



## 1. NOTABLE TREE VARIATION

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Corporate Plan Output: City Design & Heritage Policy	

### PURPOSE

The purpose of this report is to advise the Council that the Fendalton/Waimairi Community Board requests additional trees to be added to the City Plan schedule of notable trees.

### BACKGROUND

A survey of additional trees in the Fendalton/Merivale area which meet the criteria for listing was initially brought before the Council at the Council meeting on 24 June 1999, having been included in the report of the Fendalton/Waimairi Community Board. The Council resolved that the report together with the Community Board's recommendation be referred to the Resource Management and Environment Committees. On 5 August 1999 the Resource Management Committee decided that a Section 32 analysis should be undertaken. Under Section 32 of the Resource Management Act, the Council has a duty to consider alternatives, assess benefits and costs etc. before adopting any objective, policy rule etc.

The Section 32 analysis was undertaken in October/November 1999. It considered the need for tree protection, various means of protecting trees and vegetation and the associated costs of each method. A full report of the analysis is available for inspection. The report concluded that the listing of further trees in the notable tree schedule of the City Plan was the most appropriate means of retaining significant trees, while other methods of retaining vegetation could be employed to assist and complement the regulatory approach. This conclusion was reported to the Fendalton/Waimairi Community Board meeting on 1 February 2000, together with the following advice and recommendation:

#### *Variation to the City Plan*

*In order to add trees to the schedule of notable trees at this stage it would be necessary to instigate a Variation to the City Plan. However, since the Council wishes to get the City Plan operative as soon as possible, it earlier agreed that all Variations to the Plan should be postponed until the Plan is operative, unless the Variations are critical. Fourteen Variations have been identified as critical and will be undertaken in the time before the Plan becomes operative. The two main reasons given for why Variations hold up the operative date of the Plan are:*

- *City Plan staff resources are diverted away from the major task of resolving or preparing evidence for Environment Court hearings*
- *There is a risk that if the Variation is contentious, it will give rise to substantial Council hearings and likely references to the Environment Court*

*Therefore to add another Variation to the priority list, a sound case will need to be made to the Resource Management Committee in order to secure their support.*

*In coming to a decision as to whether or not to seek a Variation at this stage the following issues need to be considered:*

- 1. If the further listing of trees is put on hold until the Plan is operative (two years or more), then a few more of the identified trees could be lost. In the last year, during which the tree survey has been conducted, several trees which had been surveyed have since been felled by the owners – since there was no protection for the trees the Council could not prevent this.*
- 2. If the Variation is delayed the current survey will become out-of-date and further work will be required in the future to ensure that the trees are still in existence and still in a state worthy of protection.*
- 3. The Variation is in theory straightforward because it only makes an addition to an existing appendix and it does not attempt to change any other part of the Plan, including the actual rules themselves. Submissions can be expected in relation to the inclusion of additional trees but some may seek to raise issues relating to the rules themselves. Given legal uncertainties on this issue, the Variation may activate lengthy legal procedures and further delay the Plan becoming operative.*
- 4. This would be the second Variation to add further trees to the Notable schedule. Variation No.5 was notified in June 1997. It added about 200 trees to the schedule. After the Variation was notified 15 submissions and 3 further submissions were received. There has been only one reference against the tree protection provisions, so that they are very close to becoming, in effect, operative. A Variation or succession of Variations, could complicate this.*
- 5. This survey is the first part of an on going survey of trees in several parts of the city that is likely to take another 6 to 9 months. It may be better to defer this Variation so that all the trees could be included in one Variation once the survey is complete. Experience demonstrates that Variations tend to attract more submissions, as unlike a review of the whole plan, people can focus on a particular subject. Having successive Variations will certainly add to the costs and staff time required to deal with the issue.*

**Recommendation:** *In view of the Council’s decision to put further Variations to the City Plan on hold unless they are critical, that the Board consider whether there are compelling reasons why there should be an exception in this case and if so, that this view be referred to the Resource Management Committee for its consideration.*

*The Board resolution was as follows:*

*“That, while acknowledging that there could be difficulties in achieving completion of the Variations, the Board nevertheless requests the Resource Management Committee and the Council to endorse the importance of the retention of significant trees in the City, by initiating an appropriate Variation together with the 14 already approved by the Council.”*

- Recommendation:**
1. That the request for a variation to the City Plan be declined at this stage.
  2. That a report be prepared:
    - (i) To define the term “vegetation” as it applies to the size of plants covered, and “clearance” as it applies to specifying what area or number of plants;
    - (ii) To determine the impact of rules defining “pruning” operations.