix Trees 1 and there have been no changes to the provisions for protection of these trees in the District Plan. As a non-statutory initiative, a brochure was produced by the Parks and Gardens Division outlining frequently asked questions about remnant nikau palms – such as how Council looks after nikau palms and in what circumstances one can be removed.

Proposed Residential Chapters 4A (General), 4B (Special), 4D (Hill) and 4E (Landscape Protection) were originally notified in 1995 with only partial provisions relating to vegetation removal. As a result of submissions from the Wellington Conservation Board, Chapters 4A, 4B, 4D and 4E were amended to include provisions which gave effect to section 6 of the Act and to add consistency to the chapters (for example, there were no vegetation removal rules in Chapter 4B).

Chapters 4A, 4B, 4D and 4E have been reviewed by Plan Change 12 (Residential Review) in 2009; however the provisions relating to vegetation removal were not altered.

### **3. CURRENT PROVISIONS AND ISSUES**

The City of Lower Hutt District Plan provides an issue, objective and policies which relate to the protection of remnant nikau palms in General Rules Chapter 14G and limits on vegetation removal in Residential Chapters 4A (General), 4B (Special), 4D (Hill) and 4E (Landscape Protection). Note, Chapter 4C (Historic Residential) does not identify vegetation as contributing to amenity values as in the other residential chapters and therefore does not have any objectives, policies or rules about vegetation removal. Similarly, vegetation removal is not identified as an issue in any other activity area or general rules chapter in the District Plan.

The purpose of General Rules Chapter 14G is to protect identified individual trees and all remnant nikau palms for their heritage and amenity values.

Significant Natural Resources, which includes significant areas of vegetation, are protected in a separate chapter – General Rules Chapter 14E.

Residential Chapters 4A, 4B, 4D and 4E are aimed at protecting residential amenity values, avoiding, remedying or mitigating adverse effects on the intrinsic values of ecosystems and in some residential activity areas such as Hill Residential (4D) and Landscape Protection Residential (4E), to manage site stability.

#### **Current issues with vegetation removal rules in Residential Chapters 4A 4B 4D and 4E:**

The main issue with Residential Chapters 4A, 4B, 4D and 4E is that the vegetation removal provisions are in conflict with the RMAA 2009 as the provisions are considered to be blanket protection, which the RMAA 2009 disallows in urban environments.

Current rules that conflict with section 76(4A) in regards to felling, damaging or removal of trees in urban environments will be revoked from 1 January 2012. This applies to the references to

vegetation removal in residential Chapters 4A (General), 4B (Special), 4D (Hill) and 4E (Landscape Protection).

#### **Current issues with remnant nikau palm rules in General Rules Chapter 14G:**

The provisions for remnant nikau palms are now in conflict with the Act, following the RMAA 2009 as they are considered to be blanket tree protection rules. This is because the protected remnant nikau palms are not 'specifically identified' in the District Plan – the main issue being that their geographic location is not defined.

Rule 14G 2.2 (a), in respect of the trimming of remnant nikau palms, became invalid on 1 October 2009 because it conflicts with section 76(4A) of the Act. This means that the trimming of remnant nikau palms in urban environments is no longer covered by the provisions in the District Plan.

Similarly, Rules 14G 2.1 (b) and 14G 2.2 (a) (where it relates to the damaging of remnant nikau palms) will no longer be valid from 1 January 2012. Felling, damaging or removal of remnant nikau palms not be covered by the provisions of the District Plan and Council therefore needs to bring the rules into line with section 76(4A) of the Act.

#### **Other issues:**

The vegetation removal rule is not listed as a permitted, controlled, restricted discretionary or discretionary activity in the Historic Residential (4C), Commercial (5A, 5B, 5C, 5D, 5E), Business (6A, 6B, 6C, 6D), Recreation and Open Space (7A, 7B, 7C, 7D), Rural (8A, 8B), Community Health (9A) and Community Iwi (10A) Activity Areas. This means it would have a non-complying activity status.

The technical issue of vegetation removal defaulting to a non-complying activity is now irrelevant due to the RMAA 2009. However, it is important to consider vegetation removal as an adverse effect on amenity values, site stability and the intrinsic values of ecosystems in any of these activity areas. It may be appropriate to review the need to manage vegetation removal in the other activity areas at a later stage as part of a further review relating to trees.

In a future review relating to trees it would also be appropriate to look at the issue of the notable tree criteria and notable tree list, which are both considered as being out of date.



#### 4. RESEARCH

##### Remnant nikau palm assessment:

The existing remnant nikau palms have been assessed and recorded by Council’s Horticultural Asset Manager. These remnant nikau palms have been identified in suburbs located on the valley floor and in the Eastern Bays of the City. These suburbs are shown on proposed Appendix Trees 2.

##### Resource consent monitoring:

A resource consent monitoring exercise was undertaken to enable officers to gain an understanding about how the current provisions regarding vegetation removal in residential activity areas and remnant nikau palm protection were being applied on the ground.

##### Vegetation removal:

Investigation of the Council’s database for resource consents associated with vegetation removal returned 34 results ranging from 2005 to 2011 indicating that there are not a large number of consents processed for vegetation removal.

23 of the 34 resource consents were also for noncompliance with breached earthworks provisions. This shows clear linkages between vegetation removal and earthworks, but it is considered important to retain both provisions which enable the management of the issues separately. Controlling earthworks only will not always have flow on effects to the management of vegetation.

##### Number and status of resource consents for vegetation removal from 2005 to 2011:

Activity Area	Status	Number
Hill Residential	Restricted Discretionary	4
	Discretionary	5
	Withdrawn	1
	Declined	1
	Not stated	1
General Residential	Restricted Discretionary	4
	Discretionary	9
Landscape Protection Residential	Controlled	1
	Restricted Discretionary	2
	Discretionary	1
General Recreation	Restricted Discretionary	1
	Discretionary	1
River Recreation	Permitted (Certificate of Compliance)	1
General Rural	Permitted (Certificate of Compliance)	1
		Total: 34

The Council generally includes resource consent conditions relating to landscaping and vegetation planting in order to mitigate the adverse effects from vegetation removal, for example:

*“Vegetation removal shall be limited to that required for the building platform”*

*“Any trees removed or damaged as a result of the proposal shall be replaced with specimen grade New Zealand native trees, minimum planted height of 2 metres, and shall be maintained to ensure their establishment.”*

Earthworks conditions relating to site stability control and run off avoidance are used as well, for example:

*“Sediment control measures must be installed and maintained on site in compliance with the Wellington Regional Council Erosion and Sediment Control Guidelines for the Wellington Region, April 2003.”*

*“All earthworks shall be undertaken to ensure the stability of the adjoining properties are not adversely affected by the proposal.”*

Guidance on best practice for managing the effects of earthworks and vegetation removal from Quality Planning ([www.qp.org.nz](http://www.qp.org.nz)) states that replanting worked over areas is a key mitigation measure to manage both the short and long term effects of earthworks. The removal of vegetation, particularly indigenous vegetation, can result in the loss of habitat and visual amenity. In addition, exposed soil can cause other effects such as erosion, increased surface water and sediment runoff and dust nuisances.

#### Remnant nikau palms:

Since the District Plan became operative in 2004, there have been two recorded resource consent applications related to remnant nikau palms. The first occurred in July 2005 and proposed to relocate two remnant nikau palms on a site. The application was to be publicly notified, however it was withdrawn and an amended consent application that did not propose to relocate the nikau palms was lodged and approved in July 2006. The second resource consent application was lodged in 2008 and was also for the relocation of selected nikau palms from various sites. This application was also to be publicly notified however was withdrawn by the applicant due to the strong position of the Council’s Horticultural Asset Manager regarding the adverse effects of moving the trees.

Further monitoring of incidents involving remnant nikau palms and their protection have shown that in most cases where a nikau palms health may be threatened by fences or infrastructure such as power lines, negotiation has occurred between Parks and Gardens staff at Council, land owners and other relevant stakeholders - such as qualified arborists and telecommunications companies, to reach a positive outcome.

#### **Environment Court declaration:**

In 2010 the Environment Court was engaged by North Shore City Council, Waitakere City Council and the Auckland Regional Council (now all superseded by Auckland Council) to provide direction on section 76(a) of the Act. The court issued its decision on 20 May 2011 (*Re Auckland Council* [2011] NZEnvC 129). A summary of the most relevant findings to Lower Hutt City’s situation is explained below:

The Environment Court stated that a ‘group of trees specifically identified’ in a district plan covers any of the following sets, where the set (usually, but not always) implements specific objectives and policies in the district plan:

1. A cluster of trees identified precisely by location (usually by street address and/or legal description);
2. All trees of one or more named species in a defined area or zone;
3. All trees in a class with defined characteristics in a defined area or zone;

4. All trees in a named ecosystem (usually natural rather than artificial) or habitat or landscape (unit) or ecotone.

The Court goes on to confirm by way of example *“We have in effect determined that a rule which controls all trimming, felling of ‘exotic trees over x metres high’ in a defined zone may be legitimate (whether it was originally justifiable under section 32 is another issue) under section 152(3) of the Simplifying Act, depending on the wording of the objectives and policies which such a rule implements”*.

Council has obtained legal advice regarding the City of Lower Hutt District Plan and the implications of the above decisions. In respect of vegetation removal:

- The District Plan’s objectives and policies for controlling vegetation removal in residential activity areas are strong; however the rules do not fit into any of the ‘sets’ the Environment Court identified. This is because although the area in which vegetation is controlled (residential), it is unclear what the District Plan means by ‘vegetation’ – it is not specific enough and is not defined in the District Plan.

In respect of remnant nikau palms:

- The District Plan’s objectives and policies concerning remnant nikau palm trees are strong, however the rules protecting remnant nikau palms do not fall within any of the ‘sets’ the Court identified as meeting the ‘specifically identified’ criteria. This is because although the type of tree is identified, the location of the remnant nikau palms to be protected is not clearly identified.

Both of these issues can be resolved by making amendments to the District Plan as further discussed in Section 6 of this report.

Notable trees are not affected by the RMAA 2009 because they are specifically identified in the notable tree list (Appendix Trees 1) and in the District Plan maps. They therefore remain protected following the deadline of January 1, 2012.

#### **4.1 Consultation**

Internal consultation has been conducted with the Parks and Gardens Division and the Environmental Consents Division at Hutt City Council. In addition, it is noted that the identification of remnant nikau palms on the valley floor and in the Eastern Bays of the city by the Horticultural Assets Manager was very valuable to the formation of this plan change.

In accordance with Clause 1 of Schedule 1 of the Resource Management Act 1991 the following statutory authorities have been consulted prior to notification of the proposed plan change:

- Ministry for the Environment
- Te Runanganui o Taranaki Whanui ki te Upoko o te Ika a Maui
- Wellington Tenth Trust
- The Palmerston North Maori Reserve Trust

- The Port Nicholson Block Settlement Trust
- Neighbouring territorial authorities
- Greater Wellington Regional Council

## 5. POLICY ANALYSIS

### 5.1 Resource Management Act 1991

Proposed Plan Change 23 is considered to be in keeping with the purpose of the Act, in that it provides for the promotion of the sustainable management of natural and physical resources.

The Act identifies matters relating to trees and vegetation throughout Part 2 – purpose and principles. The purpose of the RMA is stated in Part 2, Section 5 of the RMA as follows:

#### **5 Purpose**

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
  - (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
  - (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
  - (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

Sections 6, 7 and 8 in the Act are in place to achieve the Act’s purpose. The protection of areas of significant indigenous vegetation and the protection of historic heritage (i.e. trees with heritage value) from inappropriate subdivision, use, and development are both listed as matters of national importance in Section 6 of the Act.

Section 7 identifies the maintenance and enhancement of amenity values, the intrinsic values of ecosystems, maintenance and enhancement of the quality of the environment and any finite characteristics of natural and physical resources as being other matters to have particular regard to when achieving the purpose of the Act.

With respect to Section 8, the principles of the Treaty of Waitangi have been taken into account.

In summary, Proposed Plan Change 23 is consistent with the purpose of the Act as it seeks to protect remnant nikau palms and to manage vegetation removal in residential areas.

### 5.2 Operative Regional Policy Statement 1995

The Regional Policy Statement for the Wellington Region (RPS) sets the regional perspective for managing the environment and providing for growth and its effects.

The Regional Policy Statement identifies the significant resource management issues for the region and outlines the policies and methods required to achieve the integrated sustainable management of the region's natural and physical resources.

The most relevant chapters of the RPS to the proposed plan change are Chapter 6 – Soil and minerals, Chapter 9 – Ecosystems and Chapter 10 – Landscapes and Heritage.

Chapter 6 – 'Soil and minerals' recognises that vegetation removal is an issue which can lead to erosion and increased sedimentation.

Chapter 9 – 'Ecosystems' aims to increase the overall quality of the regions ecosystems and indigenous ecosystems. It also aims to have healthy, functioning ecosystems that are distributed throughout the region, including the rural and urban environments, have a diversity of healthy ecosystems which represent a full range of regional flora, fauna and habitats (Objective 4) and protect and appropriately manage special ecosystems.

Chapter 10 – 'Landscapes and Heritage' of the operative Regional Policy Statement is closely linked with Chapter 9 – 'Ecosystems'. Chapter 10 aims to protect nationally and regionally outstanding landscapes and natural features from inappropriate use and development.

It also promotes that the cultural heritage of the Region which is of regional significance is:

- (1) Recognised as being of importance to the Region;
- (2) Managed in an integrated manner with other resources; and
- (3) Conserved and sustained for present and future generations.

Proposed Plan Change 23 takes into account the issues, objectives and policies corresponding to the relevant chapters of the operative RPS. The Plan Change is consistent with the operative RPS because it aligns with the relevant chapters by protecting remnant nikau palms, an important historic feature in Lower Hutt and aims to manage vegetation removal in residential areas, ensuring soil erosion is minimised and protecting the intrinsic values of ecosystems.

### **5.3 Proposed Regional Policy Statement for the Wellington Region 2009**

This District Plan review takes into account the issues, objectives and policies of the proposed Regional Policy Statement 2009.

Section 2.5 – Historic Heritage aims to protect historic heritage from inappropriate modification and destruction. The policies require historic heritage to be identified in plans in order to manage adverse effects.

Relevant policies are:

- Policy 20 Identifying places, site and areas with significant historic heritage values;
- Policy 21 Protecting historic heritage values; and
- Policy 45 Managing effects on historic heritage values.

Section 2.6 – Indigenous Ecosystems recognises that the Wellington Region has a diverse range of ecosystems. These ecosystems cover a wide spectrum of 'indigenouness'; from a high level to those more dominated by exotic species e.g. pastoral farmland.

Relevant policies are:

- Policy 22 Identification of indigenous ecosystems, habitats and areas with significant indigenous biodiversity values;

- Policy 23 Protection of indigenous ecosystems, habitats and areas with significant indigenous biodiversity values; and
- Policy 44 Managing effects on indigenous ecosystems, habitats and areas with significant indigenous biodiversity values.

Section 2.11 – Soils and Minerals aims to minimise soil erosion and maintain soil ecosystem function and range of uses.

Relevant policies are:

- Policy 14 Erosion and sediment control from earthworks and vegetation removal; and
- Policy 70 Minimise soil erosion.

Proposed Plan Change 23 is consistent with the Proposed RPS because it ensures the ongoing protection of remnant nikau palms – a historic link to Lower Hutt’s past and maintains the management of vegetation removal, ensuring soil erosion is minimised and the intrinsic values of ecosystems are protected.

#### **5.4 The Wellington Regional Strategy**

The Wellington Regional Strategy (WRS) is a sustainable growth strategy that has been developed by greater Wellington’s nine local authorities, in conjunction with central government, and the region’s business, education, research and voluntary sector interests. The WRS lists three focus areas for sustainable growth, being leadership and partnerships, growth of the region’s economy and good regional form.

The Proposed Plan Change is considered to be consistent with the WRS as the WRS is implemented through the Regional Policy Statement.

#### **5.5 Consistency with Surrounding District Plans**

Section 74(2)(c) of the Act requires Council to consider the extent to which this Proposed Plan Change needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

It is considered that the proposed amendments for vegetation removal and nikau palm protection are consistent, as all surrounding district plans must comply with the Act and the RMAA 2009 – these provisions being the reason for this plan change.

#### **5.6 Other Strategies and Plans**

The Hutt City Council has a number of relevant strategies and plans that detail the priorities for the City in regards to trees and vegetation namely:

- Bush Reserves Management Plan 2002
- Environmental Sustainability Strategy 2009
- Long Term Council Community Plan (LTCCP) 2009
- Neighbourhood reserves management plan 2001
- Reserves Key Directions Strategy
- Reserves Policy 2004
- Urban Forest Plan

This Plan Change has taken these into consideration and is aligned with the above strategies and plans.

**5.7 Area Wide Objectives of the District Plan**

Amendments to the vegetation removal provisions and reviewing the notable tree provisions are both considered to be in keeping with the Area Wide Objective in Chapter 1.10 of the District Plan.

The most relevant of the Area Wide Objectives is considered to be:

Objective 1.10.2                      *To identify, maintain and enhance the character and amenity values of Amenity Values                      the different activity areas.*

The Proposed Plan Change is considered to be the most appropriate option for achieving this objective. The protection of remnant nikau palm in the identified areas on the valley floor and in the Eastern Bays, and the management of vegetation removal in residential areas will ensure that amenity values in Lower Hutt are maintained and enhanced.

**EVALUATION OF OPTIONS**

**6.1 Alternatives – Vegetation removal in Chapters 4A General Residential, 4B Special Residential, 4D Hill Residential and 4E Landscape Protection Residential**

Chapters 4A, 4B, 4D and 4E have provisions that manage vegetation removal in their relevant activity areas. The purpose of these provisions is to protect and enhance amenity values, ensure soil stability and protect the intrinsic values of ecosystems.

Three options have been explored in the preparation of this Proposed Plan Change and these are discussed below:

**Option 1:** Status Quo, i.e. no changes to Chapters 4A, 4B, 4D and 4E.

**Option 2:** Amend Chapters 4A, 4B, 4D and 4E to reflect RMAA 2009 by inserting a definition of ‘vegetation’ that expressly includes ‘exotic and indigenous vegetation’.

**Option 3:** Insert a definition of trees, with reference to particular characteristics e.g: height, width.

OPTION	EVALUATION
<p><b>Option 1:</b> Status Quo – no change to Chapters 4A, 4B, 4D and 4E</p>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>- Avoids the cost associated with a plan change process</li> <li>- Small chance that the Environment Court may uphold the term ‘vegetation’ as being a legitimate way of identifying vegetation without needing to define it specifically in the District Plan.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>- Vegetation removal rules would become invalid after 1/1/2012.</li> <li>- Does not support the policies in the residential chapters eg:</li> </ul>

NOT RECOMMENDED	<p>4A 1.1.1 (e).</p> <ul style="list-style-type: none"> <li>- High chance of ‘vegetation’ without specific definition in the District Plan being found to be inadequate by the Environment Court.</li> </ul>
<p><b>Option 2:</b> Amend Chapters 4A, 4B, 4D and 4E to reflect RMAA 2009 by inserting a definition of ‘vegetation’ that expressly includes ‘exotic and indigenous’ vegetation</p> <p><b>RECOMMENDED</b></p>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>- Appropriately updates the District Plan to be aligned with the RMAA 2009 amendments.</li> <li>- Amendments would have a higher chance of being able to stand up in the Environment Court.</li> <li>- Significantly less risk than Option 1.</li> <li>- Directly reinforces the objectives and policies for vegetation removal eg: 4A 1.1.1 (e).</li> <li>- Decisions on the Proposed District Plan indicated that vegetation was inclusive of ‘indigenous’ and ‘exotic’ vegetation.</li> <li>- Continues the same level of protection that currently exists for vegetation in residential areas.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>- Costs associated with a plan change process.</li> </ul>
<p><b>Option 3:</b> Amend Chapters 4A, 4B, 4D and 4E to reflect RMAA 2009 by inserting a definition of trees, with reference to particular characteristics e.g: height, width</p> <p><b>NOT RECOMMENDED</b></p>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>- Appropriately updates the District Plan to be aligned with the RMAA 2009 amendments.</li> <li>- Bring the current rules into line with the Environment Court’s decision.</li> <li>- Significantly less risk than Option 1.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>- Costs associated with a plan change process.</li> <li>- Defining ‘tree’ in the District Plan significantly narrows the scope of the management of vegetation removal – does not enable the same level of protection that currently exists.</li> <li>- Less consistent with the objectives and policies managing vegetation removal in residential areas.</li> </ul>

## 6.2 Alternatives – remnant nikau palm provisions in Chapter 14G Trees

Chapter 14G Trees is a General Rules Chapter which means it is relevant to Lower Hutt City as a whole; covering all notable trees and remnant nikau palms.

Four options have been explored in the preparation of this Proposed Plan Change and these are discussed below:

**Option 1:** Status Quo, i.e. no change to Chapter 14G.

**Option 2:** Amend Chapter 14G to reflect RMAA 2009 by defining a spatial area that relates to the existing objectives and policies e.g. the valley floor and Eastern Bays.



**Option 3:** Amend Chapter 14G to reflect RMAA 2009 by listing and mapping all existing remnant nikau palms in Appendix Trees 1.

**Option 4:** A Combination of Option 2 and 3.

OPTION	EVALUATION
<p><b>Option 1:</b> Status Quo – no change to Chapter 14G</p> <p>NOT RECOMMENDED</p>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>- Avoids the cost associated with a plan change process.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>- Some provisions (rules 14G 2.1 (b) and 14G 2.2 (a) and policies 14G 1.2 (a) and (b)) will become void after 1/1/2012 meaning the District Plan will be out of date.</li> <li>- No protection of remnant nikau palms.</li> </ul>
<p><b>Option 2:</b> Amend Chapter 14G to reflect RMAA 2009 by defining a spatial area that relates to the existing objectives and policies eg: the valley floor and Eastern Bays</p> <p>RECOMMENDED</p>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>- Appropriately updates the District Plan to be aligned with the RMAA 2009 amendments.</li> <li>- Ensures rules are valid for 1/1/2012.</li> <li>- Protects all current and future remnant nikau palms located on the valley floor and Eastern Bays.</li> <li>- Supports the objectives and policies in Chapter 14G 1.2.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>- Costs associated with a plan change process.</li> <li>- Would require both text and map amendments.</li> </ul>
<p><b>Option 3:</b> Amend Chapter 14G to reflect RMAA 2009 by listing and mapping all identified nikau palms in Appendix Trees 1</p> <p>NOT RECOMMENDED</p>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>- Appropriately updates the District Plan to be aligned with the RMAA 2009 amendments.</li> <li>- Ensures rules are valid for 1/1/2012.</li> <li>- Supports the objectives and policies in Chapter 14G 1.2.</li> <li>- Protects identified existing remnant nikau palms (currently growing).</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>- Costs associated with a plan change process.</li> <li>- Would require both text and map amendments – more substantial than in Option 2.</li> <li>- Possible ongoing costs to Council to maintain nikau if they have the same status as notable trees.</li> <li>- Does not protect any future remnant nikau palms which may be planted.</li> </ul>
<p><b>Option 4:</b> A Combination of Option 2 and 3 and list any other</p>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>- Ensures rules are valid for 1/1/2012.</li> <li>- Supports the objectives and policies in Chapter 14G 1.2.</li> </ul>

<p>existing nikau outside the defined area</p> <p>NOT RECOMMENDED</p>	<p>Costs:</p> <ul style="list-style-type: none"> <li>- Protect all remnant nikau palms on the valley floor, the Eastern Bays and any other specifically identified nikau outside of this area.</li> <li>- Costs associated with a plan change process.</li> <li>- Similarly to Option 3, in areas outside the valley floor and the Eastern Bays it would only protect those nikau currently growing.</li> <li>- Would require both text and map amendments – more substantial than in Option 2.</li> <li>- No remnant nikau palms identified outside the valley floor or the Eastern Bays area – more research required.</li> </ul>
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### 6.3 Effectiveness and Efficiency

It is important to the effectiveness and efficiency of the District Plan that it is kept as up to date as possible as its effectiveness is jeopardised by rules becoming invalid due to the RMAA 2009 changes.

The Proposed Plan Change does not change the intent or outcome of the provisions of the District Plan relating to remnant nikau palm protection and vegetation removal. For this reason the proposed amendments are seen as the most appropriate way of ensuring that the existing objectives are achieved. The District Plan will therefore operate in a more effective and efficient manner once the plan change becomes operative because it will continue the same level of protection and management as currently exists.

### 6.4 The Risk of Acting or Not Acting

A Section 32 evaluation must take into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

It is considered that Council has sufficient information about the subject matter of this Proposed Plan Change. Should Council decide not to take action to protect remnant nikau palm trees and vegetation, there is a significant risk that remnant nikau palms and areas of vegetation could be lost as a result. This would have adverse effects on the environment through the potential for soil instability and ecosystem loss in residential areas. There would also be adverse effects on community’s amenity values and our City’s sense of place.

Should the Proposed Plan Change go ahead as suggested, there will be greater certainty that the identified remnant nikau palms will be protected and that vegetation in residential areas will be managed for the benefit of current and future generations.

## CONCLUSION:

This assessment required by Section 32 of the Act has shown that the Proposed Plan Change, which updates the District Plan to reflect the Act’s new provisions relating to the specific identification of trees or groups of trees that Council wishes to protect, is the best way to give effect to the Act.

Defining a spatial area that relates to the existing objectives and policies to continue protecting remnant nikau palms on the valley floor and in the Eastern Bays (**Option 2**) and to continue the same level of management of vegetation removal in Residential Chapters 4A, 4B, 4D and 4E to reflect the Act by inserting a definition of vegetation that expressly includes 'exotic and indigenous' vegetation (**Option 2**), is warranted.

Proposed Plan Change 23 is considered the most appropriate means in achieving the objectives and policies relevant to remnant nikau palm protection and the management of vegetation removal and is consistent with the purpose of the Act.

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**Part 5: Copy of Submission Form**

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# Submission on publicly notified Proposed District Plan Change



Clause 6 of the First Schedule, Resource Management Act 1991

To: Chief Executive, Hutt City Council

**1. This is a submission from:**

Full name	<i>Last</i>		<i>First</i>	
Company/organisation				
Contact <i>if different</i>				
Address	<i>Number</i>	<i>Street</i>		
	<i>Suburb</i>			
	<i>City</i>		<i>Postcode</i>	
Address for Service <i>if different</i>	<i>Postal Address</i>		<i>Courier Address</i>	
Phone	<i>Day</i>		<i>Evening</i>	
Fax	<i>Mobile</i>			
Email				

**2. This is a submission on the following proposed change to the City of Lower Hutt District Plan:**

**Proposed District Plan Change No:**

**Title of Proposed District Plan Change:**

**3. The specific provisions of the proposal that my submission relates to are:**

*Please give details:*

*(Please use additional pages if you wish)*

**4. My submission is:**

*Include whether you support or oppose the specific provisions or wish to have them amended; and reasons for your views:*

*(Please use additional pages if you wish)*

**5. I seek the following decision from Hutt City Council:**

*Give precise details:*

*(Please use additional pages if you wish)*

6. I  **wish**  **do not wish** to be heard in support of my submission.  
*(please tick one)*

7. If others make a similar submission,  
 I  **will**  **will not** consider presenting a joint case with them at the hearing.  
*(please tick one)*

Signature of submitter:  *Date*  
*(or person authorised to sign on behalf of submitter)*

Submission number   
**OFFICE USE ONLY**