

# Decision on notification of an application for resource consent under the Resource Management Act 1991



## Discretionary activity

<b>Application number:</b>	LUC60361479 (s9 land use consent)
<b>Applicant:</b>	Marutuahu Ockham No.3 Limited Partnership
<b>Site address:</b>	1817 Great North Road, Avondale
<b>Legal description:</b>	Lot 1 DP 514556
<b>Proposal:</b>	To construct an apartment building containing of 117 residential apartments and removal of a Notable Macrocarpa tree.

Resource consent is required for the following reasons:

## Land use consent (s9) – LUC60361479

### Auckland Unitary Plan (Operative in part)

#### **District land use (operative plan provisions)**

##### *H13 Business – Mixed Use Zone*

- New buildings are a *restricted discretionary activity* under rule H13.4.1(A45).
- The proposal involves use and development under rules H13.4.1(A2) and H4.4.1(A45) that fails to meet the following standards and is a *restricted discretionary activity* under rule C.1.9(2):
  - The proposed total building and occupiable height is up to 28.03m, which exceeds the 19m occupiable building height and 21m total building height permitted under standard H13.6.1.
  - The proposed building of the eastern tower where it exceeds 27m is not setback 6m from the site frontage, which does not meet standard H13.6.3. A setback of 0m is proposed.
  - The outlook space for the principal living room of some units does not meet the minimum 4m width required (shortfall of 0.44m-0.65m) and the outlook space for the bedroom of some units does not meet the minimum 3m width required (shortfall of 0.28m-0.78m), which does not meet standard H13.6.9(3)<sup>1</sup>.
  - The thirteen one-bedroom units proposed have a net internal area of 41m<sup>2</sup>, which does not meet the minimum 45m<sup>2</sup> required under standard 13.6.10(1).

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<sup>1</sup> Principal living rooms of units G01-G07, D103, D104, D107, D108, G105, G106, A111, B112, D113, E114, E101, D102, J103, G104, F105, C106-C110, 203-208, 201-212, 401-412, 601-608  
Bedroom of units I109, I101, I102, 201, 202, 209

### *D13 Notable Trees Overlay*

- The proposal involves pruning of one Poplar Tree. Tree trimming or alteration that does not comply with Standard D13.6.1, is a *restricted discretionary activity* under rule D13.4.1(A6).
- The proposal involves the removal of one Macrocarpa tree. Tree removal is a *discretionary activity* under rule D13.4.1(A7).
- The proposal involves works within the protected root zone of three Poplar trees. Work within the protected root zone not otherwise provided for, is a *restricted discretionary activity* under rule D13.4.1(A9).

### *E17 Trees in roads*

- The proposal involves work within the protected root zone of a Swamp Cypress street tree. Works within the protected root zone that do not comply with Standard E17.6.3, is a *restricted discretionary activity* under rule E17.4.1(A8).
- The proposal involves removal of a mix of Taupata, Karo, Tree privet, Titoki, and Karaka street trees. Tree removal of any tree greater than 4m in height or greater than 400mm in girth, is a *restricted discretionary activity* under rule E17.4.1(10).

### *E27 Transport*

- The proposal involves accessory parking and loading that does not meet the following parking and loading standards and is a *restricted discretionary activity* under rule E27.4.1(A2).
  - One loading space is required for the proposal. No loading space will be provided within the site (the applicant proposes to utilise the shared access to the south of the site (outside of the site)), and this therefore does not meet the requirements of Table E27.6.2.7(T113).
- Any activity which exceeds the trip generation standards set out in Standard E27.6.1, is a *restricted discretionary activity* under rule E27.4.1(A3).

### National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS)

- Disturbing soil that does not meet the provisions of regulation 9 is a *restricted discretionary activity* under regulation 10(2).

The reasons for consent are considered together as a **discretionary activity** overall.

## Decision

I have read the application, supporting documents, and the report and recommendations on the application for resource consent. I undertook a site visit on 3 November 2020. I am satisfied that I have sufficient information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on notification.

## Preamble

This application has been referred to me because a Council arborist, a Council heritage arborist, and the Whau Local Board recommend public notification. Public notification has also been requested by a third-party, the Tree Council. These comments are limited to the proposed removal of a notable Macrocarpa tree (# 730, Schedule 10 of the Unitary Plan).

In all other respects there is agreement between the Applicant and its experts, and the Council's assessing personnel, that the proposal would warrant non notification. I have accepted that advice and largely adopted the recommendations given to me by the Council's planner Mr. Pan.

In terms of the notable Macrocarpa tree, I have considered the arguments in favour of public notification very carefully and in terms of the provisions of the Unitary Plan and the RMA. In terms of the Unitary Plan, Rule D13.5 specifies that I am to follow the normal tests for notification as set out in the RMA, subject to Rule C1.13(4) as it relates to limited notification. I find that if applications to remove notable trees were expected to be generally notified the Unitary Plan would have specified this.

In terms of the RMA tests as set out in sections 95A – 95E, these require me to follow prescribed steps and do not bestow on me any general discretion to publicly notify applications on principle or as I might otherwise see fit.

Having worked through those requirements, I find that the only opportunities I would have to publicly notify the application would be because special circumstances exist, or because adverse effects on the environment would be more than minor. For limited notification, the same situation exists except that the adverse effects threshold reduces from 'more than minor' to 'more than less-than-minor' on persons.

In terms of special circumstances, in this instance I find that no special circumstances apply to the application. I have reached this conclusion for three reasons:

- a.) I have no information before me to suggest that a special circumstance might exist, including from those parties that seek the application be publicly notified; and
- b.) That some in the community (i.e. "public interest") and/or some of the Council's experts providing an assessment of an application seek public notification, or otherwise oppose a proposal, is not of itself a special circumstance; and
- c.) The general proposal to remove a tree on urban-zoned land so as to facilitate its re-development, including circumstances where the tree has particular values or is scheduled within a Plan, is not unusual, novel or irregular in Auckland and the Unitary Plan does provide a policy framework and consent pathway for such applications to be made and considered.

For these reasons, I am unable to accept the request of the Tree Council, which has stated as its principal reason to justify public notification that:

*"Scheduled trees are public heritage assets, not private ones, and we consider a public process is required in all applications for removal."*

I am similarly unable to accept the request of the Whau Local Board, which has stated as its principal reason to justify public notification (other than reference to the position of the Council's Heritage Team) that:

*“...currently there is a considerable public interest in further loss of mature trees in Avondale.”*

In terms of adverse effects, and turning to the technical evidence before me, I am not persuaded to publicly or limited notify the application based on the comments provided by the Council’s arborist Mr. Hansen, and the Council’s heritage arborist Mr. Fynn. I instead prefer, by a significant margin, the position in support of non-notification presented by the Applicant and the Council’s planner Mr. Pan. My principal reasons for this are:

- a.) Neither Mr. Hansen or Mr. Fynn have provided me with any actual analysis of the adverse effects of the proposed tree removal. They have instead only provided me with opinions on what outcomes they consider the Unitary Plan seeks (a matter of separate s.104(1)(b) and s.104B determination), and a view that the tree is not in such a poor state of health that its removal would become warranted. I find this analysis generally unhelpful and at times seemingly unrelated to what the RMA and Unitary Plan state. For example, Mr. Fynn opined in his memorandum dated 31 August 2020:

*“Whilst visual assessment relating to the Macrocarpa tree is interesting it has no bearing on an application to remove the tree and would only be relevant at the time of the assessment of this tree for inclusion as a notable tree or under a submission relating to that. 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.”*

That is an assertive statement addressing consent merit, not one that helps me determine what range and severity of adverse effects might arise from the proposed removal.

- b.) On the other hand, the Applicant and Council’s Planner Mr. Pan have provided me with several clearly articulated reasons as to why adverse effects from the removal would not be more than a minor (public notification) or more than a less-than-minor (limited notification) level. I have been able to engage with and evaluate these opinions, and Mr. Pan is to be commended for the way he very helpfully provided balanced reasons why he did not agree with the conclusions of Mr. Hansen and Mr. Fynn. My site visit allowed me to confirm for myself the arguments made by the Applicant’s consultants, in particular landscape architect Ms. Gilbert, and overall, I find them comprehensive and convincing.

For all the above reasons, I accept the recommendation to non-notify the application set out in Mr. Pan’s s.42A report. In my detailed reasons that follow I have largely adopted his recommendations.

### Public notification

Under section 95A of the RMA, this application shall proceed without public notification because:

1. Under step 1, public notification is not mandatory as:
  - a. the applicant has not requested it;

- b. there are no outstanding or refused requests for further information; and
  - c. the application does not involve any exchange of recreation reserve land under s15AA of the Reserves Act 1977.
2. Under step 2, public notification is not precluded as:
- a. there is no plan rule or regulation in an NES that specifically precludes public notification of the application; and
  - b. the application is for activities other than those specified in s95A(5)(b).
3. Under step 3, public notification is not required as:
- a. the application is for activities that are not subject to a plan rule or regulation in an NES that specifically requires it; and
  - b. the activities will have or are likely to have adverse effects on the environment that are no more than minor because:

- **Streetscape, Character and Built form effects**

The scale, height and appearance of the two buildings with the connecting lower scale podium provide interest and diversity to the built form of the local environment.

In terms of streetscape, the proposal will provide a shared vehicle access with the development site to the south through a signalised intersection at Great North Road and Walsall Street. This removes the need for vehicle crossings and will contribute to pedestrian safety and streetscape amenity.

The units with street frontage have their principal living area oriented towards the street, which will provide passive surveillance to the street.

With regard to building dominance, the façade of the Eastern Tower has considerable glazing and is well-articulated. The use of different materials, colours and textures creates a modulated built form, that is visually compatible with the surrounding environment. The units have open and recessed balconies, which creates a permeable and open-feeling frontage. The arch framing of the balconies also provides a vertical emphasis that mitigates potential building scale effects.

Overall, any adverse built form, character and streetscape effects as a result of the proposed built form will be less than minor.

- **Notable trees effects**

#### Macrocarpa tree

The proposal involves removal of one Notable Macrocarpa tree to facilitate the proposed development. The applicant has provided an arboricultural assessment prepared by Peers Brown Miller Ltd and a visual amenity assessment prepared by Bridget Gilbert Landscape Architecture Limited.

Overall, Ms Bridget Gilbert considers the adverse visual amenity effects associated with the tree removal will be low-very low. The removal of the notable Macrocarpa tree will not detract from the character or quality of the local visual environment. This is due

to the well vegetated environment in which the notable Macrocarpa is located, which reduces its visual importance, and the well vegetated environment that will remain in place once the notable tree has been removed which includes the retention of the notable Cottonwood Poplars on the site and the existing street trees located on Ash Street.

The Peers Brown Miller report notes that the tree has been subjected to significant pruning, with a significant amount of pruning undertaken in the lower canopy. Given there are many large, mature trees existing in the vicinity of the site (also noting the three Poplars on site), many of which are of a similar scale to the notable Macrocarpa tree, the removal of the tree is not considered likely to have adverse visual and amenity effects on the environment or any lasting loss of habitat opportunity. The retained existing environment will, and new planting proposed as part of the development, will mitigate and minimise any adverse effects.

The Macrocarpa tree was not scheduled for the purpose of recognising any historic heritage values. Noting this it is considered that there would be no adverse heritage effects or any particular significance.

The Macrocarpa tree is not a rare species in the region or in New Zealand, nor do they represent as either individuals or as a group any particular ecological significance. The subject tree is not outstanding for its species in relation to either its form, diameter, height or canopy spread. In this regard, the adverse effects on botanical values will be less than minor.

#### Poplar trees

The proposal involves works within the protected root zone of the Poplar trees (Trees 1-3), to establish the building foundation and installation of a new stormwater line, and the pruning of Tree 3 to accommodate/ provide clearance for the proposed building. This aspect has also been assessed for the applicant by Peers Brown Miller Ltd.

The proposal has been designed to have minimal impacts on the existing Poplar trees and will not impact on their long-term health and well-being.

- **Street tree effects**

Removal of street trees and works within the root zone of a street tree will be required to facilitate the proposed development. As mitigation, the applicant proposes to plant 11 street trees (11 400L Silver Cloud) along Great North Road and along the northern boundary. The applicant has provided an arboricultural assessment prepared by Peers Brown Miller Ltd.

The trees to be removed will be replaced within the road berm on completion of the works. Any potential loss of habitat or ecological effects will be mitigated. All works will be supervised by a suitably qualified works arborist, in accordance with best arboricultural practice.

Any adverse effects will diminish as the replacement trees mature. The locality is one that has a large number of street trees, including those within Peace Park, and in this regard the trees to be removed are generally less prominent; their removal will not dramatically alter the treed character of the area.

A Tree Protection Methodology will be used to protect trees that are to be retained within the road corridor. Works within the protected root zone and tree removal will be undertaken in accordance with the Tree Protection Methodology. The implementation of this methodology will ensure any potential adverse effects on trees will be managed and mitigated.

- **Earthworks effects**

Earthworks up to 2,305m<sup>2</sup> and 1,775m<sup>3</sup> are proposed on the site to accommodate the development. The earthworks are required for the preparation of the basement, building platform and installation of services.

The road network will not be damaged as a result of the proposed earthworks and construction traffic can be managed so as to also not adversely affect the transport system.

The proposed earthworks and final ground levels will not adversely affect overland flow paths or increase the potential volume or frequency of flooding within the site or on surrounding sites. The extent of works will not exacerbate the risks associated with natural hazards and the final ground levels will not affect existing utility services.

Dust will be adequately managed to ensure no airborne or deposited dust beyond the subject site as a result of the earthworks activity. This will be achieved through watering to dampen the soil and will be conditioned appropriately.

Taking into account the above, any adverse effects associated with the earthworks phase of the proposed development will be mitigated and be less than minor on the environment.

- **Construction noise and vibration effects**

A construction noise and vibration assessment and Construction Noise and Vibration Management Plan (**CNVMP**) prepared by Earcon Acoustics has been provided to support the proposal.

The noise report confirms that construction noise is predicted to comply with the 70dB L<sub>Aeq</sub> and 85dB L<sub>Amax</sub> limits provided the operational and procedural requirements of the CNVMP are adhered to and all best practice measures are followed in order to mitigate noise levels.

In terms of vibration, the noise report confirmed that given the scale and nature of the proposed works and the setback distances to the closest buildings, vibration levels are expected to meet the AUP-OP standards.

It is noted that no rock breaking, or sheet piling is proposed. The bored (or auger) piling method will be adopted which is quieter than vibratory or impact/driven piling methods. The use of best practice construction measures will ensure that overall, any potential noise and vibration related effects will be less than minor.

Construction noise and vibration effects during earthworks will be managed by implementing a management plan to demonstrate best practice will be adopted to minimise noise and vibration effects as far as practicable. Taking into account the

above, any adverse effects associated with the construction phase of the proposed development on the environment will be less than minor.

- **Contamination effects**

A Preliminary Site Investigation (PSI) and Detailed Site Investigation (DSI) prepared by Riley Consultants and a Site Management Plan (SMP) prepared by Williamson Water & Land Advisory Ltd, have all been provided by the applicant. The reports concluded that the contamination levels of the near-surface soils that may be disturbed as part of the proposed works do not pose a risk to human health.

Adverse effects on human health from the disturbance of contaminated soil will be less than minor. It is considered that the effects of contamination on the environment will be less than minor.

- **Infrastructure effects**

An engineering infrastructure report prepared by Anchor Consultants Limited has been provided to support the proposal.

The proposed stormwater run-off generated from the subject site is sufficiently minimised and managed through the provision of a detention tank to service the development.

Sufficient wastewater infrastructure is provided that there is sufficient capacity within the existing wastewater network in the area to accommodate the proposed increase in the intensity of the use of the subject site.

Taking into account the above, stormwater and wastewater effects of the proposal will be less than minor on the environment.

- **Traffic and access effects**

A transportation assessment report prepared by Harrison Grierson Consultants Ltd has been provided. The report confirmed that the proposal will not exacerbate the crash rate within 50m radius of the subject site. In terms of traffic generation, the traffic report confirmed that the estimated traffic generated by the proposed activity is low and is unlikely to cause any adverse traffic safety or operational issues. Furthermore, in terms of impact at the Great North Road/Ash Street intersection, the traffic report confirmed that an additional vehicle arriving at the intersection per minute is low and will not impact on the level of service or significantly impact on queue lengths at the intersection.

The traffic report did not identify any design features that would obstruct visibility from the proposed vehicle access. The proposed access provides good inter-visibility between egress traffic and pedestrians on the footpath and therefore it is not expected to create any adverse traffic safety effects. There is adequate space for vehicles to stop and check for pedestrians/vehicles before existing the site.

Whilst no designated loading space is provided within the development site, an informal loading space is provided within the shared access of 1825 Great North Road (adjacent to the site). Any adverse effects from not providing a loading space within the site has been mitigated by providing one adjacent to the site.



Traffic and carparking effects of the proposal will be less than minor on the environment.

4. Under step 4, there are no special circumstances that warrant the application being publicly notified because there is nothing exceptional, abnormal or unusual about the application, and the proposal has nothing out of the ordinary run of things to suggest that public notification should occur.

### Limited notification

Under section 95B of the RMA this application shall proceed without limited notification because:

1. Under step 1, limited notification is not mandatory as:
  - a. there are no protected customary rights groups or customary marine title groups affected by this proposal; and
  - b. no person to whom a statutory acknowledgement is made is adversely affected by this proposal.
2. Under step 2, limited notification is not precluded as:
  - a. there is no plan rule or regulation in an NES that specifically precludes limited notification of the application; and
  - b. the application is for activities other than that specified in s95B(6)(b).
3. Under step 3, limited notification is not required as:
  - a. this application is not for a boundary activity; and
  - b. there are no adversely affected persons because any adverse effects on any person will be less than minor for the reasons set out in the above s.95A findings and in addition:

- **1802-1826 Great North Road**

In relation to 1802-1826 Great North Road, the proposed development is sufficiently setback from these persons by the road reserve which will maintain a reasonable standard of residential amenity to these persons.

The eastern façade of the development is well articulated so as to create visual interest, which will help to reduce building bulk when viewed from these persons. The eastern façade is of a size and scale which is generally in keeping with the building envelope generally anticipated within the Business – Mixed Use zone.

Whilst the proposal exceeds the maximum height standard and does not have the upper floor setback, given the scale of the protrusion, any adverse dominance or shadowing effects generated to be no more than what can be generally anticipated by the plan and would not be readily appreciated by these persons.

A shading analysis has been provided, which demonstrates additional shading would fall on persons at 1812-1826 Great North Road when compared to a complying development. However, the additional shading is reasonable, and the separation

distance of Great North Road further reduces any adverse shading effects generated onto these persons. Any effect will only be in the latter parts of afternoons, and therefore would be of only limited duration.

The proposal meets the outlook space depth standard as it relates to these persons, and in conjunction with the separation distance provided, I consider any overlooking effects generated from the proposal onto these persons to be no more than what is generally anticipated by the plan.

- **1832-1834 Great North Road**

In relation to 1832-1834 Great North Road, the proposed development is sufficiently setback from these persons so as to maintain a reasonable standard of amenity for these persons.

Whilst the proposal exceeds the maximum height with no building setback at the upper floor, noting the scale of the protrusion, any adverse dominance or shadowing effects generated to be no more than what can be generally anticipated by the plan and would not be readily appreciated by these persons. A shading analysis has been provided, which demonstrates additional shading would fall on the land at the front of the building when compared to a complying development. It is noted this area is used for parking. The separation distance of Great North Road further reduces any adverse shading and dominance effects generated onto these persons.

- **11B-G and 15 Highbury Street**

In relation to 11B-G and 15 Highbury Street, the proposed development is sufficiently setback from these persons so as to maintain a reasonable standard of amenity to these persons.

The north and north-west façade of the development is well articulated and will create visual interest, which helps to minimise building bulk when viewed from these persons. The north and north-west façade is of a size and scale will appear in-keeping with the building envelope generally anticipated for the Business – Mixed Use zone. The proposed building is also setback from these persons by a minimum distance of 30 metres which is considered to be sufficient to substantially reduce potential visual dominance effects experienced by these persons.

Whilst the Eastern Tower exceeds the maximum height with no building setback at the upper floor, the scale of the protrusion is such that any adverse dominance or shadowing effects generated to be consistent with what can be generally anticipated by the plan and would not be readily obvious to these persons located to the north-west of the site. A shading analysis has been provided, which demonstrates that no shading effects would be generated on these persons (noting these persons are to the north-west of the subject site).

The proposal meets the outlook space depth standard as it relates to these persons, and in conjunction with the separation distance provided, any overlooking effects generated from the proposal onto these persons to be no more than what can generally be anticipated by the plan.

Taking into account the internal layout of the proposed units, setback and the site context within the wider built environment, the proposal will result in less than minor adverse amenity, shading, dominance and privacy effects on these persons.

#### All other persons

No other persons are considered to be adversely affected by the proposal. In consideration of the separation distance and screening provided by the existing built form and vegetation in the immediate environment, I consider the adverse effects on the amenity of all other persons to be less than minor.

- **Earthworks effects**

The application is supported by a geotechnical assessment report by Initia Ltd. The geotechnical report details the expected soil conditions across the site in context of the development presented in this application. It is understood no stability concerns were identified for the subject site. Based on the assessment provided, it is considered that no adjacent properties are likely to be affected from soil instability issues arising from the earthworks, and in turn the proposal is unlikely to cause harm to adjacent property or persons.

Given all of the above, and taking into account the mitigation measures proposed, any adverse effects associated with the earthworks phase of the proposed development and adverse effects in terms of land stability, flooding and construction earthworks traffic will be less than minor on persons external to the site.

- **Construction noise and vibration effects**

To ensure construction noise will comply with the AUP-OP, the applicant proposes to erect a 2.4m acoustic fence along the eastern boundary. In addition, if the proposed buildings at the southern boundary are occupied prior to the completion of earthworks and foundation on the subject site, then additional mitigation measures are required. This would include a minimum 3.4m height acoustic fence along the southern boundary, and a minimum 2.1m height localised fencing in proximity to noise generating works using acoustic blankets on chain-link fences.

With regard to construction vibration, the proposed development area is at least 20m from the nearest neighbouring receiver. As such, vibration effects are expected to be sufficiently attenuated to be within compliance levels at all neighbouring receivers.

Provided all mitigation measures and good practice procedures detailed in the CNVMP are implemented, it is expected that construction noise and vibration levels from works within the subject site will be within the criteria limits at all neighbouring receivers and the proposed development in construction will achieve full compliance with the applicable standards under the AUP-OP.

Given all of the above, any adverse effects associated

4. Under step 4, there are no special circumstances that warrant the application being limited notified to any other persons because there is nothing exceptional, abnormal or unusual about the application, and the proposal has nothing out of the ordinary run of things to suggest that notification to any other persons should occur.

Accordingly, this application shall proceed on a **NON-NOTIFIED** basis.

A handwritten signature in black ink, appearing to read 'Ian Munro', written in a cursive style.

**Ian Munro**

**Duty Commissioner**

3 November 2020