

Decision of Hearing Panel

**PROPOSED PLAN CHANGE H(B) – NOTABLE TREES
TO THE MANAWATŪ DISTRICT PLAN**

**Decision Report and Decision of the Hearing Panel
appointed by the Manawatū District Council
pursuant to section 34A of the Resource Management Act 1991**

7 July 2023

CONTENTS

1. INTRODUCTION	4
▪ Report purpose.....	4
▪ Role and report outline.....	5
2. PLAN CHANGE CONTEXT	7
▪ Background	7
▪ Operative District Plan.....	8
▪ Other Proposed Plan Changes to the District Plan.....	8
▪ Other Non-Statutory Documents.....	9
▪ Plan Change: Reasons, Purpose, Evaluations and Provisions.....	9
▪ Pre-hearing directions and procedures.....	14
▪ The Hearing (7 June 2023)	15
▪ Hearing adjournment and post-hearing.....	16
3. EVALUATION.....	17
▪ Overview.....	17
▪ Tree 1, 11 South Street.....	19
▪ Tree, 28 Kimbolton Road	20
▪ Overall evaluation	22
▪ Corrections	22
4. CONCLUSION.....	23
5. DECISION.....	23

SCHEDULE OF APPENDICES

APPENDIX 1: Panel decisions on relief sought by submissions and further submissions

APPENDICES 2 and 3: Annotated version of Plan Change chapters

INDEX OF ABBREVIATIONS

This report utilises several abbreviations and acronyms as set out in the glossary below:

Abbreviation	Means...
“Appendix 1D”	Trees with Heritage Value contained in the Operative District Plan
“the Act”	Resource Management Act 1991
“the Council”	Manawatū District Council
“the Regional Council”	Horizons Regional Council
“the District Plan”	Operative Manawatū District Plan (December 2002)
“MDC”	Manawatū District Council
“Notable Tree”	Tree included in the District Plan with a STEM Score of 130 points or above
“NES-TF”	National Environmental Standards for Telecommunication Facilities 2016
“NES-ET”	National Environmental Standards for Electricity Transmission Activities 2009
“NPS”	National Planning Standards 2019
“PPCH(b)”	Proposed Plan Change H(b) Notable Trees
“the Plan Change”	Proposed Plan Change H(b) Notable Trees
“the RMA”	Resource Management Act 1991
“RPA”	Root Protection Area
“the RPS”	The Regional Policy Statement part of the Horizon Regional Council’s One Plan
“s[#]”	Section Number of the RMA, for example s32 means section 32
“s42A report”	The report prepared by MDC pursuant to s42A, RMA
“STEM Assessment”	New Zealand Standard Tree Evaluation Method
“STEM Score”	Score provided to tree through the STEM Assessment
“STEM Threshold”	Trees with a STEM score of 130 points or more

**Manawatū District Council
Proposed Plan Change H(b)
Notable Trees**

Decision of the Hearing Panel

Proposal Description:

The Proposed Plan Change (**PPCH(b)**) insert a new 'Notable Trees' chapter into the Manawatū District Plan, as required by the National Planning Standards and to update the existing Appendix 1D containing the list of trees with heritage value to remove trees that have met the STEM score threshold. Consequential changes are also proposed to Chapter 3d Earthworks and Subdivision Rules.

Hearing Panel:

Gina Sweetman - Independent RMA Hearing Commissioner, Chairperson
Alison Short - Commissioner/elected representative

Date of Hearing:

7 June 2023

Hearing Officially closed:

12 June 2023

1. INTRODUCTION

Report purpose

- 1.1 This report sets out our decision on PPCH(b) to the operative Manawatū District Plan 2002, relating to Notable Trees.
- 1.2 We were appointed by the Council to hear submissions made on the Plan Change and to consider and make a decision under delegated authority of the Council under section 34A of the Resource Management Act 1991 as to whether PPCH(b) should be declined, approved or approved with amendments.
- 1.3 PPCH(b) (as notified) seeks to:
 - Insert a new chapter into the District Plan: 'Notable Trees' consisting of:
 - One objective
 - Five policies
 - Four Rules relating to:
 - Pruning

- Gardening with Root Protection Area
 - Works within the Root Protection Area
 - Removal or Other works
 - Three Standards
 - Insert a new Notable Trees Schedule containing eight trees
 - Identify proposed notable trees with symbols on the Planning Maps in accordance with the National Planning Standards
 - Remove the existing Appendix 1D in the District Plan “Trees with Heritage Value”
 - Consequential amendments to the following chapters are also proposed to ensure alignment with the new Notable Trees Chapter:
 - Chapter 2 Definitions
 - Chapter 3D Earthworks
 - Chapter 4 Historic Heritage
 - A1 Rules – Subdivision
- 1.4 We will canvass PPCH(b)’s background in due course. It has been the subject of a section 32 report¹, consultation with stakeholders, and, of course, the public notification and hearing process, culminating in our decision.
- 1.5 Before setting out the details of PPCH(b), the submissions to it and our substantive evaluation, there are some procedural matters that we will address, beginning with our role as a Hearing Panel.

Role and report outline

- 1.6 As noted above, our role is to make a decision about the outcome of PPCH(b) on the Council’s behalf. The authority delegated in us by the Council includes all necessary powers under the RMA to hear and decide on the submissions received on PPCH(b).
- 1.7 The purpose of this report is to satisfy the Council’s various decision-making obligations and associated reporting requirements under the RMA.
- 1.8 Having familiarised ourselves with PPCH(b) and its associated background material, read all submissions, conducted the site visits and hearing, we hereby record our decision.
- 1.9 In this respect, our report is broadly organised into the following two parts:
- a. Factual context for PPCH(b):

This non-evaluative section (comprising **Section 2** in this report) is largely factual and contains an overview of the land subject to PPCH(b) and an outline of the background to PPCH(b) and the relevant sequence of events. It also outlines the main components of PPCH(b) as notified. This background section provides relevant context for considering the issues raised in submissions to

¹ Section 32 of the RMA sets out the requirements for preparing and publishing reports that evaluate the appropriateness of a plan change.

PPCH(b). Here, we also briefly describe the submissions received to PPCH(b) and provide a summary account of the hearing process itself and our subsequent deliberations. We also consider here various procedural matters about the submissions received.

b. Evaluation of key issues:

The second part of our report (comprising **Sections 3 to 5**) contains an assessment of the main issues raised in submissions to PPCH(b) and, where relevant, amplification of the evidence/statements presented at the hearing (in **Section 3**). We conclude with our decision (in **Section 5**), having had regard to the necessary statutory considerations that underpin our considerations (in **Section 4**). All these parts of the report are evaluative, and collectively record the substantive results of our deliberations.

2. PLAN CHANGE CONTEXT

Background

- 2.1 Proposed Plan Change H(b) Notable Trees (**PPCH(b)**) was prepared and notified in accordance with Section 74 of the RMA, and the first part of Schedule 1, to commence a review of each provision in its District Plan no later than 10 years after the provision was made operative. The Act allows Council to review the District Plan in full or in sections. The Council decided to undertake the review of the District Plan in sections (i.e. a sectional district plan review).
- 2.2 PPCH(b) is a plan change under Manawatū District Council’s Sectional District Plan “rolling” Review.
- 2.3 In 2009, the Resource Management (Simplifying and Streamlining) Amendment Act inserted two new sections (Sections 76(4A) and 76(B) in relation to rules regarding the felling, trimming, damaging, or removal of trees. The changes to the Act introduced in 2009 were intended to reduce high transaction costs caused by the large number of resource consents required due to blanket tree protection rules in urban environments. The provisions required councils to specifically identify ‘notable’ trees for protection in a plan, either individually or as part of a definable group. This plan change gives effect to this national direction.²
- 2.4 This Plan Change follows a review assessment of the notable trees listed in Appendix 1D of the District Plan in 2021 by Council’s Consultant Arborist, Mr Jeremy (**Jez**) Partridge as part of the rolling review and in light of the 2009 Amendment Act. This assessment was carried out using the New Zealand Tree Evaluation Methodology (**STEM**), which determines the intrinsic quality of trees, in addition to a basic safety assessment of each tree. The findings of these assessments were used to determine which trees should remain listed in the District Plan as Notable Trees.³
- 2.5 The National Planning Standards 2019 (**NPS**) requires district plans to include a separate chapter for Notable Trees, where relevant, which must address the follow matters:
- (a) *“identification of individual trees or groups of trees*
 - (b) *provisions to manage trees or groups of trees*
 - (c) *a schedule(s) of individual trees and groups of trees. This schedule must include a description of the tree(s) including the species of the tree(s). This may cross -reference an appendix”⁴*
- 2.6 Furthermore, any schedule provided in accordance with (c) above must include the following information for each site or item identified:
- (a) *“unique identifier (created by the local authority)*

² S32 Report, Proposed Plan Change H(b) – Notable Trees, dated September 2022, Section 6, page 6

³ Statement of Evidence of Mr Jez Partridge on behalf of MDC, dated 18 May 2023, Section 2- 3, page 3-4

⁴ National Planning Standards 2019, Section 7, 16 a-c, page 33

- (b) site identifier (e.g., legal description, physical address, site name or description)
- (c) site type (including description of values)
- (d) map reference or link.”⁵

- 2.7 PPCH(b) sought to redress the fact that the current provisions of the Operative District Plan were not efficient or effective in managing notable trees and did not provide clarity for plan users as to whether a resource consent was required for tree works. In addition, the list of notable trees in Appendix 1D was outdated with several trees listed no longer in existence.
- 2.8 Prior to the notification of PPCH(b), the completed tree assessments and a new draft chapter for Notable Trees were sent to landowners and affected neighbours for comment.⁶ In addition, the draft plan change was also sent to the Ministry for the Environment and Ministry for Culture and Heritage and representatives of iwi and hapū.⁷ Feedback received is set out on pages 23 and 24 of the s32 report.
- 2.9 Matters raised by affected parties is also canvassed further in this decision in relation to submissions received. It was noted that at the time of the s32 report, no feedback had been received from iwi or hapū.⁸
- 2.10 The proposed new chapter and appendix of trees of PPCH(b) has been prepared to take account of the Amendment Act, the STEM assessment and to be consistent with the requirements of the NPS.

Operative District Plan

- 2.11 The District Plan became operative on 1 December 2002. As set out above, Council reviewed the existing list of trees contained within Appendix 1D in 2021. The changes proposed by PPCH(b) are set out earlier in this decision.

Other Proposed Plan Changes to the District Plan

- 2.12 As set out earlier, the Council is carrying out a sectional district plan review.
- 2.13 Alongside PPCH(b), the Council have also proposed Plan Change H(a) in relation to Historic Heritage.
- 2.14 This plan change does not have any direct relevance, bearing or legal status or weight on our decision on PPCH(b).

⁵ National Planning Standards 2019, Section 10 Format Standard , 14, page 42

⁶ S42A Report, Proposed Plan Change H(b) – Notable Trees, dated May 2023, Section 2, para 2.3, page 3

⁷ S32 Report, Proposed Plan Change H(b) – Notable Trees, dated September 2022, Section 13.2, page 23

⁸ S32 Report, Proposed Plan Change H(b) – Notable Trees, dated September 2022, Section 13.2, page 24

Other Non-Statutory Documents

2.15 The s32 Report referenced two additional documents which it has taken into consideration:⁹

- (a) Tree Protection in Urban Environments, Ministry for the Environment (2013)
- (b) NZ Tree Register

2.16 The approach taken in the review of the Notable Trees in Appendix 1D and the proposed rules are considered to be consistent with (a) above. The inclusion of new trees such as those listed in the NZ Tree Register has been considered as a matter for future consideration and any tree that is listed on the NZ Tree Register does not automatically mean the trees should be included in the District Plan and should be subject to a STEM assessment.¹⁰

Plan Change: Reasons, Purpose, Evaluations and Provisions

Purpose and Reasons for PPCH(b)

2.17 As notified, PPCH(b) proposed to:

“is to review Appendix 1D – Trees with Heritage Value and corresponding District Plan provisions. A new chapter is proposed to manage notable trees, including an updated notable tree schedule. The scope of PCH(b) is narrow and limited to a review of the existing notable tree schedule only.”¹¹

2.18 The s32 document states the following purpose of the plan change as being:

“The purpose of PCH(b) reviews the provisions for notable trees which are mostly contained in Chapter 4: Historic Heritage and Appendix 1D - Trees with Heritage Value of the operative District Plan. These provisions have not been reviewed since the District Plan was made operative in December 2002. The proposed plan change inserts a new chapter into the District Plan for the management of notable trees in the District including a new schedule of notable trees.”¹²

Evaluations - Section 32 and 32AA Reports

2.19 Before notifying a proposed plan change, the Council is required to prepare an evaluation report in accordance with s32 of the RMA. The s32 Report (September 2022)¹³ evaluated the objectives of the proposal to determine whether they are the most appropriate to achieve the purpose of the RMA.

⁹ S32 Report, Proposed Plan Change H(b) – Notable Trees, dated September 2022, Section 7.6, page 12

¹⁰ S32 Report, Proposed Plan Change H(b) – Notable Trees, dated September 2022, Section 7.6, page 13

¹¹ Public notice under Clause 5 of the First Schedule of the Resource Management Act (1991), dated 17 November 2022

¹² S32 Report, Proposed Plan Change H(b) – Notable Trees, dated September 2022, Section 4, page 3

¹³ S32 Report, Proposed Plan Change H(b) – Notable Trees, dated September 2022

2.20 Under section 32AA, a further evaluation is required for any amendments to the Plan Change since the original s32 report was completed.

2.21 The initial s32 evaluation report section “Part III: Statutory Evaluation” undertook an evaluation of the following:

- a. **Scale and Significance:**¹⁴ considering the environmental, economic, social and cultural effects of the provisions.
- b. **Evaluation of the following three options:**¹⁵
 - Option 1: Status Quo
 - Option 2: No provisions for notable trees
 - Option 3: Insert new chapter

2.22 The s32 analysis concluded that:

“the preferred option is Option 3 (Plan Change H(b)) for the following reasons:

- *Most likely to achieve the identified resource management issues for notable trees;*
- *Providing a more appropriate and effective rule framework such as enabling the removal of notable trees when trees become unsafe, or have less than five years life expectancy;*
- *Gives effect to the relevant statutory planning documents and the Act. It is based on technical assessments undertaken for the Council which evaluated the current list of Notable Trees and completed a comprehensive STEM assessment. The proposed provisions are considered to provide a clear and easily understood approach to managing the small number of Notable Trees in the District, which provides clarity for plan users compared with the operative District Plan.”*¹⁶

2.23 In respect to the proposed objective of the new Notable Trees chapter, the s32 carried out the following assessment whether the objective is the most appropriate way to achieve the purpose of the Act:

- a. **Relevance:** Achieves purpose and principles of RMA addresses a resource management issue assists Council to carry out its statutory function within the scope of higher level documents
- b. **Feasibility:** Acceptable level of uncertainty and risk realistically able to be achieved
- c. **Acceptability:** Consistent with identified Iwi and community outcomes will not result in unjustifiably high costs on the community or parts of the community

2.24 The s32 report concluded that the proposed objective:

¹⁴ S32(1)(a) of the Resource Management Act 1991

¹⁵ S32(1)(b)(i) of the Resource Management Act 1991

¹⁶ S32 Report, Proposed Plan Change H(b) – Notable Trees, dated September 2022, Section 18.1, page 32

“is the most appropriate way to achieve the purpose of the Act. The objective provides an effective and efficient approach to identify and then protect notable trees. The objective contributes to achieving section 6 of the Act and the overall purpose of the Act, being sustainable management of notable trees in the Manawatū District.”¹⁷

2.25 The s32 went on to provide an assessment whether the proposed provisions are the most appropriate way to achieve the objective of the following:

- a. Costs, Benefits and Risk of Acting/Not Acting if there is uncertainty or insufficient information about the subject matter of the provisions:
 - Environmental
 - Economic
 - Social Cultural
- b. Effectiveness and Efficiency

2.26 Overall, the s32 report concluded that PPCH(b) is the most appropriate options for the following reasons:

- *“PCH(b) is not inconsistent with higher order documents including national policy statements, environmental standards and regulations, Horizons One Plan, and gives effect to the National Planning Standards;*
- *PCH(b) is the most effective and efficient way to achieve the purpose of the Act through enabling people and the community to provide for their well-beings and for their health and safety. It therefore enables the Council to better fulfil its obligations under the Act.*
- *The plan change removes the existing inefficient and ineffective provisions (policy and rules) in the District Plan and proposes a new chapter for notable trees. The notable tree schedule is updated with more appropriate information for each tree, including: tree name, STEM assessment number, location, legal description, co-ordinates, and a description of values for each tree.*
- *There is sufficient information for Council to make the changes as proposed.*
- *While the current schedule is limited to the existing listed notable trees, this assessment framework can be used if additional notable trees are proposed in the future.”¹⁸*

2.27 A s32AA assessment (May 2023) was included in the s42A report, resulting from two matters of proposed change to the notified version post submission stage, in relation to:

- a. Retention of Tree 1 (Sequoia sempervirens – Coast Redwood), 11 South Street, on the Notable Tree Schedule.

¹⁷ S32 Report, Proposed Plan Change H(b) – Notable Trees, dated September 2022, Section 18.2, page 34

¹⁸ S32 Report, Proposed Plan Change H(b) – Notable Trees, dated September 2022, Section 19, page 40

- b. Retention of Tree 6 (*Sequoiadendron giganteum* – Giant Sequoia), 28 Kimbolton Road, on the Notable Tree Schedule; and

2.28 With respect to a. above, the s32AA assessment contained in the s42A Report concluded that:

“the submitter has raised issues related to the aesthetics of the tree and issues over safety and mess from dead branches, twigs and foliage which fall on their property and the footpath, which could also endanger footpath users¹⁹..... the proposed provisions in PPCH(b) enable the removal of a notable tree if there is an imminent threat to the safety of people or property without the need for a resource consent. These provisions provide more certainty to the tree owners and a more efficient way forward for managing the tree if there are safety issues identified compared with the operative District Plan approach.”²⁰

In considering the evidence provided by Mr Partridge and the proposed provisions for managing trees, my recommendation is to retain the Coast Redwood on the Notable Tree Schedule (for Tree 1). I wish to review this recommendation in light of any evidence shared at the hearing.”²¹

2.29 With respect to b. above, the s32AA assessment concluded that:

“The Hare et al submission states that the Giant Sequoia provides an ongoing maintenance burden for the nearby residents and that the submitters have ongoing anxiety and genuine concerns with regards to health and safety. I consider these concerns relate to social well-being and the safety of the tree on properties and people who live near the tree, which in turn may impact on the health of those people. The assessments provided by Mr Partridge confirm that the tree is safe to retain as a notable tree, and specific provisions in PCH(b) enable the removal of a notable tree without the need for resource consent if there is an imminent threat to the safety of property or people which cannot be made safe by pruning.”²²

2.30 These matters were further canvassed and confirmed in the Council Officers Right of Reply²³, concluding that:

“Throughout the development of this plan change, I have been guided by the advice of Mr Partridge.²⁴ This advice, along with a much improved policy and rule framework for managing the health and safety of notable trees, has led to

¹⁹ S42A Report, Statement of Evidence Prepared by Ms Rochelle Waugh, Proposed Plan Change H(b) – Notable Trees, dated 22 May 2023, Section 4, para 4.25, page 8

²⁰ S42A Report, Statement of Evidence Prepared by Ms Rochelle Waugh, Proposed Plan Change H(b) – Notable Trees, 22 May 2023, Section 4, para 4.26, page 8

²¹ S42A Report, Statement of Evidence Prepared by Ms Rochelle Waugh, Proposed Plan Change H(b) – Notable Trees, 22 May 2023, Section 4, para 4.27, page 8,

²² S42A Report, Statement of Evidence Prepared by Ms Rochelle Waugh, Proposed Plan Change H(b) – Notable Trees, 22 May 2023, Section 4, para 4.19, page 7

²³ Right of Reply, prepared by Ms Rochelle Waugh, dated 7 June 2023

²⁴ Council’s consultant Arborist Expert

my recommendation to retain both Tree 1 and Tree 6 on the Notable Tree Schedule.”²⁵

Plan Change provisions (as notified)

- 2.31 We have set out the changes proposed through PPCH(b) earlier. These are also set out in detail in the PPCH(b) documentation itself.²⁶
- 2.32 The relevant components of these changes which are subject to submissions (as set out in Appendix 2) are considered in detail under the relevant issue in Section 3 of our report.

Notification and submissions

- 2.33 PPCH(b) was publicly notified on 17 November 2022. The closing date for submissions was 15 December 2022.
- 2.34 A total of four submissions were received by the Council.
- 2.35 A summary of submissions was prepared and subsequently notified for further submissions on 23 February 2023 with the closing date for receiving further submissions being 8 March 2023. One further submission was received.
- 2.36 Table 1 provides a list of submitters to PPCH(b), together with their broad positions. We provide a full summary of the submissions received in Appendix 1, including our decisions on the relief sought by each submitter.

Submissions		
Submission number	Submitter	Position
S1	Suzanne Wood	Not stated
S2	Clare and Adrian Hare, et al, lodged by Geoworks Ltd	Oppose
S3	Judith Perry	Oppose
S4	Horizons Regional Council	Support with amendments
Further Submissions		
FS01	Bruce Bruton and The Bruton Trust	Opposed to S1

Table 1: List of submitters to the Plan Change

- 2.37 We note that we were required to decide the status of the further submission from Mr Bruce Bruton and The Bruton Trust. The reason is that this further submission was

²⁵ Right of Reply, prepared by Ms Rochelle Waugh, dated 7 June 2023, page 2

²⁶ Publicly notified on 17 November 2022

made via text, rather than by letter or email. We were shown the detail of the text and subsequent discussions between Ms Waugh and Mr Bruton. We are satisfied and find that the further submission can be accepted and considered.

- 2.38 Ms Waugh also sought that we made a determination in terms of the status of the submission relating to the list of concerned neighbours and the extent of submitters as part of the submission lodged by Geoworks on behalf of Mr and Mrs Hare. In particular, section 2 of the Geoworks submission includes a table with the names of owners of six other properties. These property owners were not signatory to the submission, and they did not provide separate submissions. Ms Waugh advised that she separately contacted each of the owners of the six other properties, with three parties²⁷ stating they wished to be part of the submission. Two parties²⁸ stated that they did not want to be part of the submission but provided some comments about the trees. Mr Bruton was a further submitter.
- 2.39 Given that only one submission was received, we find that it must be treated as one submission. We also find that the three parties who have stated to the Council they wish to be part of the submission have status as submitters to that submission.
- 2.40 Without taking away from the finer detail provided in the submissions, the matters raised in those submissions and further submissions opposed to PPCH(b) or providing conditional support, fall into one of more of the following categories:
- a. General support for provisions²⁹
 - b. Liability of damages if tree falls³⁰
 - c. Amendments to standards³¹
 - d. Minor amendments to description of Trees³²
 - e. Opposition to inclusion of trees in the Notable Trees Schedule³³

- 2.41 We discuss these issues where relevant (and the submissions underpinning them) in greater detail under our key issue evaluation in Section 3 of this report below.

Pre-hearing directions and procedures

- 2.42 Prior to the commencement of the hearing, we issued a minute (Minute 1)³⁴ to the parties to address various administrative and substantive matters. This minute, and the others we issued through the course of the hearing and deliberations processes are available on Council's plan change website.³⁵

²⁷ Garry Wood and Barbara Wiley, Max Bryant and Daniel Bryant, Julie and Andrew White

²⁸ Patricia Ashton and John and Joan Key.

²⁹ Submission S4

³⁰ Submission S1

³¹ Submission S4

³² Submission S1 and S2

³³ Submission S2

³⁴ Minute 1 issued 3 May 2023

³⁵ <https://www.mdc.govt.nz/services/planning/district-plan/plan-changes/plan-change-hb-notable-trees>

2.43 In summary, the pre-hearing minutes addressed the following:

- a. Minute 1 (03.05.2023) – this covered:
 - i. Introduction of the hearings panel
 - ii. Procedural matters;
 - iii. Date and venue of the hearing (Wednesday 7 June 2023)
 - iv. Circulation dates for evidence before the hearing
 - v. Brief summary of the hearing process
 - vi. Panels approach to site visits
 - vii. Process for further communication and questions

- b. Minute 2 (11.05.23) – this covered:
 - i. Request from Council to the format of the hearing;
 - ii. Process for further communication and questions

2.44 In the lead up to the hearing, the following reports and evidence were received and made available to all parties in accordance with the timetable set out in Minute 1:

- a. The s42A officer's report, prepared by Ms Rochelle Waugh, a planner, dated 22 May 2023, and incorporating:
 - i. Appendix 1: Officer recommendation in response to submissions
 - ii. Appendix 2: Notable Tree Chapter showing officer recommendations
 - iii. Appendix 3: Amendments to Chapter 2: Definitions, Consequential amendments to Chapter 3 Earthworks; Rule A1, Removal of Appendix 1D Trees with Heritage Value
 - iv. Appendix 4: Statement of Evidence of Jez Partridge
 - v. Appendix 5: Correspondence for clarification of Submission 2 'concerned neighbours'
 - vi. Appendix 6: Recommended changes in new District Plan Structure – Notable Trees Chapter
 - vii. Appendix 6 – Recommended consequential changes in the new District Plan Structure Notable Trees Other

2.45 No expert evidence was received on behalf of submitters either during the lead up to or during the course of the hearing.

The Hearing (7 June 2023)

2.46 The hearing commenced at 12:30pm on Wednesday, 7 June 2023.

2.47 All the documents referred to in this section are available on the council file and [web page](#).

2.48 At the outset of proceedings, we outlined the manner in which we expected the hearing to be conducted and called for appearances and introductions from the attendees. We also set out a range of procedural matters and outlined our role and the relevant statutory matters framing our consideration of the proposal.

2.49 No procedural matters were raised during the course of the hearing that we were obliged to make a finding on.

2.50 Over the course of the initial hearing, we heard from the following people:

Council s42A Advisors

- Rochelle Waugh, Consultant Planner
- Jeremy (Jez) Partridge, Consultant Arborist

Submitters

- Clare Hare, regarding Tree 6 at 29 Kimbolton Road, Feilding³⁶
- Judith Perry, regarding Tree 1 at 11 South Road, Feilding

2.51 The above submitters usefully provided the panel with their speaking notes. These are available on the council file and web page.

Hearing adjournment and post-hearing

2.52 We adjourned the hearing on 7 June 2023.

2.53 We received the Council's right of reply on 8 June 2023. We closed the hearing on 8 June 2023.

³⁶ Mrs Hare was accompanied by Mr Hare

3. EVALUATION

Overview

- 3.1 For the purpose of this evaluation, we have grouped our discussion based on the matters that remained in contention by the time of the hearing – rather than assessing each issue on a submitter-by-submitter basis. Our decision should be read in conjunction with the s42A report which addresses all the submissions and further submissions received on PPCH(b).
- 3.2 The s42A report provides a comprehensive summary of submissions made on PPCH(b) and the issues raised in those submissions. The s42A report summarises the submission points and assesses them in both the body of the s42A report and in Appendix 1 to the report. The s42A itself focuses on the outstanding issues in contention, while Appendix 1 records Ms Waugh’s recommendations in respect to the other submission points, which she agrees to and has recommended acceptance.
- 3.3 To avoid unnecessary repetition or duplication, we have adopted the approach of focusing our written analysis on:
- the outstanding matters in contention at the hearing
 - material provided to us by submitters
 - any alteration to the s42A authors’ recommendation as part of their right of reply.
- 3.4 It follows that where we accept the recommendation in the s42A report or reply report that PPCH(b) provisions should be amended, we accept and adopt the evaluation contained in the s42A Report or reply report for the purposes of s32AA of the RMA unless otherwise stated. We have not produced a separate evaluation report under s32AA; rather we have incorporated any s32AA evaluation into our assessment and decision.
- 3.5 We note that there were no submissions that sought amendments to the objectives, policies or rules. The Regional Council did seek amendments to the standards, which Ms Waugh has recommended acceptance of. There were no further submissions on the amendments sought by the Regional Council, and as such, they are not in contention. To that end, we accept that the objective, policies and rules meet the relevant tests under s32 of the RMA and are the most appropriate means to achieve the purpose of the RMA. We also find that PPCH(b) as a whole is consistent with the Council’s functions under s31 of the RMA.
- 3.6 By the time of the hearing, the matters left in contention were:
- The retention of Tree 1 at 11 South Street, Feilding on the schedule
 - The retention of Tree 6 at 28 Kimbolton Road, Feilding on the schedule
- 3.7 The focus of this decision is therefore on the two trees and whether they should be included on the Schedule or not. In evaluating whether the two trees should be retained on the Notable Tree Schedule, we have evaluated the extent to which their retention is the most appropriate means of achieving the objective TREE-O1 and policies TREE-P1 to P5. The reason we have focussed on these is that there were no

submissions seeking amendment to these provisions. Accordingly, they are beyond contention or appeal and to all extent can be considered as operative. We set out the objective and relevant policy below:

TREE-O1

Trees with notable botanical, landscape, amenity, historic heritage or cultural values are identified and protected.

TREE-P1

Identify notable trees within the Notable Tree Schedule where the tree or group of trees have a Standard Tree Evaluation Method score of 130 or higher, and where they have one or more of the following values:

- a. Botanical*
- b. Landscape*
- c. Amenity*
- d. Historic heritage*
- e. Cultural*

3.8 We did identify in our review of the proposed amendments in response to submissions that the description of values for Tree 8 may need a further amendment in response to Ms Waugh’s recommended amendment to Tree 8’s location and legal description. We address this as an other matter.

3.9 During the course of the hearing, we asked Ms Waugh to confirm the status of the removal of a tree on the Schedule in the event that the tree was found to be an imminent threat to people or property. She also addressed who is responsible for maintenance of a tree and liability in the event of injury or death. Ms Waugh addressed this at the hearing and confirmed it in her right of reply³⁷. We find it useful to repeat this in full in our decision:

As a general rule, responsibility for the maintenance of a notable tree lies with the owner. As would be the case with any tree owner, owners of notable trees still need to look at the vegetation on their property and management it.

Owners concerned about liability for injury or death are generally not founded as a tree falling on someone and injuring them would be a ‘personal injury’ within the meaning of the Accident Compensation Act 2001, and therefore any proceedings for damages arising from that injury would be barred by s317 of that Act.

The proposed amendments to the District Plan (Plan Change H(b): Notable Trees) enables safety concerns to be addressed without the need for resource consent, e.g.:

³⁷ Right of reply dated 7 June 2023.

- *Under proposed Rule 4: The removal of a notable tree as a permitted activity if there is an imminent threat to the safety of people or property, and/or the tree is dead or has less than five years life expectancy;*
- *Under proposed Rule 1: The pruning of branches as a permitted activity to prevent damage or obstruction to structures, buildings or paths/driveways/roads;*
- *Under proposed Rule 1: The removal of deadwood, diseased vegetation and broken branches to be removed without the need for a resource consent.*

These amendments therefore enable any health and safety issues identified with notable trees to be addressed as a permitted activity, subject to some actions being undertaken, including the input by an Arborist.

3.10 We received no evidence contrary to Ms Waugh’s position and therefore accept it.

Tree 1, 11 South Street

3.11 Judith Perry sought that Tree 1, Sequoia sempervirens – Coast Redwood, 11 South Street, not be included on the Notable Tree Schedule. Her reasons, as set out in her submission and in her statement at the hearing, were focussed on the tree being ugly, with no aesthetic value, and that it sheds dead branches and twigs onto her property and the adjacent road reserve. In addition, at the hearing she expressed that it may damage people or property if it was to fall. She felt that the property owner should be able to trim or remove the tree as they wish. She stated that the tree owner was happy for it to be removed from the list. We were not provided any evidence that this was the case. Mrs Perry also queried whether we had viewed the tree from her property to see how ugly it is.

3.12 Mr Partridge had addressed the submitter’s reasons in section 4.3 of his statement of evidence. We do not repeat his evidence in full, but do note:

- He acknowledges that the lean of the tree and area of lost branches are strongly in view from Mrs Perry’s property
- From some street views the lean is less apparent and the loss of branches less visible
- Irrespective, the tree scores highly on the STEM Amenity Value category
- The tree is not considered to be unsafe
- The tree has a STEM score of 204 points which is relatively high and well above Council’s STEM threshold
- He recommends annual inspections of the tree for three years.

3.13 As noted earlier, Ms Waugh was guided by the advice of Mr Partridge and recommends that the tree be retained.

- 3.14 We viewed the tree from the property itself and varying viewpoints within the road reserve. We did not go onto Mrs Perry’s property; however, we were able to see the characteristics of the tree that Mrs Perry referred to in her submission. We accept Mrs Perry’s position that the tree is not attractive from all perspectives, given the loss of branches on one side and its lean. Mrs Perry did not present any expert evidence that the Tree should be scored less on the STEM for any particular values.
- 3.15 Overall, we prefer Mr Partridge’s expert evidence as to the Tree’s values and the safety risk and its STEM score and find that it is appropriate to retain the Tree on the Schedule. Based on the advice of Ms Waugh, there are avenues for ongoing maintenance and the removal of the tree itself as a permitted activity, should it pose imminent risk to the health and safety of people or property. The scheduling of the tree is consistent with the objective and policies in the Notable Trees chapter which, as we have set out earlier, were not in dispute through submissions.

Tree, 28 Kimbolton Road

- 3.16 A submission was received from Geoworks on behalf of Mr and Mrs Hare et al³⁸, seeking that Tree 6, *Sequoiadendron giganteum*, 28 Kimbolton Road, not be included on the Notable Tree Schedule. Their reasons, as set out in the submission and in Mrs Hare’s submission at the hearing were:
- The tree is considered to be a health and safety hazard due to its size and is causing anxiety.
 - Future weather patterns may exacerbate the risks.
 - The tree is already damaging existing buildings such as root systems cracking the concrete slab of an existing garage
 - The root system is encroaching under the Pines Court access leg
 - It is an ongoing maintenance burden for the nearby residents
 - It is not native
 - One of the owners of 6 Pine Court is the grandchild of Colonel Halcombe who planted the tree, and she would like it removed³⁹
 - The tree is not appropriate for its location
 - Resource consent would be required for any future maintenance of the damage it is causing, and for its removal
 - The tree is creating considerable shade on the properties at 28, 24 and 24A Kimbolton Road
 - Liability issues if the tree was to fall
 - The tree could be replaced with a smaller attractive tree.
- 3.17 The submission was accompanied by photographs showing the tree and the alleged damage to property.
- 3.18 Mr Partridge had addressed the submitter’s reasons in section 4.2. of his statement of evidence. We do not repeat his evidence in full, but do note:

³⁸ We addressed who was party to the submission earlier in this decision.

³⁹ We note the correspondence from Ms Ashton which states that she does not want to be included in the submission.

- There is no evidence of any defects, decay or disease which would indicate there is a risk of failure under normal weather conditions
- The tree may require some occasional tree work but is generally a low maintenance species
- There is no sign of root damage to surrounding kerbs, hard surfaces or structures
- There are no signs of damage to the garage at 26 Kimbolton Road
- There is no direct evidence that any of the driveway cracks are related or caused by below ground tree roots
- There is no damage to structures or hard surfaces closer to the tree than the cracks in the driveway or concrete slab, indicating these cracks are caused by something else
- It is appropriate that an experienced arborist assess whether a tree could be removed as a permitted activity
- The tree has a relatively high score using the STEM method.

3.19 As noted earlier, Ms Waugh was guided by the advice of Mr Partridge and recommends that the tree be retained. However, she did note that given the health and safety concerns raised by the submitters, we may wish to provide more weight to the impact of this on residents in the immediate vicinity, as opposed to the public at large.

3.20 We queried Mr Partridge as to the health and safety risk associated with more extreme weather events. He advised that his assessment did not specifically take abnormal weather conditions into account, as no arborist can guarantee the safety of any tree in those conditions. However, his assessment did assess its structural integrity, and he did not identify any concerns in that regard. He also advised that the dropping of leaves and pine needles is not generally a sufficient nuisance to warrant the removal of a tree. It is generally the responsibility of the tree owner to clean up after them.

3.21 We visited the tree and were able to inspect its surroundings. We noted the patterns of concrete cracking that the submitters and Mr Partridge both addressed. We preferred Mr Partridge's evidence, in particular noting that we could not see evidence of any raising of soil or concrete within proximity of the Tree and noted the distance between the cracks and the Tree.

3.22 We carefully considered the health and safety concerns raised by the submitters. We accept that they feel anxiety about the potential threat from the tree, exacerbated by extreme weather events. However, we were not presented with any expert evidence that the tree is structurally unsound that it would be at risk from extreme weather events. The scheduling of the Tree is consistent with the objective and policies in the Notable Trees chapter which were not in dispute through submissions.

3.23 Overall, we prefer Mr Partridge's expert evidence as to the Tree's values and the safety risk and its STEM score and find that it is appropriate to retain the Tree on the Schedule. Based on the advice of Ms Waugh, there are avenues for ongoing

maintenance and the removal of the tree itself as a permitted activity, should it pose imminent risk to the health and safety of people or property.

Other matters

- 3.24 At the beginning of the hearing, Commissioner Sweetman queried whether the description of values for Tree 8 needed to be amended as a consequential amendment to submission 1 which sought to clarify that the magnolia tree in question was fully located in the road reserve. Ms Waugh confirmed through her right of reply that the description should be amended as follows:

Description of Values

This tree is located on the former Waituna West Hall site ~~at the rear of the section against the fence, adjacent to McLaren Road~~ on the road reserve of McLaren Road. This tree is over 100 years old and approximately 20.7 metres in height, with a crown spread of 19 metres. This tree is large, infrequently found tree and a good specimen.

- 3.25 We accept Ms Waugh's recommended amendments as being an appropriate consequential amendment.

Overall evaluation

- 3.26 The Panel notes that there was no dispute from submitters that PPCH(b) did not give effect to any relevant national or regional policy statements or national environmental standards, was inconsistent with any regional plan or did not achieve the objectives of the District Plan. No submitters raised any other statutory documents that PPCH(b) was inconsistent with that we may have regard to. There was no contention overall that the proposal was not the most appropriate means of achieving the purpose of the Act, nor that it was not in accordance with the functions of the Council. Accordingly, we find that PPCH(b) meets the relevant statutory tests under the RMA.
- 3.27 As detailed in our evaluation of Trees 1 and 6, we preferred the evidence of Ms Waugh and Mr Partridge that the scheduling of the Trees was consistent with the Objective and Policies of the Notable Trees Chapter, which are beyond contention. While we accept the submitters have concerns about the trees, the rules provide an avenue to address their concerns.

Corrections

- 3.28 There are also the three minor issues identified in paragraphs 4.28 to 4.31 of Ms Waugh's s42a report to address. These were in relation to:
- a) Cross-referencing from Rule TREE-R3 to the Notable Tree Schedule;
 - b) Amending the reference from "Colonel Halcombe" to "Mr Halcombe" in respect to Tree 6; and
 - c) Amending the GPS co-ordinates for Tree 3.

3.29 In respect to Tree 3, we noted that the Notable Tree Schedule attached as Appendix 2 amended the co-ordinates for Tree 4 instead of Tree 3. We have corrected this. We also noted that the Road/Street reference for Tree 8 is incorrect, as the reference to McClaren Road should be McLaren Street.

3.30 We consider that these are all minor amendments that can be made under Clause 16 of Schedule 1, and have made these minor amendments accordingly.

4. CONCLUSION

4.1 PPCH(b) seeks to:

- Insert a new chapter into the District Plan: ‘Notable Trees’ consisting of:
 - One objective
 - Five policies
 - Four Rules relating to:
 - Pruning
 - Gardening with Root Protection Area
 - Works within the Root Protection Area
 - Removal or Other works
 - Three Standards
- Insert a new Notable Trees Schedule containing eight trees
- Identify proposed notable trees with symbols on the Planning Maps in accordance with the National Planning Standards
- Remove the existing Appendix 1D in the District Plan “Trees with Heritage Value”
- Consequential amendments to the following chapters are also proposed to ensure alignment with the new Notable Trees Chapter:
 - Chapter 2 Definitions
 - Chapter 3D Earthworks
 - Chapter 4 Historic Heritage
 - A1 Rules – Subdivision

4.2 Based on our evaluation of the matters raised in the submissions, including the s32 evaluation report and the s42A report and evidence presented at the hearing, we find that PPCH(b), as amended in response to submissions, to be the most appropriate means of achieving the purpose of the Act. We also find it to be consistent with the Council’s statutory functions under s31 of the RMA.

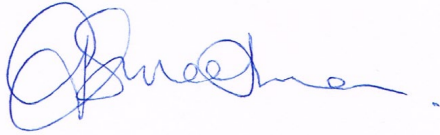
5. DECISION

5.1 For the reasons outlined in this decision, we, on behalf of the Council:

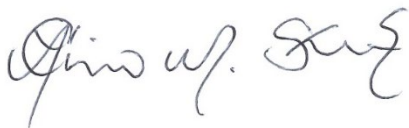
- (a) Accept the further submission of Mr Bruce Bruton and The Bruton Trust.
- (b) Treat the submission made by Geoworks as one submission, which Mr and Mrs Hare, Garry Wood and Barbara Wiley, Max Bryant and Daniel Bryant, Julie and Andrew White are all party to.
- (c) Pursuant to section 32(2)(a) of the RMA, adopt the evaluation of PPCH(b) contained within this decision, including the conclusion that PPCH(a) is the

most appropriate means of achieving the objectives of the District Plan, and in doing so, achieving the overall purpose of the RMA.

- (d) Pursuant to Clause 10 of Schedule One of the RMA, approve PPCH(b), subject to the amendments outlined in this decision and as set out in Appendices 2 and 3.
- (e) Accept, accept in part or reject the submissions for the reasons outlined in this decision, as set out in Appendix 1.
- (f) Pursuant to Clause 16 of Schedule One of the RMA, make minor corrections to PPCH(b), as set out in Appendices 2 and 3.



Gina Sweetman, Independent Commissioner



Alison Short

Dated this 7 July 2023