

Memo

16 December 2020

To: Chair Thomas, Whau Local Board
From: Claudia Wyss, Director Customer and Community Services and Rod Sheridan, GM Community Facilities

Subject: Application for tree owner approval to remove a Notable Macrocarpa tree at 1817 Great North Road

Purpose of memo

- 1 To inform the Local Board about a proposed decision on tree owner approval, in respect of the removal of a Notable Macrocarpa tree (**the tree**) at 1817 Great North Road.

Executive Summary

- 2 Ockham Residential Ltd in partnership with Marutūāhu iwi (**the developer**) purchased 1817 Great North Road (**the property**). The property was sold by Panuku to the Ministry of Housing and Urban Development (MHUD) for residential development.
- 3 The developer has obtained a resource consent on non-notified basis for a 117-unit development on the site which includes retention of three Notable poplars within the site and removal of the macrocarpa tree.
- 4 Tree owner approval¹ is now being sought by the developer to remove a Notable macrocarpa tree located partially in the road reserve and partially on the developer's land, to enable the development of the site (approximately 60% of the tree is located on the road reserve and 40% located on the developer's property).
- 5 The developer has sought a swift decision (within a week) on the basis that it needs to progress matters to deliver the project on time and meet its contractual commitments.
- 6 Tree owner approval decisions are usually taken by staff. Due to the public interest in the decision, staff are notifying the local board of the proposed decision in accordance with a 'No Surprises' approach.
- 7 The tree owner decision is complex because of the competing considerations involved, namely the:
 - a. Strategic and commercial objectives of the developer, Panuku and central government, including to improve housing to the community;

¹ Tree Owner Approval (TOA) process information – <https://www.aucklandcouncil.govt.nz/building-and-consents/working-on-around-trees/Pages/check-you-can-chop-prune-trim-tree-council-property.aspx>

- b. And the preferences by some members of the community to retain the tree.
- 8 In terms of community views, staff are aware that some members of the community have contacted elected members to express their support for retention of the tree and the tree has been painted with the words 'Save me'. Ngāti Whātua Ōrākei and the Tree Council also oppose the removal. More generally, we know that Aucklanders value mature trees and support their retention where possible.
- 9 From the developer's perspective, removal of the macrocarpa tree is essential to deliver the development in accordance with the resource consent obtained. Timing is essential because a building consent for Stage 1 work on the development is currently with the Council and the developer is working to prepare their forward work programme and resource planning for delivery of the development. An apparent risk exists that with a development delay, the development, and therefore access to housing, may be adversely impacted
- 10 The council has also recently been informed by an independent arborist it instructed to assist with the tree owner approval assessment that a significant part of the tree requires urgent work for safety reasons. The proposed works may contribute to a faster rate of decline and lower life expectancy for the tree.
- 11 There are two reasonably practicable options to be considered in the tree owner approval decision:
- a. Option one is to grant tree owner approval to remove the tree; and
 - b. Option two is to decline tree owner approval to removal the tree.
- 12 This report sets out the advantages and disadvantages associated with each option and gives an indication of the decision that staff propose to take.

Recommendations:

- 13 That the Chair of the Local Board:
- a. note staff's proposed decision to grant tree owner approval on the basis outlined in this memo and agree that the decision should be taken by staff.

Background and relevant information

- 14 The 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 is also located in Avondale, one of Panuku's 'Unlock' locations.
- 15 The developer has already obtained a resource consent for the works. Although public notification 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 were met and the consent was processed on a non-notified basis.
- 16 On 5 November 2020, the developer made an application for tree owner approval to remove the jointly owned macrocarpa. The application was accompanied by a number of supporting

documents including the resource consent and notification decisions and arboricultural and other reports associated with the resource consent (attached as appendix to this memo).

- 17 We are aware of community interest in this matter and note that the property is located 1km away from Canal Road where the removal of privately owned trees triggered community support in favour of retaining the trees.
- 18 Possible alternative design options which accommodate the retention of the tree are available but are not favoured by the developer (for the reasons discussed in further detail below).
- 19 On 2 December 2010, the Regional Arborists and Ecological Manager, Community Facilities, communicated to the developer that he was not in a position to support the removal of the tree.
- 20 In response to the communication from Community Facilities, the developer advised that it has continued to progress the development in reliance on the resource consent, which was granted, and that an adverse decision or any substantial delay would be untenable.
- 21 The council has also recently been informed by the independent arborist who completed the assessment referred to in paragraph 19, that further investigations have shown that a significant part of the tree requires urgent removal for safety reasons.

Details about the development

- 22 The site is located within the Unlock Avondale priority location area². The Unlock Avondale programme seeks to deliver various outcomes for 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.
- 23 Panuku have been working with the Ministry of Housing and Urban Development and the developer for over a year to secure a development on this site. Strategic alignment between the Council, Panuku and central government may be one factor for consideration in the tree owner approval decision.

Resource consent

- 24 The resource consent to remove the tree was granted by an Independent Commissioner on 16 November 2020, who 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*

² <https://www.panuku.co.nz/avondale>

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.

25 The developer was notified that tree owner approval would be required through the advice note in the resource consent decision³:

The consent holder is advised that the street trees are assets managed by the Parks Department – Auckland Council, and the granting of the resource consent alone does not authorise the removal and works within the root zone. Asset Owner Approval must be obtained by the consent holder prior to the removal and works within the root zone of street trees.

Arboricultural views

26 The Macrocarpa tree is listed on the Notable Trees Schedule⁴.

27 There are several arboricultural opinions available to the decision-maker, we summarise the key points of each opinion below.

28 The developer's arborist stated in their report accompanying the application for the resource consent:⁵

- 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.
- 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.

29 The Council's Resource Consents Department Arborist supplied the following view on 7 September 2020:

³ Decision on an application for resource consent under the Resource Management Act 1991 LUC60361479, Page 18

⁴ See [Unitary Plan](#) (link embedded)

⁵ Arboricultural Assessment, 1817 Great North Road, Avondale, dated 6 August 2020

- *The removal of one scheduled Macrocarpa tree does not in my opinion, represent a balanced design outcome. A balanced design outcome would have been better met had the building been designed to accommodate the tree given that it is scheduled and cannot easily be removed. i.e. balconies and larger windows on that side of the building.*
- *The tree is a prominent specimen, of approximately 20 metres in height. I do not support its removal.*
- *Current, possible future decline is not sufficient to remove a scheduled tree from the landscape and the long-term health and prominence of the tree cannot be realistically calculated.*
- *All in all, it appears that where the applicant has wanted to retain (or remove a tree), various aspects that encourage such an outcome have been put forward, but there is no standard or consistency in the overall approach.*

30 The Council's Senior Heritage Arborist supplied the following view on 31 August 2020:

- *Once it is a notable tree it must be retained, which is the very intent of it being notable, unless there really is no other alternative to its removal. In this instance, there is a viable alternative, being a design, which would accommodate the tree and distance all works from it. The developer would have been aware of this impediment to unrestricted development as part of their due diligence and I did state in a pre-application meeting that all trees within the site would need to be retained and incorporated into the design.*
- *In my professional opinion, there are no health or structural issues with this tree that cannot be addressed through regular maintenance pruning, which is part of property maintenance. The suggestion that it is overly onerous to maintain the tree into the future is not grounds for removal. I consider this tree viable for a long future and I do not agree with the arboricultural assessment in support of the application.*
- *This tree and the Poplar trees are highly prominent in the immediate area.*
- *In addition to the amenity values of these trees, they also provide a multitude of eco-services that are increased through maturity and scale.*
- *Whilst there has not been a historic values assessment of the Macrocarpa tree, it is undeniable that it is a historic remnant of the area and the species was used to demarcate property boundaries, particularly on farms and in areas of bush, but not exclusively. Therefore, this tree is a marker of the history of the area and one of the oldest and fewest remaining remnants of that age in the immediate area and has value in that way. I do not support the removal of this tree.*

31 Auckland Council also commissioned independent assessment of the tree from Greenscene NZ in December 2020⁶ to assist with the tree owner approval decision. The report outlined:

⁶ Arboricultural Assessment Monterey cypress (*Hesperocyparis macrocarpa*) 1817 Great North Road Avondale, dated December 2020

- *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

- 32 Subsequent climbing inspection of the tree on 4 December 2020 (by Greenscene NZ) revealed a crack in one of the tree trunks. 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.

Views of persons likely to be interested in or affected by the decision

- 33 The council is not required to undertake consultation on this matter under Part 6 of the Local Government Act 2002 (**LGA**), but the decision must consider the views and preferences of those likely to be affected by the decision.

Community views

- 34 Although formal consultation has not been carried out, the council has information about the likely views and preferences of the community on this issue (which favours retention of the tree based on its status, age and amenity provision). This is based on information we understand to have been imparted by 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 note that the tree has been painted with the words 'save me' and notification of the resource consent was requested by the Tree Council, who we understand oppose the removal of the tree.

Developer's views

- 35 The Developer has provided its views through the tree approval process.
- 36 In terms of timing of the decision, the Developer has advised that the Building Consent for the Stage 1 work is presently processing through Council and their construction team are preparing to commence site 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.

37 In terms of a decision to decline tree owner approval or to proceed with alternative design options which could accommodate retention of the tree, the Developer has advised these are not viable because:

- The current design (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.

38 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.

39 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 street trees which will be planted in mitigation under the resource consent.

Ngāti Whātua Ōrākei views

40 Retention of the tree is also supported by Ngāti Whātua Ōrākei who have provided the following views:

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.

Wider context – Council policies and strategies

41 Auckland's Urban Ngahere (Forest) Strategy⁷ 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. One of the actions in the Strategy specifically relating to the Macrocarpa tree, is 'no loss of percentage of trees larger than 10 metres' (page 61).

42 Regarding the purpose of the Notable Trees schedule, the Auckland Unitary Plan states⁸:

'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.'

43 The Council's Tree Owner Approval Guide⁹, which sets out relevant considerations for tree owner approval decisions, states¹⁰ :

'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;*

⁷ <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/topic-based-plans-strategies/environmental-plans-strategies/Pages/urban-ngahere-forest-strategy.aspx>

⁸ Section D13.1

⁹ <https://www.aucklandcouncil.govt.nz/building-and-consents/working-on-around-trees/Documents/tree-owner-approval-guide.pdf>

¹⁰ See page 5

- *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.*

Relationship between tree owner approval and resource consent

- 44 Under the Local Government Act 1974 roads vest in the local Council (though Auckland Transport has statutory responsibility for management and control of the Auckland transport network). Trees that are in the road are owned by the Council and any decision to remove such a tree requires tree owner approval from the Council.
- 45 Regulatory approval to carry out the works under the Resource Management Act (RMA) requires people to obtain approval is separate to landowner approval which must also be obtained.
- 46 In relation to this particular tree, the developer has advised the council that the tree was originally planted on the section now owned by the developer and, over time, grew to encroach on the road reserve.
- 47 The resource consent in this instance was granted by an independent commissioner.

Analysis of options

- 48 There are two reasonably practicable options associated with the tree owner approval decision: **1)** grant tree owner approval to remove the tree; **2)** decline tree owner approval to remove the tree. We set out the advantages and disadvantages associated with each option, below.

Option 1 – grant tree owner approval to remove the tree

Advantages	Disadvantages
Addresses safety issues with tree in its current state and removes the risks relating to a partial removal of the tree.	Community interest in this decision is gaining traction and a grant of tree owner approval would be inconsistent with some community views and preferences which favour retention of the tree.
Enables the development to proceed on the basis consented and without any substantial delay to project timeframes or impact on the contractual obligations flagged by the developer.	Wider impact on Auckland’s urban forest if trees are removed solely on the basis of excessive shading of the property and reduced yield for developments (as is the case here). Shading and yield are extremely common factors cited in tree removal applications. We note, however, that the particular circumstances where part of the tree is located

	on the developer's land distinguishes this tree from other tree owner approval decisions.
Consistency with wider strategic housing goals of central government (Ministry of Housing and Urban Development) and urban regeneration goals of Panuku (being a substantive council-controlled organisation) noting that the development is a key project in Avondale.	
The developer has agreed to plant 10 mature trees in the Avondale area to offset the loss of this one tree.	

Option 2 – decline tree owner approval to remove the tree

Advantages	Disadvantages
Consistent with views and preferences of some members of the community, which support retention of the tree.	Adverse impact on the developer which 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).
Consistency with the principles and objectives in the Council's Urban Forest Ngahere Strategy.	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).
Retention of a notable tree which provides landscape amenity to the area	Legal risk (and associated financial implications) – threatened action by developer.
	<p>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 will:</p> <ul style="list-style-type: none"> • reduce the landscape value provided by the tree; • increase wind loading and cause the health of the tree to decline more rapidly; • create the perception of a hazard due to the off-balance appearance of the tree.

Proposed decision

49 On the basis of the information currently available to staff, and having considered the advantages and disadvantages in respect of each option and the views and preferences of the

community, the developer and Ngāti Whātua Ōrākei outlined in this memo, staff propose to grant tree owner approval to remove the tree. In reaching this view, staff have had particular regard to the views and preferences outlined above, the value of the tree noting both the views of council's and the developer's arborists, the replanting proposed, the public benefits to the Avondale area associated with the proposed development and the fact that the tree is only partially located on council owned land.