

**OFFICER'S REPORT FOR:** District Plan Subcommittee

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

**PREPARED BY:** Chloe Smith, Environmental Policy Division,  
Hutt City Council

**REPORT DATE:** 8 February 2012

**DATE OF HEARING:** No hearing required

---

### **EXECUTIVE SUMMARY**

The purpose of Proposed Plan Change 23 is to bring the District Plan provisions relating to vegetation removal and protection of remnant nikau palm trees in line with the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (RMAA 2009).

The RMAA 2009 removed the ability for district plan rules to protect groups of trees or areas of vegetation over wide, undefined areas – commonly known as blanket protection. This has meant that our District Plan's rules relating to vegetation removal in residential activity areas and the protection of remnant nikau palms in the whole city would become invalid on the 1<sup>st</sup> of January 2012 if Council does not amend the Plan.

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 2011, with further submissions closing on 29 November 2011.

A total of 5 original submissions, 3 late submissions and 1 further submission were received.

The submissions and further submissions seek various forms of relief, including but not limited to:

- Adopting the Plan Change as notified;
- Adding Sunshine Bay, Wainuiomata, Gracefield, Petone, Korokoro and the Western Hills to the remnant nikau palm protection areas;
- Extending protection to other natives such as Totara, Rimu, Beech, and Kahikatea.

All submitters who requested to be heard have subsequently withdrawn their wish to speak to their submissions and therefore no hearing of submissions is required as stated in Schedule 1, Part 1, clause 8C of the Resource Management Act 1991.

The following report recommends that the Council accept or reject the submissions and further submissions for the reasons as outlined under section 5 of this report.

**CONTENTS**

- 1. INTRODUCTION .....3
- 2. BACKGROUND .....3
- 3. SUBMISSIONS .....4
- 4. LIST OF SUBMITTERS .....4
- 5. ANALYSIS OF SUBMISSIONS AND RECOMMENDATIONS .....5
  - Submission: DPC23/1 – The Port Nicholson Block Settlement Trust, the Wellington Tenth Trust and the Palmerston North Maori Reserve Trust - 1.1..... 6
  - Submission: DPC23/2 – Dennis Page - 2.1 ..... 7
  - Submission: DPC23/3 – Winstone Aggregates - 3.1 ..... 8
  - Submission: DPC23/4 –East Harbour Environmental Association - 4.1..... 10
  - Submission: DPC23/4 –East Harbour Environmental Association - 4.2..... 12
  - Submission: DPC23/5 – Robert Ashe - 5.1 ..... 14
  - Further Submission: DPC23/FS1 – Winstone Aggregates – Opposition to submission 5.1.....15*
  - Submission: DPC23/5 – Robert Ashe - 5.2 ..... 15
  - Further Submission: DPC23/FS1 – Winstone Aggregates – Opposition to submission 5.2.....16*
  - Submission: DPC23/5 – Robert Ashe - 5.3 ..... 17
  - Further Submission: DPC23/FS1 – Winstone Aggregates – Opposition to submission 5.3.....18*
  - Submission: DPC23/5 – Robert Ashe - 5.4 ..... 19
  - Further Submission: DPC23/FS1 – Winstone Aggregates – Opposition to submission 5.4.....20*
  - Submission: DPC23/5 – Robert Ashe - 5.5 ..... 20
  - Further Submission: DPC23/FS1 – Winstone Aggregates – Opposition to submission 5.5.....21*
  - Late Submission: DPC23/6 – Natasha Gilmour - 6.1..... 22
  - Late Submission: DPC23/7 – Gary James - 7.1..... 23
  - Late Submission: DPC23/8 – Kathy James – 8.1 ..... 24

Appendix 1: Proposed Plan Change 23 as recommended to the District Plan Subcommittee

## **1. INTRODUCTION**

This report discusses and makes recommendations on submissions received in relation to Proposed Plan Change 23 – Amendments to vegetation removal provisions and remnant nikau palm protection provisions (hereafter referred to as the Plan Change).

The intention of the Plan Change is to bring the vegetation removal provisions and the remnant nikau palm provisions in the District Plan into line with the Resource Management (Simplifying and Streamlining) Amendment Act (RMAA 2009). The Environment Court Decision (Re Auckland Council [2011] NZEnvC 129) provided direction regarding how the RMAA 2009 should be interpreted and this was used as a basis to form the Plan Change.

Although this report is intended as a stand-alone document, a more in-depth understanding of the Plan Change, the process undertaken, and related issues may be gained by reading the Section 32 Evaluation and associated Plan Change documents as publicly notified on 27 September 2011.

## **2. BACKGROUND**

### **Report Purpose**

The purpose of this report is to summarise the key issues raised in submissions and provide advice to the Committee on the issues raised. While recommendations have been provided in this report, ultimately it is the role of the District Plan Subcommittee to consider the issues, the submissions and the advice of the reporting officer before making a decision.

### **Plan Change Background**

The recent changes to the Resource Management Act 1991 (the Act) by the 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 1<sup>st</sup> 2012) and require amendments such as those put forward in the Plan Change to bring back their validity.

This plan change proposes amendments 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. SUBMISSIONS

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 Plan Change.

#### Late submissions recommendation

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.

It is recommended to Council that the 3 late submissions received be **accepted** 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.

### 4. LIST OF SUBMITTERS

The following submitters have lodged submissions on Plan Change 23:

Submission Number	Name of Original Submitters	Submission Reference
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	4.1, 4.2

	Association	
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

## 5. ANALYSIS OF SUBMISSIONS AND RECOMMENDATIONS

The following sections of this report provide a brief summary of each submission and a recommendation in response to each of the decisions sought.

The submissions are addressed by submitter. In the heading the submission number, the name of the submitter and the submission reference are printed in bold. Then the decision 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 officer's recommendation. Where a submitter seeks more than one decision the submission has been split into parts with different submission references (e.g. 5.1, 5.2). This is followed by the further submissions that refer to that submission. Here the submission number, the name of the further submitter and the submission reference and whether the further submission is in support or opposition are printed in bold italics.

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 of submissions*

*(1) Once a proposed policy statement or plan is publicly notified under clause 5, the persons described in subclauses (2) to (4) may make a submission on it to the relevant local authority.*

*(2) The local authority in its own area may make a submission.*

*(3) Any other person may make a submission but, if the person could gain an advantage in trade competition through the submission, the person's right to make a submission is limited by subclause (4).*

*(4) A person who could gain an advantage in trade competition through the submission may make a submission only if directly affected by an effect of the proposed policy statement or plan that—*

*(a) adversely affects the environment; and*

*(b) does not relate to trade competition or the effects of trade competition.*

*(5) A submission must be in the prescribed form.”*

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 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.

Submission:

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

#### **Request of Submitter**

Support of the Plan Change but no specific request stated.

#### **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.

#### **Discussion**

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

The purpose of the 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 need to be changed to comply with the

RMAA 2009 requirements. It is considered that the Plan Change is appropriate in terms of achieving the purpose of the Resource Management Act 1991.

### **Recommendation**

It is recommended that the submission (1.1) lodged by the Port Nicholson Block Settlement Trust, the Wellington Tenth Trust and the Palmerston North Maori Reserve Trust be **accepted**, taking into consideration the recommendation made to amend the Plan Change as sought by another submission point.

### **Reason**

An amendment to the Plan Change is recommended within this report, however the Plan Change intent and concept as notified is recommended to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

Submission:

**DPC23/2 – Dennis Page - 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.

### **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.

### **Discussion**

The submitter is supportive of the 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.

### **Recommendation**

It is recommended that the submission (2.1) lodged by Dennis Page be **accepted**, taking into consideration the recommendation made to amend the Plan Change as sought by another submission point.

### **Reason**

An amendment to the Plan Change is recommended within this report, however the Plan Change intent and concept as notified is recommended to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

Submission:

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

### **Request of Submitter**

That the Council adopt the plan change as notified in its entirety.

### **Specific Comments**

The direction of the 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.

### **Discussion**

The submitter is supportive of the 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 Plan Change are Chapter 6 – Soil and minerals, Chapter 9 – Ecosystems and Chapter 10 – Landscapes and Heritage. The Plan Change takes into account the issues, objectives and policies corresponding to these relevant chapters of the operative RPS.

The 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 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.

### **Recommendation**

It is recommended that the submission (3.1) lodged by Winstone Aggregates be **accepted**, taking into consideration the recommendation made to amend the Plan Change as sought by another submission point.

### **Reason**

An amendment to the Plan Change is recommended within this report, however the Plan Change intent and concept as notified is recommended to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

Submission:

## **DPC23/4 –East Harbour Environmental Association - 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.

### **Specific Comments**

The submitter recognises that the proposed definition of vegetation has the potential to give rise to perverse outcomes. The submitters 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.

### **Discussion**

The submitter is supportive of the 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 recommended 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 recommended 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 Plan Change is appropriate in terms of achieving the purpose of the Resource Management Act 1991.

### **Recommendation**

It is recommended that the submission (4.1) lodged by the East Harbour Environmental Association be **accepted** and that 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.*

### **Reasons**

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.

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

Submission:

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

### **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.

### **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.

### **Discussion**

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

Option 2 is recommended 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 plan change. The intention of 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 the plan change 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, 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.

### **Recommendation**

It is recommended that the submission (4.2) lodged by the East Harbour Environmental Association be **accepted in part**, taking into consideration the recommendation made to amend the 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 plan change.

### **Reasons**

A minor amendment to the Plan Change is recommended within this report (see submission 4.1 above), however the Plan Change intent and concept as notified is recommended to

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 the plan change.

Submission:

**DPC23/5 – Robert Ashe - 5.1**

**Request of Submitter**

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

**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.

**Discussion**

The provision the submitter has identified is not under review in this plan change. The intention of 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 the plan change 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.

**Recommendation**

It is recommended that the submission (5.1) lodged by Robert Ashe be **rejected** to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

**Reason**

The relief requested by the submitter is outside the scope of the plan change.

*Further Submission:*

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

**Purpose of Further Submission:**

To oppose submission 5.1 by Robert Ashe.

**Specific Comments**

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

**Discussion**

Refer to discussion above regarding submission 5.1.

**Recommendation**

It is recommended that the further submission (FS1) lodged by Winstone Aggregates be **accepted** to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

**Reason**

The relief requested by the original submitter is outside the scope of the Plan Change. The Plan Change intent and concept as notified is recommended to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

Submission:

**DPC23/5 – Robert Ashe - 5.2**

**Request of Submitter**

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

**Specific Comments**

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

**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 Plan Change, I 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 Plan Change.

The intent of the Plan Change 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 Plan Change 23 seeks to achieve.

Granting relief to this submission would be a major adjustment to the intended outcome of the Plan Change and it is recommended that 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.

### **Recommendation**

It is recommended that the submission (5.2) lodged by Robert Ashe be **rejected** to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

### **Reason**

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

*Further Submission:*

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

### **Purpose of Further Submission:**

To oppose submission 5.2 by Robert Ashe.

### **Specific Comments**

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

### **Discussion**

Refer to discussion above regarding submission 5.2.

### **Recommendation**

It is recommended that the further submission (FS1) lodged by Winstone Aggregates be **accepted** to the extent that the provisions of Proposed Plan Change 23 remain unchanged.



## Reason

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

Submission:

**DPC23/5 – Robert Ashe - 5.3**

## 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.

## Specific Comments

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

## Discussion

The opportunity to extend protection to other natives is not an issue under review in this plan change. The intention of 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 the plan change 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 Plan Change is clarifying the original intent of the District Plan rules are 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.

### **Recommendation**

It is recommended that the submission (5.3) lodged by Robert Ashe be **rejected** to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

### **Reason**

The submitter’s request to extend protection to other natives is outside the scope of this plan change. 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.

*Further Submission:*

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

### **Purpose of Further Submission:**

To oppose submission 5.3 by Robert Ashe.

### **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 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 Plan Change 23. Acceptance of such a

submission would therefore be inconsistent with the Resource Management Amendment Act streamlining process.

### **Discussion**

Refer to discussion above regarding submission 5.3.

### **Recommendation**

It is recommended that the further submission (FS1) lodged by Winstone Aggregates be **accepted** to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

### **Reason**

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

Submission:

**DPC23/5 – Robert Ashe - 5.4**

### **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.

### **Specific Comments**

No specific comments given.

### **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.

### **Recommendation**

It is recommended that the submission (5.4) lodged by Robert Ashe be **rejected** to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

### **Reason**

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

*Further Submission:*

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

**Purpose of Further Submission:**

To oppose submission 5.4 by Robert Ashe.

**Specific Comments**

The further submitter made no specific comments relating to submission 5.4.

**Discussion**

The further submission in opposition (FS1) by Winstone Aggregates covered all submission points by Robert Ashe but their comments do not relate to this submission point specifically.

**Recommendation**

It is recommended that the further submission (FS1) lodged by Winstone Aggregates be **accepted** to the extent that the provisions of Proposed Plan Change 23 remain unchanged

**Reason**

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

Submission:

**DPC23/5 – Robert Ashe - 5.5**

**Request of Submitter**

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

**Specific Comments**

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

**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. The proposed plan change is therefore required to ensure the ongoing protection of remnant nikau palm in a way that conformed 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, the plan change is clarifying the original intent of the District Plan rules are towards remnant nikau palm protection.

### **Recommendation**

It is recommended that the submission (5.5) lodged by Robert Ashe be **rejected** to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

### **Reason**

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

#### *Further Submission:*

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

#### **Purpose of Further Submission:**

To oppose submission 5.5 by Robert Ashe.

#### **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 Plan Change 23. Acceptance of such a submission would therefore be inconsistent with the Resource Management Amendment Act streamlining process.

#### **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 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.

## Recommendation

It is recommended that the further submission (FS1) lodged by Winstone Aggregates be **accepted** to the extent that the provisions of Proposed Plan Change 23 remain unchanged.

## Reason

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

Late Submission:

**DPC23/6 – Natasha Gilmour - 6.1**

## Request of Submitter

That Council approves the amendments in Plan Change 23

## Specific Comments

The submitter supports the amended provisions proposed in Plan Change 23

## Discussion

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

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

## Recommendation

It is recommended that the submission (6.1) lodged by Natasha Gilmour be **accepted**, 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 recommendation made to amend the Plan Change as sought by another submission point.

## Reason

A minor amendment to the Plan Change is recommended within this report (see submission 4.1 above), however the Plan Change intent and concept as notified is recommended to

remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

Late Submission:

**DPC23/7 – Gary James - 7.1**

**Request of Submitter**

That Council approves the amendments in Plan Change 23

**Specific Comments**

The submitter supports the amended provisions proposed in Plan Change 23

**Discussion**

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

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

**Recommendation**

It is recommended that the submission (7.1) lodged by Gary James be **accepted**, taking into account the reasons stated in Section 3 of this report for waiving the failure to comply with the submission period’s time frame and taking into consideration the recommendation made to amend the Plan Change as sought by another submission point.

**Reason**

A minor amendment to the Plan Change is recommended within this report (see submission 4.1 above), however the Plan Change intent and concept as notified is recommended to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.

Late Submission:

**DPC23/8 – Kathy James – 8.1**

**Request of Submitter**

That Council approves the amendments in Plan Change 23

**Specific Comments**

The submitter supports the amended provisions proposed in Plan Change 23

**Discussion**

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

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

**Recommendation**

It is recommended that the late submission lodged by Kathy James be **accepted**, taking into account the reasons stated in Section 3 of this report for waiving the failure to comply with the submission period's time frame and taking into consideration the recommendation made to amend the Plan Change as sought by another submission point.

**Reason**

A minor amendment to the Plan Change is recommended within this report (see submission 4.1 above), however the Plan Change intent and concept as notified is recommended to remain unchanged and is considered the most appropriate in terms of aligning with the provisions in the Act.



# Appendix 1: Proposed Plan Change 23 as recommended to the hearings committee

---

## Proposed Plan Change to Chapter 3

---

*\*Amendment 1*

**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.

---

## Proposed Plan Change to Chapter 14G

---

# 14G Trees

---

## 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 the City as identified in Appendix Trees 2.

### **Policies**

- \*Amendment 5**
- (a) 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 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.

### **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**

**(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:**

**\*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**

- \*Amendment 8**
- (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.

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

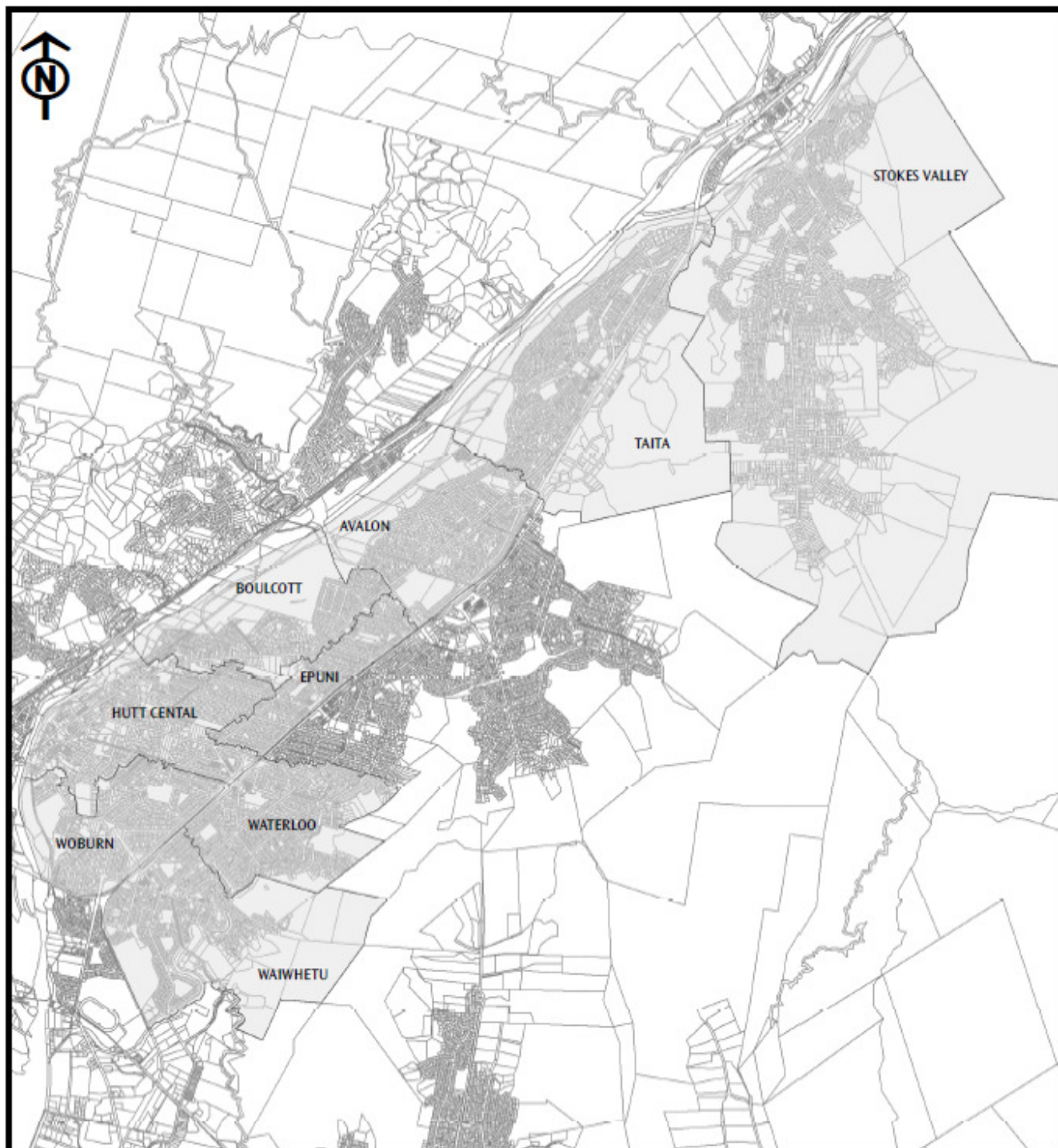
*\*Amendment 9* ~~(a) Protection of notable trees and all remnant nikau palms in the City.~~

(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.

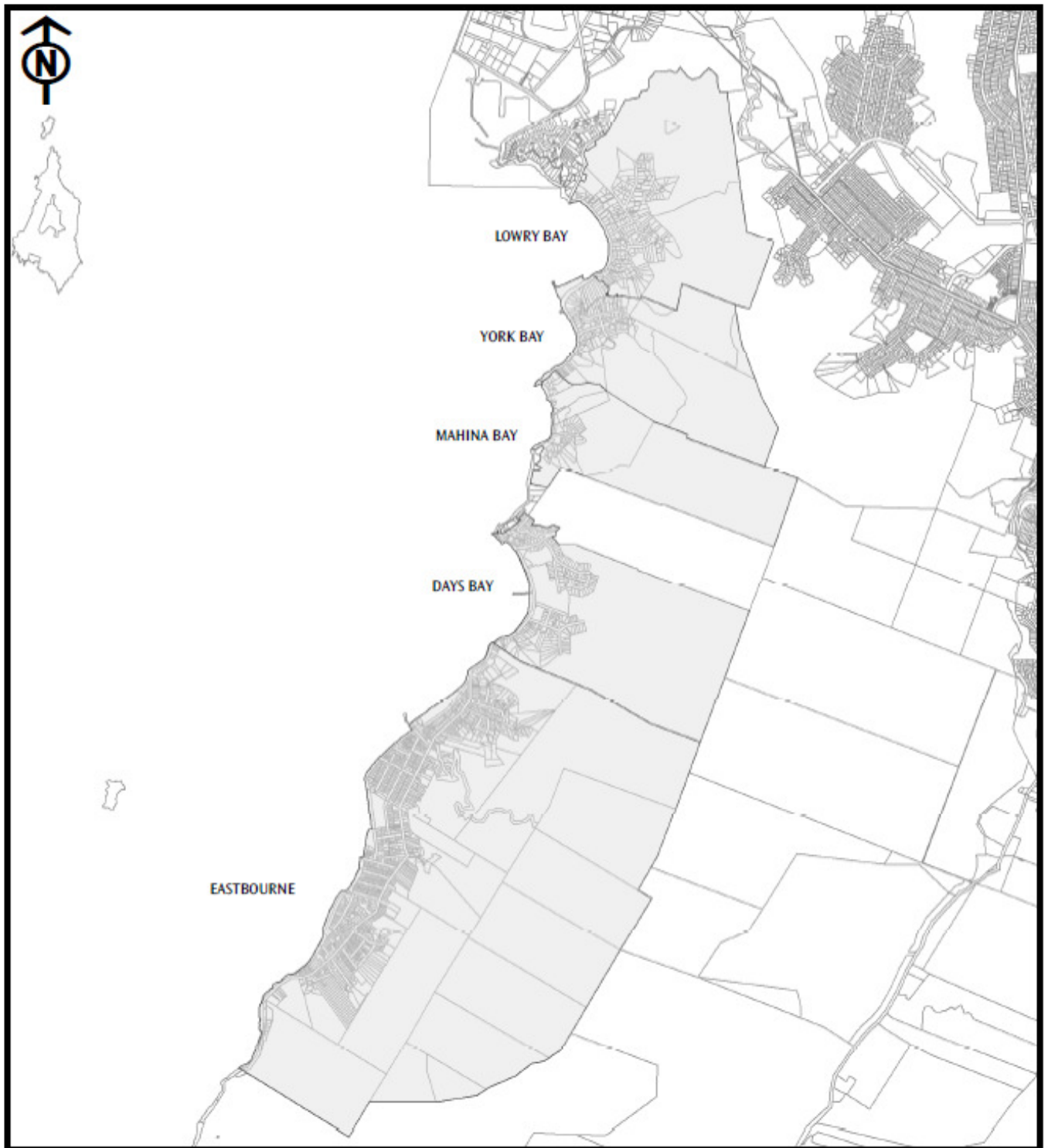
## Appendix Trees 2 - Remnant nikau palm protection areas




### 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 Eastern Bays where remnant nikau palms are protected