

Decision on application for tree owner approval to remove a Notable macrocarpa tree at 1817 Great North Road, Avondale



Applicant:	Marutuahu Ockham No.3 Limited Partnership
Site address:	1817 Great North Road, Avondale
Proposal:	To grant tree owner approval to the applicant to remove a notable macrocarpa tree at 1817 Great North Road.

Background to the application

The application

- 1 On 5 November 2020, the applicant applied to Auckland Council (**council**) for tree owner approval to remove a notable macrocarpa tree (**the tree**) at 1817 Great North Road, Avondale. This application follows the grant of a non-notified resource consent in respect of the same tree.
- 2 The application for tree owner approval was accompanied by a number of supporting documents including the resource consent, notification decisions and arboricultural and other reports associated with the resource consent (**attached**).

Details about the development

- 3 The development site has an area of 2912m² and was sold by Panuku to the Ministry of Housing and Urban Development (**MHUD**) for residential development. The site was then on sold to Ockham Residential (in partnership with Marutūāhu iwi) (**the developer**) under MHUD's Land for Housing Programme. The site is located in Avondale, one of Panuku's priority regeneration areas.¹
- 4 The Unlock Avondale programme seeks to deliver various outcomes for regenerating and developing Avondale. The High-Level Project Plan (HLPP) sets the requirements and objectives for each unlock location. The site is identified in the HLPP for Avondale for the delivery of 'Key Move 2: Creating High Quality Residential Neighbourhoods'. The HLPP has been endorsed by the Whau Local Board and the Planning Committee.
- 5 Panuku have been working with the MHUD and the developer for over a year to secure a development on this site. Strategic alignment between the Council, Panuku and central government should be considered in the tree owner approval decision.
- 6 By letter dated 18 December 2020 (**attached**), the Developer advised that the development supports and is aligned with:
 - a. the central themes of the Auckland Unitary Plan and its objectives and policies;
 - b. the council's investment in the rail network;
 - c. the council's \$15m investment in the Avondale own centre;

¹ <https://www.panuku.co.nz/avondale>

- d. Auckland's recognition that there is a climate crisis (the development involves 117 well-connected units in the heart of Auckland as opposed to further afield);
- e. The 2020 Nation Policy Statement on urban development.

Resource consent

- 7 The application for tree owner approval follows the developer having obtained a resource consent for the removal of the tree which straddles the property boundary (with approximately 40% of the tree on the developer's land, and 60% on the road reserve which is owned by the council).
- 8 Although public notification of the resource consent was requested by the Whau Local Board and the Tree Council, the independent hearing commissioner did not consider that the requirements for public notification under the Resource Management Act 1991 (**the RMA**) were met and the consent was processed on a non-notified basis.
- 9 The resource consent to remove the tree was granted by an Independent Commissioner on 16 November 2020. The developer was notified that tree owner approval would be required through the advice note in the resource consent decision.²

Decision

- 10 For the reasons summarised below, I (acting under delegated authority) **grant** tree owner approval to the applicant to remove the macrocarpa tree at 1817 Great North Road, and give permission to access council-owned land for the purposes of the removal of the tree in accordance with the resource consent.
- 11 In reaching my decision I have reviewed and considered the following documents (**attached**):
 - a. Tree Owner Approval application from the developer and supporting documents, including:
 - i. Arboricultural Assessment, from Peers Brown Miller Ltd (6 August 2020)
 - ii. Decision on notification of an application for resource consent under the RMA to construct an application building containing 117 residential apartments and removal of a Notable Macrocarpa tree (3 November 2020)
 - b. Consent decision with conditions (16 November 2020)
 - c. Letter from Mark Todd (18 December 2020)
 - d. Report from GreensceneNZ (December 2020)
 - e. Memo from GreensceneNZ (7 December 2020)
 - f. Email from GreensceneNZ regarding safety works (4 December 2020)
 - g. Letter from the Tree Council (16 December 2020) and attached Landscaper report
 - h. Email from Ngāti Whātua Ōrākei (16 December 2020)
 - i. Auckland Council Urban Ngahere (Forest) Strategy

² Decision on an application for resource consent under the Resource Management Act 1991 LUC60361479, Page 18.

j. Council's Tree Owner Approval Guide

- 12 I have sufficient knowledge of and have considered the relevant information put before me, including the views and preferences of the local community and those interested in or affected by the decision (to the extent known by council).
- 13 The information and advice I have considered in reaching this decision are also outlined below.

Summary of reasons for my decision

- 14 My decision to grant tree owner approval to the applicant to remove the macrocarpa tree at 1817 Great North Road is made under my standing delegation from the Whau Local Board and is based on the following reasons (in no particular order):
- a. I accept that the tree provides a degree of amenity value and I note that there is a strong preference in the community to retain the tree. Retention of the tree would also be consistent with the principles and objectives in the Council's Urban Forest Ngahere Strategy.
 - b. The tree is only partially located on council owned land.
 - c. Removal of the tree will address safety issues with tree in its current state and removes the risks relating to a partial removal of the tree. If the tree is not removed, then safety issues with the tree will need to be addressed and a significant portion of the tree will need to be removed. The proposed works may:
 - i. reduce the landscape value provided by the tree;
 - ii. increase wind loading and cause the health of the tree to decline more rapidly;
 - iii. create the perception of a hazard due to the off-balance appearance of the tree.
 - d. Removal of the tree will enable the development to proceed on the basis on which it has consented and without any substantial delay to project timeframes or impact on the contractual obligations flagged by the developer.
 - e. Refusing this application would adversely impact the developer and will require them to either proceed with an alternative design which reduces unit yield on the development or abandon the development (which the developer has indicated they would do due to commercial viability, if they were unable to proceed with their favoured design).
 - f. I also note that the development is at a late stage and substantive changes to the timeframes or delivery of the project itself is likely to be a reputational risk for the developer, MHUD, Panuku and the council (due to its involvement with the tree owner decision).
 - g. I am cognisant that a decision by council refusing this application is arguably inconsistent with council's support (through Panuku) of this development and more generally, to increasing affordable housing and supporting growth in Auckland. However, there is also a reputational risk to council in granting the application given the community opposition to the removal of the tree.

- h. There is also a financial risk to council if council does not grant this application, as the developer has threatened legal action. The developer has indicated that it may seek to recover costs from council incurred as a result of delay by council in granting this application, or as a result of council declining this application.
- i. Removal of the tree will support consistency with wider strategic housing goals of central government (MHUD) and urban regeneration goals of Panuku (being a substantive council-controlled organisation) noting that the development is a key project in Avondale.
- j. The developer has agreed to plant 10 mature trees in the Avondale area (in addition to the 11 new trees as per the resource consent conditions) to offset the loss of this one tree, which accords with the principles and objectives in the Council's Urban Forest Ngahere Strategy.

Relevant information and advice

Relationship between Resource Consent and Tree Owner Approval processes

- 15 A basic principle of land law is that whatever is fixed to the land is owned by the landowner. Per section 316 of the Local Government Act 1974 roads vest in the local council. As such, trees that are in the road reserve are owned by the council.
- 16 Under the RMA any person can apply for resource consent to carry out an activity on any land. However, to be able to exercise a resource consent applied for over someone else's land, the applicant must also obtain landowner approval.
- 17 A resource consent provides regulatory approval under the Auckland Unitary Plan (**AUP**), but not landowner approval and cannot override asset owner approval. A commissioner, or member of staff making decisions under an RMA delegation are not delegated or empowered under the RMA to dispose of council assets.

Relevant council strategies and policies

- 18 Auckland's Urban Ngahere (Forest) Strategy (**attached**) recognises the social, environmental, economic, and cultural benefits of our urban ngahere (forest), and sets out a strategic approach to knowing, growing, and protecting it. It also underpins the decision making around tree management. There are nine principles in the Strategy, one of which is to protect mature healthy trees.
- 19 Regarding the purpose of the Notable Trees schedule, the Auckland Unitary Plan states:³

The purpose of the Notable Trees Overlay is to protect notable trees and notable groups of trees from danger or destruction resulting from development. Individual trees and groups of trees that have been scheduled as notable trees are considered to be among the most significant trees in Auckland. These trees have been specifically identified to ensure that the benefits they provide are retained for future generations.

³ Section D13.1

- 20 The Council's Tree Owner Approval Guide⁴, which sets out relevant considerations for tree owner approval decisions, states:⁵

'Decisions regarding removal of healthy, functioning street trees are made on a case-by case basis by an Urban Forest Specialist. In determining whether the removal of a healthy tree is warranted, Council will consider:

- The significance of the vegetation;
- Whether the species of tree is appropriate for its location, and whether it is a nuisance species tree;
- Whether the tree's crown, stem or root growth habit has developed in a manner that would prevent continued healthy growth or is negatively impacting on other tree(s);
- The impact of removal and replanting on the neighbourhood streetscape and the public benefit.

Arboricultural views

- 21 The Macrocarpa tree is listed on the Notable Trees Schedule.⁶
- 22 There are several arboricultural opinions available, the key points of which are summarised below.
- 23 The developer's arborist stated in their report accompanying the application for the resource consent:⁷
- The tree is considered to be of moderate health and condition. A Visual Tree Inspection (VTA) was undertaken to determine the current structural state of the tree, no decay or significant included unions were identified.
 - From an arboricultural perspective, it is suggested that the tree is beginning to 'retrench', as portions of the upper canopy have been progressively reducing in height since 2011.
 - Consideration of the tree's current progressive decline, it is reasonable to predict that further retrenchment will occur in the coming decade. Canopy reductive pruning would be required in order to mitigate the risk of future failures. This type of pruning would be an ongoing procedure to address any future failure potential.
 - In recognition of the declining health of the tree in the last decade, it is conceded that the tree may further decline and require ongoing monitoring and management.

⁴ <https://www.aucklandcouncil.govt.nz/building-and-consents/working-on-around-trees/Documents/tree-owner-approval-guide.pdf>

⁵ Council's Tree Owner Approval Guide at 5.

⁶ See [Unitary Plan](#) (link embedded).

⁷ Arboricultural Assessment, 1817 Great North Road, Avondale, dated 6 August 2020.

- Heavily modified Macrocarpa trees can continue to stand in such a state for many decades. However, because of the progression of its decline up until this point, the future long-term health and prominence of the tree is difficult to estimate.
 - Any works within the protected root zone of such a tree would need to be very minor, especially in consideration of its age, prominence, and current condition.
- 24 The Council's Senior Heritage Arborist supplied a view on 31 August 2020 that removal of the scheduled macrocarpa was not supported because:
- Once a tree is scheduled, it must be maintained unless there really is no other alternative to its removal.
 - There are no health or structural issues with this tree that cannot be addressed through regular maintenance pruning (in his opinion), which is part of property maintenance.
 - This tree is highly prominent in the immediate area.
 - The tree provides amenity value and eco-services that are increased through maturity and scale.
 - There has not been a historic values assessment of the macrocarpa tree, it is undeniable that it is a historic remnant of the area.
- 25 The Council's Resource Consents Department Arborist supplied a view on 7 September 2020 that removal of the scheduled macrocarpa was not supported because:
- Removal did not represent a balanced design outcome;
 - Was a prominent specimen;
 - Long-term health of the tree cannot be realistically calculated;
 - There is no consistency in the approach put forward by the applicant.
- 26 In deciding the resource consent application, I note that the Independent Commissioner made the following findings about the opinions of the council's arborist and heritage arborist:⁸
- [Their findings] did not provide a helpful assessment, and incorrectly assumed that a notable tree could only be removed if there were arboricultural reasons to support it.
 - Each arborist strayed beyond their fields of expertise at times (by expressing views on landscape and visual amenity effects and alternative development outcomes and commercial viability).
 - Arguments before him in favour of granting the consent were substantially more corroborated and persuasive and that there were no reasonable grounds to withhold consent to conditions proposed.

⁸ Decision on an application for resource consent under the Resource Management Act 1991 LUC60361479, Page 3.

27 In granting the resource consent, the Independent Commissioner noted:

I find that there are no reasonable grounds to withhold consent subject to the conditions that have been offered by the Applicant and otherwise recommended by the Council staff.

With regard to the removal of the notable *Macrocarpa* tree, the streetscape would retain an overall 'well-treed' character due to the existing road reserve trees and three *Poplars* retained on site, as well as new planting proposed. The loss of the Notable *Macrocarpa* will not have significant visual amenity, landscape or local character effects on the environment and although replacement planting will take time to reach a large enough scale as to be able to mitigate the loss that will result, I find that this will be acceptable.

28 Following the decision of the Independent Commissioner, Auckland Council staff obtained further independent assessment of the tree from Greenscene NZ in December 2020⁹ to assist with the tree owner approval decision. The report outlined:

- The *macrocarpa* contributes to the local setting by providing a significant component of the green corridor and urban ngahere (forest). Currently the Avondale area has been assessed as low canopy cover (10% to 15%) with very few large trees, thus increasing the valuable role of the *macrocarpa* in the setting.
- The *macrocarpa* has a historic connection with the European settlers of the Avondale or Whau area where planting exotic trees was commonplace for functional wind reduction and shading.
- It now provides a green barrier between the State Highway and the local urban area to its south and is likely to contribute to the local property values.
- Further investigation into the tree's health condition would be prudent.

Safety issues associated with the tree

29 A subsequent climbing inspection of the tree on 4 December 2020 (by Greenscene NZ) revealed a crack in one of the tree trunks which posed a 'not tolerable or extreme risk' (email advice from Greenscene NZ **attached**). Remedial work to address this will require a reduction of the cracked trunk to reduce the weight and minimize the possibility of the trunk failing (and which constitutes removal of a significant portion of the tree). This action may:

- Lower the landscape value;
- Increase speed of decline (in part due to increased wind loading);
- Create a visual perception of a hazard due to off-balance appearance of the tree.

Applicant's views and supporting information

30 The Developer has advised that the Building Consent for the Stage 1 work is presently being processed by the Council and their construction team are preparing to commence site

⁹ Arboricultural Assessment Monterey cypress (*Hesperocyparis macrocarpa*) 1817 Great North Road Avondale, dated December 2020.

establishment works for this project. The Developer is negotiating sub-contracts that need to be let prior to commencing on site. Leading into Christmas, and with the current market conditions, all subcontractors need to know what their forward work programme is, so they are able to commit resources and plan accordingly prior to Christmas.

- 31 The Developer has advised that an option to proceed with alternative design options, which could accommodate retention of the tree, is not viable because:
- The current design for the development (117 units) is based on the tree removal as approved by Panuku and Auckland Council (resource consent) and the developer is contractually obliged to deliver 117 units.
 - The Crown's Kiwibuild approvals and commitments to the developer are based on 117 units.
 - Bank finance, and the developer's commercial commitments and the financial viability of the project are based on 117 units.
 - 52 contracts for units which rely on the approved 117 unit design.
 - The maximum yield for a design which has retains the tree would only produce 83 units.
 - Given all the existing financial decisions and contractual commitments, a 83 unit development would not be feasible, and the developer has noted they would have no option but to cancel contracts with purchasers (many of which are first home buyers) and long standing contractors and recoup their costs and financial exposure from Council.
- 32 I note that on the issue of alternative design options which accommodate the retention of the tree, the Independent Commissioner (who granted the resource consent) found that:¹⁰
- Having considered the relative merits of a scenario of only allowing development that retains the tree, and the scenario where the tree is permitted to be removed, I am satisfied that the overall promotion of sustainable management will in this instance be best served by enabling the more efficient use of land close to an identified centre for additional housing supply. This leads me to support the granting of consent.
- 33 The developer also noted the potentially high reputational risk to the developer, central government, Panuku and the Council should the development be cancelled, particularly given the need for affordable housing in the Avondale area.
- 34 If tree owner approval is granted, the developer has agreed to plant 10 mature trees in the Avondale area (final details on type and location to be agreed with the council). This is in addition to the 11 replacement street trees which will be planted by the developer under the resource consent.

Views and preferences of the community

- 35 I am aware of various views from numerous groups, and/or individuals in the community. In general, I understand the community's preference to be retention of the tree based on its status, age and amenity provision. This is based on information I understand to have been imparted by

¹⁰ Resource consent decision LUC60361479, Paragraph 4.

some members of the community directly to elected members, and the fact that the tree was nominated by the public to be included on the notable schedule list. Staff also advise me that the tree has been painted with the words 'save me'.

36 I have considered and weighed these views in coming to my decision.

Ngāti Whātua Ōrākei views

37 Ngāti Whātua Ōrākei support the retention of the tree, and have provided the following views:¹¹

Regarding the notable *Macrocarpa* outside 1817 Great North Road in Avondale Ngāti Whātua Ōrākei expect to see this tree protected and retained.

In line with Te Pou o Kāhu Pōkere, our Iwi Management plan, we oppose the removal of vegetation unless it is an imminent health and safety risk or a known weed. Outcome 14 clearly states that significant trees will be protected.

While it is not a native tree it still plays a significant role in the ecosystem and the community of Avondale. Culturally we consider the mauri of the habitat as a whole and this tree will support a number of native animals, including birds, invertebrates and fungi. Nature does not exist in isolation, it is related through whakapapa and it is still a child of Papatūānuku.

We would also like to draw attention to the recently declared climate change emergency, as well as the councils own Urban Ngahere strategy and Te Tāruke-ā-Tāwhiri: Auckland's Climate Plan; all of which clearly outline the importance of retaining vegetation and especially large trees.

Finally, this *Macrocarpa* is a notable tree, it is loved by the community, it plays a significant role in the ecosystem and is contributing to reducing our climate impact. While we understand the need for intensification, this development does not depend on the tree being removed. Tāmaki Makaurau is losing trees at an alarming rate, we see this every day in resource consents. This should be taken as an opportunity to showcase how we should be retaining trees.

There is limited tree protection left in Aotearoa, we would like to trust that the Auckland council, as our treaty partners will appropriately value the protected trees. Auckland Council should be showing the people of Tāmaki Makaurau that they respecting their role as kaitiaki.

Tree Council views

38 On 16 December 2020, the Tree Council contacted the council to provide its support for the retention of the tree and attached a report by a Landscape Architect ([REDACTED]) assessing the effect of removal of the tree on visual effects. The Tree Council comments include¹² (full letter **attached** to this report):

- We oppose removal of this scheduled notable tree.
- We dispute the suggestion the tree is in poor health / decline based on the Greenscene Arboricultural Report that you commissioned.
- We request that representatives of the Tree Council and mana whenua are present at any discussion and decision making meeting of the Whau local

¹¹ See email from Ngāti Whātua Ōrākei, 16 December 2020.

¹² We note that the Tree Council raised a number of issues in relation to the resource consent, which has already been determined and is separate to the tree owner approval decision before the local board.

board regarding this tree. We would like to request speaking rights at any such meeting to address the local board on this issue.

- We request that any such meeting be open to the public and advertised so that interested members of the local community, whom the Whau local board purports to represent, can be present.

Whau Local Board views

- 39 The Whau Local Board has been provided with all the supporting material and background documents referred to in this record of decision. Members of the Board acknowledge the amenity value of the macrocarpa tree to the Avondale community. However, because of the risk of legal action if the decision is not made before the Board can formally meet, the Chairperson of the Whau Local Board has confirmed that the Board accepts the need for the Chief Executive to take this decision under delegated authority.

Risks

- 40 The developer has threatened legal action if tree owner approval is not provided. The developer has also indicated that it will seek to recover any costs it incurs as a result of council refusing its application or by delaying this project further. As such, there is a financial risk to council if a decision is made to refuse the application, and if there is any further delay in taking a decision.
- 41 As noted by the developer, there is also reputational risk to council if the application for tree-owner approval is declined on the basis that such a decision is arguably inconsistent with council's support (through Panuku) of this development and more generally, to increasing affordable housing and supporting growth in Auckland.
- 42 However, there is also a reputational risk to council in granting the application given the community opposition to the removal of the tree.

Delegated decision maker:

Name: James Stabback

Title: Chief Executive of Auckland Council

Signed:



Date: 23 December 2020