

**DISTRICT PLAN SUBCOMMITTEE**

**DECISION ON PROPOSED PLAN CHANGE 23 –  
AMENDMENTS TO VEGETATION REMOVAL PROVISIONS AND REMNANT  
NIKAU PALM PROTECTION PROVISIONS**

Record of the Decision of the District Plan Subcommittee on Proposed Plan Change 23 at  
their meeting at Hutt City Council, Administration Building, 30 Laings Road,  
Lower Hutt on 12<sup>th</sup> April 2012

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**PRESENT:**

Cr RW Styles (Chair)  
Cr L Bridson (Deputy Chair)  
Cr D Bassett  
Cr C Milne

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In accordance with a delegation by Council, pursuant to the provisions of section 34 of the Resource Management Act 1991, the District Plan Subcommittee had power to act in determination of Changes to the Operative District Plan for recommendation to Council.

## 1. SUBMISSIONS

The following submitters have lodged submissions on Proposed Plan Change 23:

<b>Submission Number</b>	<b>Name of Original Submitters</b>	<b>Submission Reference</b>
DPC23/1	Port Nicholson Block Settlement Trust, Wellington Tenth Trust and the Palmerston North Maori Reserve Trust	1.1
DPC23/2	Dennis Page	2.1
DPC23/3	Winstone Aggregates	3.1
DPC23/4	East Harbour Environmental Association	4.1, 4.2
DPC23/5	Robert Ashe	5.1, 5.2, 5.3, 5.4, 5.5
DPC23/6	Natasha Gilmour	6.1
DPC23/7	Gary James	7.1
DPC23/8	Kathy James	8.1

<b>Further Submission Number</b>	<b>Name of Further Submitters</b>	<b>Submission Reference</b>
DPC23/FS1	Winstone Aggregates	5.1, 5.2, 5.3, 5.4, 5.5

## 2. HEARING NOT REQUIRED

A hearing of submissions was not required as all submitters withdrew their requests to be heard on Proposed Plan Change 23. A hearing of submissions is not required pursuant to schedule 1, Part 1, clause 8C of the Resource Management Act (the Act) which states that, where submissions are made but the request to be heard is withdrawn, the local authority shall consider the submissions along with the other relevant matters but shall not be required to hold a hearing.

## 3. DELIBERATIONS OF THE SUBCOMMITTEE

### **Statutory Regime and Legal Framework**

The changes to 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 Residential), 4B (Special Residential), 4D (Hill Residential) and 4E (Landscape Protection Residential) 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 or vegetation 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. These provisions are now treated as invalid (as of January 1st 2012) and require amendments such as those put forward in Proposed Plan Change 23 to bring back their validity.

This Proposed Plan Change proposes amendments to ensure that the current rules are brought into line with the Act, continuing the management of vegetation removal and the protection of remnant nikau palms.

Proposed Plan Change 23 was notified on 27 September 2011, with submissions closing on 28 October 2011. The summary of submissions was notified on 15 November, with further submissions closing on 29 November 2011.

A total of 5 original submissions, 3 late submissions and 1 further submission were received with regard to the Proposed Plan Change.

Part II of the Act underpins the exercise of all functions, duties and powers. 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.

Section 31 outlines the functions of the Council under the Act and includes: *The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district, and the methods used to carry out any functions under subsection (1) may include the control of subdivision.*

Section 74 requires the Council to change its plan in accordance with its functions under section 31, the provisions of Part II, its duty under section 32 and any regulations.

Section 76 outlines the contents that a District Plan must contain, including objectives, policies and rules. 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.”*

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.”*

Although this report is intended as a stand-alone document, a more in-depth understanding of the Proposed Plan Change, the process undertaken, and related issues may be gained by reading the Section 32 Evaluation and associated Proposed Plan Change documents as publicly notified.

### **Procedural Matters and Analysis of Submission**

The District Plan Subcommittee gave careful consideration to the Proposed Plan Change, the relevant issues and the submissions.

The following report provides a summary of the submissions and a decision in response to each submission.

The name of the submitter and the submission reference are printed in bold in the heading. Then the relief sought by the submitter is outlined and specific comments made by the submitter are summarised. This is followed by a discussion of the issues raised and the Council’s decision.

With respect to determining the scope of a submission, reference is made to Clause 6 of the First Schedule to the Resource Management Act 1991 (referred to as the Act) which states:

**“6. Making submissions**

*Any person, including the local authority in its own area, may, in the prescribed form, make a submission to the relevant local authority on a proposed policy statement or plan that is publicly notified under clause 5.”*

A submission on a plan change is therefore limited in that it must be “on” the plan change.

In the case of Proposed Plan Change 23 the purpose was to amend the rules relating to vegetation removal in residential areas and remnant nikau palm protection in the whole city so that they align with the RMAA 2009.

Accordingly, for a submission to be deemed to be within the scope of Proposed Plan Change 23 the submission must relate to any one of the issues addressed in the plan change.

A further submission is limited to a matter in support of, or opposition to, an original submission and can only be made by:

- any person representing a relevant aspect of the public interest;
- any person that has an interest in the proposed plan change greater than the interest that the general public has; and
- the local authority itself

A further submission cannot raise new issues that haven't been addressed in one of the original submissions.

Attached to this report as Appendix 1 are the amendments to the City of Lower Hutt District Plan provisions as a result of the decisions on Proposed Plan Change 23.

### **Late submissions**

Under Section 37 of the Act, Council has the power to decide whether or not to waive a failure to comply with a set timeframe. In this case, three late submissions were received on 11 September, 10 working days after the close of the submission period which was 27 September 2011 to 28 October 2011.

Council can only decide to waive the failure after taking into account:

- the interests of any person who, in its opinion, may be directly affected by the waiver;
- the interests of the community in achieving adequate assessment of the effects of the proposed plan change; and
- its duty under Section 21 of the Act to avoid unreasonable delay.

The District Plan Subcommittee accepts the three late submissions for the following reasons:

- They would not unduly prejudice anyone. The submissions are not complex, they are consistent with many of the submissions already received and they do not raise any new issues or seek any new decisions from Council;
- The plan change process has not been held up in any way to date by these submissions.

### **Conclusion**

After evaluating all matters, it is considered that the Proposed Plan Change offers the most appropriate way of achieving the purpose and principles of the Act.

RESOLVED:

**Minute No. DP120201**

*“That the District Plan Subcommittee:*

- (i) receives the report;*

- (ii) notes that the background to Proposed Plan Change 23 is identified in the officer's report (attached as Appendix 1 to the report) and is the result of amendments to the Resource Management Act 1991 (RMA) by the Resource Management (Simplifying and Streamlining) Amendment Act 2009;
- (iii) notes that the purpose of Proposed Plan Change 23 is to bring the existing District Plan provisions, which manage vegetation removal in residential areas and which protect remnant Nikau palms, into line with the RMA;
- (iv) notes that a total of five original submissions, three late submissions and one further submission were received;
- (v) notes that the officer's report has analysed the submissions and made recommendations on the matters raised in the submissions;
- (vi) notes that the officer's report has been sent to all submitters and that in response all those submitters who requested to be heard have withdrawn their request. As such a hearing is not required pursuant to Schedule 1, Part 1, Clause 8C of the RMA;
- (vii) makes a decision on the submissions to Proposed Plan Change 23, accepting or rejecting the submissions for the reasons recommended in the officer's report, and that the Proposed Plan Change be altered as per the recommended amendments contained within the officer's report attached as Appendix 1 to the report; and
- (viii) notes that several submitters raised issues regarding the District Plan provisions for notable tree protection that are considered outside the scope of this plan change and that these matters will be addressed in the on-going review of the District Plan."

**RECOMMENDED:**

**Minute No. DP120202**

*"That the District Plan Subcommittee:*

- (i) *instructs officers to prepare the decision for Proposed Plan Change 23 for approval by the Policy Committee and Council; and*
- (ii) *notes that following Council's resolution, the decision will be issued to all submitters and a public notice advising of the appeal period will be placed in The Hutt News."*

#### 4. DECISION:

##### 4.1 Submission

##### **DPC23/1 – The Port Nicholson Block Settlement Trust, the Wellington Tenth Trust and the Palmerston North Maori Reserve Trust – 1.1**

###### 4.1.1 Request of Submitter

Support of the Proposed Plan Change but no specific request stated.

###### 4.1.2 Specific Comments

The submitter states that the new features are consistent with the changes to the tree protection provisions by the Resource Management Amendment Act 2009 and will provide sufficient protection for those remnant nikau that remain in the city.

###### 4.1.3 Discussion

The Submitter is supportive of the Proposed Plan Change as a whole.

The purpose of Proposed Plan Change 23 is to bring the District Plan provisions relating to vegetation removal and remnant nikau palm trees in line with the RMAA 2009. The RMAA 2009 removed the ability for district plan rules to protect groups of trees over wide, undefined areas – commonly known as blanket protection. This has meant that Lower Hutt City's District Plan rules relating to vegetation removal in residential activity areas and the protection of remnant nikau palms in the whole city need to be changed to comply with the RMAA 2009 requirements. It is considered that the Proposed Plan Change is appropriate in terms of achieving the purpose of the Resource Management Act 1991.

###### 4.1.4 Decision

**Accept** the submission lodged by lodged by the Port Nicholson Block Settlement Trust, the Wellington Tenth Trust and the Palmerston North Maori Reserve Trust, taking into consideration the amendment to the Proposed Plan Change as sought by another submission point.

###### 4.1.5 Reason

While an amendment to the Proposed Plan Change is made as a result of this decision (further discussed at submission 4.1), the Proposed Plan Change intent and concept as notified remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

##### 4.2 Submission

##### **DPC23/2 – Dennis Page – 2.1**

###### 4.2.1 Request of Submitter

That the Council endorses the recommendations of its officers in their concluding remarks (pp 34-35 of the Section 32 report) so that the remnant nikau palm and notable tree protection provisions remain consistent with the Act (RMAA 2009) from January 2012.

#### **4.2.2 Specific Comments**

The submitter explains that in recent times, infill housing and subdivision, especially on the valley floor, has resulted in much attractive vegetation being removed. Well managed vegetation in urban areas provides many positive benefits – one of them being the screening and softening of harsh architecture. Notable and distinct trees also help to provide a source of local identity. Lower Hutt would be one of the few sizable urban centres in New Zealand where large specimens of nikau palms can be seen growing in suburban gardens. Any provisions that protect the few remaining trees that connect us to our past must be protected.

In addition, as city section sizes become smaller, there is less scope to plant tree varieties that grow to a substantial size as property owners then object to the loss of views and the potential shading of dwellings. This pressure also arises when larger sections that have sizable trees are subdivided into smaller lots for higher density housing – the trees are often sacrificed in order for developers to maximise their profits. The nikau palm would be one of the few trees that when mature has a small footprint and a small light-shadow – it is ideally suited for the smaller sized section and is potentially a developer's ally rather than an obstacle.

The submitter does not believe it was the intent of the RMAA 2009 to create an inconsistency that would effectively over-rule the original aspirations of Hutt City to preserve its notable trees and remnant nikau palms.

#### **4.2.3 Discussion**

The submitter is supportive of the Proposed Plan Change as a whole.

Remnant nikau were chosen to be protected in the City of Lower Hutt District Plan over and above other types of natives because they are relatively uncommon in an urban area this far south and are one of the few endemic species surviving from pre-European times. They also provide one of the few natural design cues for Lower Hutt.

Adding a new appendix to Chapter 14G Trees showing the suburbs where Council wishes to protect remnant nikau palm (Option 2 in the Section 32 Evaluation) will ensure their continued protection. It is considered that this addition will best give effect to the provisions in the Act relating to blanket tree protection.

#### **4.2.4 Decision**

**Accept** the submission lodged by lodged by Dennis Page, taking into consideration the amendment to the Proposed Plan Change as sought by another submission point.

#### **4.2.5 Reason**

While an amendment to the Proposed Plan Change is made as a result of this decision (further discussed at submission 4.1), the Proposed Plan Change intent and concept as notified remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

### **4.3 Submission**

#### **DPC23/3 – Winstone Aggregates – 3.1**

#### **4.3.1 Request of Submitter**

That the Council adopt the Proposed Plan Change as notified in its entirety.

#### **4.3.2 Specific Comments**

The direction of the Proposed Plan Change as a whole is supported as currently notified; it is consistent with the Purpose and Principles of the RMA and the provisions in the Wellington Regional Policy Statement.

#### **4.3.3 Discussion**

The submitter is supportive of the Proposed Plan Change as a whole.

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.

Adding a new appendix to Chapter 14G Trees showing the suburbs where Council wishes to protect remnant nikau palm (Option 2 in the Section 32 Evaluation) will ensure their continued protection and inserting a definition of vegetation to Chapter 3 Definitions that expressly includes exotic and indigenous vegetation (Option 2 in the Section 32 Evaluation) will continue the same level of management of vegetation removal in Residential Chapters 4A, 4B, 4D. It is considered that these additions will best give effect to the provisions in the Act relating to blanket tree protection.

The relevant chapters of the operative Wellington Regional Policy Statement (RPS) to the Proposed Plan Change are Chapter 6 – Soil and minerals, Chapter 9 – Ecosystems and Chapter 10 – Landscapes and Heritage. The Proposed Plan Change takes into account the issues, objectives and policies corresponding to these relevant chapters of the operative RPS.

The Proposed Plan Change is considered to be 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.

The Proposed Plan Change is also considered to be consistent with the Proposed RPS 2009 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. Details of the relevant issues, objectives and policies are explained in the Section 32 Evaluation.

#### **4.3.4 Decision**

**Accept** the submission lodged by lodged by Winstone Aggregates, taking into consideration the amendment to the Proposed Plan Change as sought by another submission point.

#### **4.3.5 Reason**

While an amendment to the Proposed Plan Change is made as a result of this decision (further discussed at submission 4.1), the Proposed Plan Change intent and concept as notified remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

#### **4.4 Submission**

##### **DPC23/4 – East Harbour Environmental Association – 4.1**

#### **4.4.1 Request of Submitter**

Adopt 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) as put forward in the Section 32 Report.

#### **4.4.2 Specific Comments**

The submitter recognises that the proposed definition of vegetation has the potential to give rise to perverse outcomes. The submitter's reading of the definition may mean that an application involving the removal of 500m<sup>2</sup> lawn could require a resource consent.

However, the submitter states that the intent of the objective and rule are clear and they trust the definition would be applied with a good measure of common sense.

#### **4.4.3 Discussion**

The submitter is supportive of the Proposed Plan Change amendments regarding the management of vegetation removal in residential areas.

The submitter comments that there is potential for the proposed definition of vegetation to be interpreted and applied by Council as including lawn grass. To date, Council's interpretation of the vegetation removal rule has not included grass which is maintained frequently such as lawn grass and turf grass. However, Council has never had to operate under a definition of vegetation before, relying solely on guidance from the objectives and policies in the Plan to administer the rules relating to vegetation removal. It is considered that to give increased certainty and clarity to District Plan users, the definition of vegetation should be amended to exclude lawn and turf grass.

*Vegetation: All exotic and indigenous flora (plant life) including shrubs, trees, grasses (excluding lawn and turf 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.*

It is expected that Council's current interpretation of vegetation would continue to be used if this amended definition is accepted – the removal of 500m<sup>2</sup> of lawn grass or similar would not trigger the need for a resource consent under the vegetation removal rules in Chapters 4A, 4B, 4D and 4E.

It should be noted that the removal of lawn grass, turf grass or similar may trigger other rules such as the permeable surfaces rule (Chapter 4A General Residential - Rule 4A 2.1.1 (g)). This would occur if the removal of lawn grass contributed to or resulted in more than 70% of a General Residential site being covered in non-permeable material. The earthworks rule (Chapter 14I Earthworks - Rule 14I 2.1.1 (b)) may be triggered if the removal of lawn or turf grass included the earth underneath to a maximum volume of 50m<sup>3</sup> per site or the ground level was altered by more than 1.2m, measured vertically in any activity area.

Option 2 is considered as the best practicable option in the Section 32 Evaluation for the following reasons:

- Appropriately updates the District Plan to be aligned with the RMAA 2009 amendments.
- Amendments would have a higher chance of being able to stand up in the Environment Court than the status quo.
- Directly reinforces the objectives and policies for vegetation removal eg: 4A 1.1.1 (e).
- Decisions on the Proposed District Plan indicated that vegetation was inclusive of 'indigenous' and 'exotic' vegetation.
- Continues the same level of protection that currently exists for vegetation in residential areas.
- There are limited costs associated with this option; namely the cost of the plan change itself.

It is considered that the Proposed Plan Change is appropriate in terms of achieving the purpose of the Resource Management Act 1991.

#### **4.4.4 Decision**

**Accept** the submission lodged by lodged by East Harbour Environmental Association, and that the Proposed Plan Change 23 be amended as follows:

*Vegetation: All exotic and indigenous flora (plant life) including shrubs, trees, grasses (excluding lawn and turf 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.*

#### **4.4.5 Reason**

It is appropriate to amend the proposed definition of vegetation to exclude lawn and turf grass as this will provide greater clarity and certainty regarding the management of vegetation removal in residential areas.

It is appropriate for the Proposed Plan Change intent and concept as notified to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

## **4.5 Submission**

### **DPC23/4 – East Harbour Environmental Association – 4.2**

#### **4.5.1 Request of Submitter**

Adopt Option 2 (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) as put forward in the Section 32 Report.

That Council consider extending similar protection to any other long-lived remnant trees of the original vegetation cover, such as Totara, Rata, Rimu, Beech and Kahikatea on the valley floor and Eastern Bays.

#### **4.5.2 Specific Comments**

The submitter supports the approach taken to the protection of remnant nikau palms by identifying the areas in which they will be protected rather than through the identification of individual trees. It would be highly inefficient and laborious task to identify all remnant nikau palms individually and register them to ensure their protection.

The submitter would also like to see similar protection given to other surviving trees that are remnants of the former vegetation in the identified areas. Such trees might include Totara, Rata, Rimu, Beech and Kahikatea. The submitter recalls the Eastbourne Borough Council's District Plan containing protection for remnant Kahikatea and that this protection was not carried through to Hutt City Council's District Plan. The submitter states that these other remnant trees are important reminders of the City's former vegetation cover and are equally worthy of protection like the nikau.

#### **4.5.3 Discussion**

The submitter is supportive of the Proposed Plan Change amendments regarding the protection of remnant nikau palms.

Option 2 is considered by the Subcommittee as the best practicable option in the Section 32 Evaluation for the following reasons:

- Appropriately updates the District Plan to be aligned with the RMAA 2009 amendments.
- Protects all current and future remnant nikau palms located on the valley floor and Eastern Bays.
- Supports the objectives and policies in Chapter 14G 1.2.
- There are limited costs associated with this option; namely the cost of the plan change itself.

It is considered that this option is the most appropriate in terms of achieving the purpose of the Act.

The opportunity to extend protection to other natives is not an issue under review in this Proposed Plan Change. The intention of Proposed Plan Change 23 is to bring the vegetation removal provisions and the remnant nikau palm provisions in the District

Plan into line with the Act following the RMAA 2009. This part of the submission is therefore outside the scope of Plan Change 23 and cannot be accepted by Council.

Remnant nikau were chosen to be protected in the City of Lower Hutt's District Plan over and above other types of natives for the following reasons:

- Nikau provide one of the few natural design cues for the City
- Remnant nikau are relatively uncommon in an urban area this far south
- Nikau have been widely valued as the world's most southern palm since early European settlement and when the plains were being cleared they were about the only species retained
- Nikau are one of the few endemic species surviving in the urban area from pre-European times and are therefore genuine heritage trees.

It was also decided to only protect remnant nikau palms because the application of the blanket protection rule to all nikau would require trees that have only just been purchased, and that have no historical significance, to be protected alongside trees that are remnants of the original valley floor.

Other natives, such as the ones the submitter has listed were not recognised as having the same level of importance to the City when the City of Lower Hutt District Plan was created. The submitter is correct regarding the history of remnant kahikatea protection. Kahikatea were proposed for blanket protection in the Draft District Plan, however were removed on advice from Council's Leisure Services Division who considered that the type of environment kahikatea used to live in does not exist anymore on the valley floor and that kahikatea are not seen as a necessary or practical group of trees to single out for protection.

Given the submitters concerns, the District Plan Subcommittee notes that there would be an opportunity to review the kinds of species protected and the best way to protect them when Chapter 14G Trees is reviewed in its entirety.

#### **4.5.4 Decision**

**Accept in part** the submission lodged by the East Harbour Environmental Association, taking into consideration the decision to amend the Proposed Plan Change as sought by another submission point.

Those parts of the submission which are accepted relate to adopting Option 2 as put forward in the Section 32 Evaluation.

Those parts of the submission which are rejected relate to the relief requested being outside the scope of the Proposed Plan Change.

#### **4.5.5 Reason**

While an amendment to the Proposed Plan Change is made as a result of this decision (further discussed at submission 4.1), the Proposed Plan Change intent and concept as notified remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

The relief requested by the submitter is outside the scope of Proposed Plan Change 23.

#### **4.6 Submission**

##### **DPC23/5 – Robert Ashe – 5.1**

#### **4.6.1 Request of Submitter**

Remove the provision requiring a plan change to occur in order to add/remove trees to the notable tree list.

#### **4.6.2 Specific Comments**

The submitter states that the provision which requires a plan change to make an amendment to the notable tree list is unwieldy and a huge administrative barrier.

#### **4.6.3 Discussion**

The provision the submitter has identified is not under review in this plan change. The intention of Proposed Plan Change 23 is to bring the vegetation removal provisions and the remnant nikau palm provisions in the District Plan into line with the Act following the RMAA 2009. This submission is therefore outside the scope of Proposed Plan Change 23 and cannot be accepted by Council.

In general, making any amendment to the District Plan without going through the plan change process as described in Schedule 1 of the Act is not possible. The only exception to this process is where Council wishes to correct minor errors to the Plan (Schedule 1 Clause 20A). A notable tree list that could be amended without going through the Schedule 1 process or any publicly notified process would need to be a document which sat outside the District Plan. This document would then have no legal status under the Act and would therefore not be enforceable, even if it was referenced in the District Plan.

Because the Act provides for outside material referenced in District Plans (under Schedule 1, Part 3, clauses 30 – 35), it is possible for Council to investigate the option of having the notable tree list sitting outside the District Plan when Chapter 14G Trees is reviewed as a whole. The submitters concerns are noted by the Subcommittee.

#### **4.6.4 Decision**

**Reject** the submission lodged by Robert Ashe and that the provisions of Proposed Plan Change 23 remain unchanged.

#### **4.6.5 Reason**

The relief requested by the submitter is outside the scope of Proposed Plan Change 23.

## **4.7 Further Submission**

### ***DPC23/FS1 – Winstone Aggregates – Opposition to submission 5.1***

#### **4.7.1 Purpose of Further Submission**

To oppose submission 5.1 by Robert Ashe.

#### **4.7.2 Specific Comments**

The further submitter made no specific comments relating to submission 5.1.

#### **4.7.3 Discussion**

Refer to discussion above regarding submission 5.1.

#### **4.7.4 Decision**

**Accept** the further submission lodged by Winstone Aggregates to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

#### **4.7.5 Reason**

The relief requested by the original submitter is outside the scope of Proposed Plan Change 23.

The Proposed Plan Change intent and concept as notified is to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

## **4.8 Submission**

### ***DPC23/5 – Robert Ashe – 5.2***

#### **4.8.1 Request of Submitter**

It should not be a requirement to obtain landowner permission to protect notable trees.

#### **4.8.2 Specific Comments**

The submitter states that it is best practice elsewhere to not require landowner consent to protect trees which the community values highly.

#### **4.8.3 Discussion**

In the decisions on the Proposed District Plan in 1999, it was considered necessary to ensure that the landowner consented to any tree on their property being listed as notable, as any activity or site development that adversely affects a notable tree, requires a resource consent. This consideration has not been reviewed since the District Plan became operative in 2003.

Whilst considered to be within the scope of the Proposed Plan Change, the District Plan Subcommittee consider that the issue of not requiring landowner permission as raised by the submitter was not well canvassed during the public submission stages of the Proposed Plan Change.

The intent of Proposed Plan Change 23 is to bring the vegetation removal provisions and the remnant nikau palm provisions in the District Plan into line with the Act following the RMAA 2009. Removing the requirement that landowners must give their permission before notable trees on their properties are listed in the District Plan has implications beyond those that Proposed Plan Change 23 seeks to achieve.

Granting relief to this submission would be a major adjustment to the intended outcome of the Proposed Plan Change and it would be more appropriate to consider the issue of landowner permission in a future plan change which reviewed Chapter 14G Trees in its entirety. This would give the public a greater chance to consider the issue and provide input.

#### **4.8.4 Decision**

**Reject** the submission of Robert Ashe and that the provisions of Proposed Plan Change 23 remain unchanged.

#### **4.8.5 Reason**

The relief sought would be better addressed in a subsequent plan change.

### **4.9 Further Submission**

#### ***DPC23/FS1 – Winstone Aggregates – Opposition to submission 5.2***

#### **4.9.1 Purpose of Further Submission**

To oppose submission 5.2 by Robert Ashe.

#### **4.9.2 Specific Comments**

The further submitter made no specific comments relating to submission 5.2.

#### **4.9.3 Discussion**

Refer to discussion above regarding submission 5.2.

#### **4.9.4 Decision**

**Accept** the further submission lodged by Winstone Aggregates to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

#### **4.9.5 Reason**

The Proposed Plan Change intent and concept as notified is to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

### **4.10 Submission**

#### ***DPC23/5 – Robert Ashe – 5.3***

#### **4.10.1 Request of Submitter**

Protection should be extended to native Beech, Rata, Rimu, Totara, Tawa, Titoki, Matai, Miro and Kahikatea. Return to former wording in Chapter 14G Trees or list all areas in Lower Hutt if required to comply with new RMAA 2009 provisions.

#### **4.10.2 Specific Comments**

The scope of nikau palm protection is significantly limited in Lower Hutt.

#### **4.10.3 Discussion**

The opportunity to extend protection to other natives is not an issue under review in this plan change. The intention of Proposed Plan Change 23 is to bring the vegetation removal provisions and the remnant nikau palm provisions in the District Plan into line with the Act following the RMAA 2009. This part of the submission is therefore outside the scope of Proposed Plan Change 23 and cannot be accepted by Council.

The District Plan currently protects remnant nikau palm in Lower Hutt City. These are nikau that are descendants from nikau growing on the original valley floor of the City. The RMAA 2009 removes Council's ability to have rules in the District Plan which blanket protects trees and groups of trees. The way in which the District Plan currently protects remnant nikau palms has been identified as being a type of blanket protection rule. The Proposed Plan Change is therefore required to ensure the ongoing protection of remnant nikau palm in a way that conforms to the Act.

Council's Parks and Gardens Division produced an inventory which identifies locations where remnant nikau palm occur. Most suburbs on the valley floor and Eastern Bays contained identified remnant nikau, but not all. In essence, the Proposed Plan Change is clarifying the original intent of the District Plan rules towards tree protection.

Remnant nikau were chosen to be protected in the Proposed City of Lower Hutt District Plan over and above other types of natives for the following reasons:

- Nikau provide one of the few natural design cues for the City
- Remnant nikau are relatively uncommon in an urban area this far south
- Nikau have been widely valued as the world's most southern palm since early European settlement and when the plains were being cleared they were about the only species retained
- Nikau are one of the few endemic species surviving in the urban area from pre-European times and are therefore genuine heritage trees.

It was also decided to only protect remnant nikau palms because the application of the blanket protection rule to all nikau would require trees that have only just been purchased, and that have no historical significance, to be protected alongside trees that are remnants of the original valley floor.

Other natives, such as the ones the submitter has listed were not recognised as having the same level of importance to the City when the District Plan was created. However, I note that there would be an opportunity to review the kinds of species protected and the best way to protect them when Chapter 14G Trees is reviewed in its entirety.

#### **4.10.4 Decision**

**Reject** the submission of Robert Ashe and that the provisions of Proposed Plan Change 23 remain unchanged.

#### **4.10.5 Reason**

The submitter's request to extend protection to other natives is outside the scope of Proposed Plan Change 23. Listing all areas in Lower Hutt would be an inaccurate way

to protect remnant nikau palms as they have been identified as only occurring in some suburbs in the Eastern Bays and on the valley floor.

#### **4.11 Further Submission**

##### ***DPC23/FS1 – Winstone Aggregates – Opposition to submission 5.3***

#### **4.11.1 Purpose of Further Submission**

To oppose submission 5.3 by Robert Ashe.

#### **4.11.2 Specific Comments**

The requested amendments will not promote sustainable management of resources and will not achieve the purpose of the Resource Management Act 1991.

The relief sought to expand the protection of additional trees is outside the scope of Proposed Plan Change 23 and should therefore be rejected.

By adding back in the additional areas, as requested by the submitter, this would in effect apply a blanket cover as previously existed prior to Proposed Plan Change 23. Acceptance of such a submission would therefore be inconsistent with the Resource Management Amendment Act streamlining process.

#### **4.11.3 Discussion**

Refer to discussion above regarding submission 5.3.

#### **4.11.4 Decision**

**Accept** the further submission lodged by Winstone Aggregates to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

#### **4.11.5 Reason**

The Proposed Plan Change intent and concept as notified is to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

#### **4.12 Submission**

##### ***DPC23/5 – Robert Ashe – 5.4***

#### **4.12.1 Request of Submitter**

The submitter requests that the spelling be corrected to 'life expectance' in Chapter 14G Trees, provision 1.2 Remnant Nikau Palm Protection.

#### **4.12.2 Specific Comments**

No specific comments given.

#### **4.12.3 Discussion**

The Section 32 Report incorrectly shows the text in provision 1.2 from Chapter 14G Trees, as 'live expectance' rather than the correct text of 'life expectancy' which is currently in the District Plan. The incorrect text is not a proposed amendment of this plan change and would therefore remain correct in the District Plan.

#### **4.12.4 Decision**

**Reject** the submission of Robert Ashe and that the provisions of Proposed Plan Change 23 remain unchanged.

#### **4.12.5 Reason**

The spelling error is in the Section 32 only and is not a proposed amendment in Proposed Plan Change 23.

### **4.13 Further Submission**

#### ***DPC23/FS1 – Winstone Aggregates – Opposition to submission 5.4***

##### **4.13.1 Purpose of Further Submission**

To oppose submission 5.4 by Robert Ashe.

##### **4.13.2 Specific Comments**

No specific comments regarding this submission have been given.

##### **4.13.3 Discussion**

The further submission in opposition by Winstone Aggregates covered all submission points by Robert Ashe but their comments do not relate to this submission point specifically.

##### **4.13.4 Decision**

**Accept** the further submission lodged by Winstone Aggregates to the extent that the provisions of Proposed Plan Change 23 remain unchanged

##### **4.13.5 Reason**

The Proposed Plan Change intent and concept as notified is to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

### **4.14 Submission**

#### ***DPC23/5 – Robert Ashe – 5.5***

##### **4.14.1 Request of Submitter**

Add protection to nikau back in the following areas: the Western Hills, Korokoro, Petone, Gracefield, Wainuiomata and Sunshine Bay.

##### **4.14.2 Specific Comments**

The submitter states that large parts of Lower Hutt will lose their current nikau palm protection.

##### **4.14.3 Discussion**

The District Plan currently protects remnant nikau palm in Lower Hutt City. These are nikau that are descendants from nikau growing on the original valley floor of the City. The Resource Management Amendment Act 2009 removes Council's ability to have rules in the District Plan which blanket protects trees and groups of trees. The way in which the District Plan currently protects remnant nikau palms has been identified as being a type of blanket protection rule. Proposed Plan Change 23 is therefore required

to ensure the ongoing protection of remnant nikau palm in a way that conforms to the RMAA 2009.

Council's Parks and Gardens Division produced an inventory which identifies locations where remnant nikau palm occur. Most suburbs on the valley floor and Eastern Bays contained identified remnant nikau, but not all. In essence, Proposed Plan Change 23 is clarifying the original intent of the District Plan rules are towards remnant nikau palm protection.

#### **4.14.4 Decision**

**Reject** the submission of Robert Ashe and that the provisions of Proposed Plan Change 23 remain unchanged.

#### **4.14.5 Reason**

The addition of those suburbs where remnant nikau palm were not identified is unnecessary to ensure on-going protection of remnant nikau palm.

### **4.15 Further Submission**

#### ***DPC23/FS1 – Winstone Aggregates – Opposition to submission 5.5***

#### **4.15.1 Purpose of Further Submission**

To oppose submission 5.5 by Robert Ashe.

#### **4.15.2 Specific Comments**

The requested amendments will not promote sustainable management of resources and will not achieve the purpose of the Resource Management Act 1991.

By adding back in the additional areas, as requested by the submitter, this would in effect apply a blanket cover as previously existed prior to Proposed Plan Change 23. Acceptance of such a submission would therefore be inconsistent with the Resource Management Amendment Act streamlining process.

#### **4.15.3 Discussion**

The further submitter opposes the original submission 5.5 by stating that adding back in the additional areas would in effect be re-applying a blanket protection as existed prior to the Proposed Plan Change. The further submitter says that this would be inconsistent with the Act's streamlining process.

If all suburbs were clearly shown on an appendix in the District Plan, Council's requirement to specifically identify the location of remnant nikau trees would be fulfilled. However, this is unnecessary as remnant nikau palm have not been identified in all suburbs by Council's Parks and Gardens Division. Clearly mapping the suburbs where they have been located strengthens the original intent of the District Plan rules which were to protect remnant nikau palm in the City.

#### **4.15.4 Decision**

**Accept** the further submission lodged by Winstone Aggregates to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

#### **4.15.5 Reason**

The Proposed Plan Change intent and concept as notified is to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

#### **4.16 Submission**

##### **DPC23/6 – Natasha Gilmour – 6.1**

#### **4.16.1 Request of Submitter**

That Council approves the amendments in Proposed Plan Change 23

#### **4.16.2 Specific Comments**

The submitter supports the amended provisions proposed in Proposed Plan Change 23

#### **4.16.3 Discussion**

The submitter is supportive of the Proposed Plan Change as a whole.

The purpose of Proposed Plan Change 23 is to bring the District Plan provisions relating to vegetation removal and remnant nikau palm trees in line with the RMAA 2009. The RMAA 2009 removed the ability for district plan rules to protect groups of trees over wide, undefined areas – commonly known as blanket protection. This has meant that Lower Hutt City's District Plan rules relating to vegetation removal in residential activity areas and the protection of remnant nikau palms in the whole city are now invalid (as of January 1<sup>st</sup> 2012) until Council makes decisions on Proposed Plan Change 23. It is considered that the Proposed Plan Change is appropriate in terms of achieving the purpose of the Resource Management Act 1991.

#### **4.16.4 Decision**

**Accept** the submission of Natasha Gilmour, taking into account the reasons stated in Section 3 of this report for waiving the failure to comply with the submission period time frame and taking into consideration the decision made to amend the Proposed Plan Change as sought by another submission point.

#### **4.16.5 Reason**

While an amendment to the Proposed Plan Change is made as a result of this decision (further discussed at submission 4.1), the Proposed Plan Change intent and concept as notified remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

#### **4.17 Submission**

##### **DPC23/7 – Gary James – 7.1**

#### **4.17.1 Request of Submitter**

That Council approves the amendments in Proposed Plan Change 23

#### **4.17.2 Specific Comments**

The submitter supports the amended provisions proposed in Proposed Plan Change 23

#### **4.17.3 Discussion**

The submitter is supportive of the Proposed Plan Change as a whole.

The purpose of the Proposed Plan Change is to bring the District Plan provisions relating to vegetation removal and remnant nikau palm trees in line with the RMAA 2009. The RMAA 2009 removed the ability for district plan rules to protect groups of trees over wide, undefined areas – commonly known as blanket protection. This has meant that Lower Hutt City's District Plan rules relating to vegetation removal in residential activity areas and the protection of remnant nikau palms in the whole city are now invalid (as of January 1<sup>st</sup> 2012) until Council makes decisions on Proposed Plan Change 23. It is considered that the Proposed Plan Change is appropriate in terms of achieving the purpose of the Resource Management Act 1991.

#### **4.17.4 Decision**

**Accept** the submission of Gary James, taking into account the reasons stated in Section 3 of this report for waiving the failure to comply with the submission period time frame and taking into consideration the decision made to amend the Proposed Plan Change as sought by another submission point.

#### **4.17.5 Reason**

While an amendment to the Proposed Plan Change is made as a result of this decision (further discussed at submission 4.1), the Proposed Plan Change intent and concept as notified remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

### **4.18 Submission**

#### **DPC23/8 – Kathy James – 8.1**

##### **4.18.1 Request of Submitter**

That Council approves the amendments in Proposed Plan Change 23

##### **4.18.2 Specific Comments**

The submitter supports the amended provisions proposed in Proposed Plan Change 23

##### **4.18.3 Discussion**

The submitter is supportive of the Proposed Plan Change as a whole.

The purpose of the Proposed Plan Change is to bring the District Plan provisions relating to vegetation removal and remnant nikau palm trees in line with the RMAA 2009. The RMAA 2009 removed the ability for district plan rules to protect groups of trees over wide, undefined areas – commonly known as blanket protection. This has meant that Lower Hutt City's District Plan rules relating to vegetation removal in residential activity areas and the protection of remnant nikau palms in the whole city are now invalid (as of January 1<sup>st</sup> 2012) until Council makes decisions on Proposed Plan Change 23. It is considered that the Proposed Plan Change is appropriate in terms of achieving the purpose of the Resource Management Act 1991.

#### **4.18.4 Decision**

**Accept** the submission of Kathy James, taking into account the reasons stated in Section 3 of this report for waiving the failure to comply with the submission period time frame and taking into consideration the decision made to amend the Proposed Plan Change as sought by another submission point.

#### **4.18.5 Reason**

While an amendment to the Proposed Plan Change is made as a result of this decision (further discussed at submission 4.1), the Proposed Plan Change intent and concept as notified remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

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## **ATTACHMENT 1 – Amendments**

The Subcommittee's decisions result in the following amendment to the Proposed Plan Change: *(Note for the purpose of this report only the changes made as a result of a decision in this report are shown here).*

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

*Amend proposed new definition for Vegetation as follows:*

**Vegetation:** All exotic and indigenous flora (plant life) including shrubs, trees, grasses (excluding lawn and turf 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.