

Section 32 Report
Proposed Plan Change 184 Isthmus Section of the Operative District Plan
Scheduling of 42 St Stephens Avenue, Parnell (“Paykel House”)

1. Background

1.1 Introduction

Proposed plan change 184 has been prepared to amend the Auckland District Plan: Isthmus Section (the Isthmus District Plan) to include 42 St Stephens Avenue “Paykel House” as a scheduled item in the Plan. The proposed plan change is for scheduling of the building, including its interior, and its surrounds as a Category B heritage building.

Council has assessed the building and all available information concerning it against the heritage assessment criteria in the Isthmus Plan. The building meets the criteria for Category B Scheduled Items and is considered to have sufficient heritage value to warrant protection as a scheduled item in the Isthmus Plan.

The proposed plan change seeks to schedule 42 St Stephens Ave to ensure that its heritage values are protected from inappropriate use and development and to ensure the integrity of Auckland City’s heritage resources are maintained.

In June 2004 Auckland City Council gave notice of a heritage order for 42 St Stephens Avenue. The purpose of the heritage order was to prevent the destruction, damage, removal or modification of 42 St Stephens Avenue without the prior written consent of Council. This was later withdrawn by Council and the site is no longer subject to a heritage order.

1.2 Effect of Scheduling

Scheduling the building listed above is a mechanism whereby any alteration to the building, including its removal and demolition will require a resource consent. The requirement for a resource consent ensures that the heritage values of the building will need to be taken into account by both the owner and also the Council in any decision issued.

The building and surrounds have been assessed as a Category B building. Category B is defined in Section 5C.7.1.2.E Categories:

“This category includes buildings, objects and places (or parts of these) of such quality and character that, although less significant than Category A items, they should not be wilfully removed, damaged or altered in a significant way unless there is a compelling reason. A Category B classification gives Plan protection to the exterior of the building together with such other elements (interior, site etc) as are particularly specified in the Schedule”.

2. Statutory Requirements

2.1 Resource Management Act 1991

The Resource Management Act 1991 (the Act) sets out the obligations and functions of Council and in particular the evaluation that must be undertaken before the notification of a plan change. Before adopting an objective, policy, rule or other method in the District Plan,

the Council must ensure that the proposed provisions meet the requirements of the Act including an assessment of the matters outlined in section 32 of the Act.

Section 74(1) of the Act states as follows:

“A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, its duty under section 32, and any regulations.”

Section 31 sets out the Council’s functions for the purpose of giving effect to the Act. The Council’s functions include:

“The control of any actual or potential effects of the use, development or protection of land.”

Section 72 states as follows:

“The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.”

The following provisions of section 76 are also relevant:

- (1) *“A territorial authority may, for the purpose of-*
 - (a) *Carrying out its functions under this Act; and*
 - (b) *Achieving the objectives and policies of the plan, -**include rules in a district plan*

...

- (3) *In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities, including, in particular, any adverse effect.”*

In achieving the purpose of the Act, the Council must carry out an evaluation under section 32 of the Act before publicly notifying a plan change. Section 32 (3) and (4) state as follows:

- (3) *“An evaluation must examine-*
 - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*
- (4) *For the purposes of this examination, an evaluation must take into account-*
 - (a) *the benefits and costs of policies, rules, or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.”*

Section 32 matters as they relate to this proposed plan change are assessed below under the following headings:

- Whether the proposed objective is the most appropriate way to achieve the purpose of the Act
- Whether the proposed rules assist the Council to carry out its function of control of actual or potential effects of the use, development or protection of land

- Whether the proposed rules have the purpose of achieving the objectives and policies of the Plan
- Whether the policies, rules, or other methods are the most appropriate for achieving the objectives-
 - *Having regard to their efficiency and effectiveness*
 - *Taking into account the benefits and costs of policies, rules, or other methods*
 - *Taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

2.1.1 Whether the proposed objective is the most appropriate way to achieve the purpose of the Act

The proposed plan change does not introduce new objectives to the Isthmus Plan. However, there are existing objectives in the Isthmus Plan that the proposed plan change is consistent with, which are in turn consistent with the purpose of the Act.

The purpose of the Act is to promote the sustainable management of natural and physical resources. Section 6 of the Act is relevant when considering the Council's role in the protection of heritage buildings. In particular section 6 states:

“In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(f) the protection of historic heritage from inappropriate subdivision, use and development.”

Historic heritage is defined in section 2 of the Act as follows:

(a) “Means those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:

(i) archaeological:

(ii) architectural:

(iii) cultural:

(iv) historic:

(v) scientific:

(vi) technological; and

(b) includes-

(i) historic sites, structures, places and areas; and

(ii) archaeological sites; and

(iii) sites of significance to Maori, including wahi tapu; and

(iv) surroundings associated with the natural and physical resources

It is noted that the Resource Management Amendment Act 2003 promoted the protection of historic heritage, by moving it from section 7 of the Act (Other Matters) to section 6 (Matters

of National Importance) as set out above. In doing this, the Amendment Act intends more consideration and weight be given to the protection of historic heritage when giving effect to the purpose of the Act.

Objectives 5C.3.1 and 5C.7.1.1 of the Isthmus Plan state the following:

“5C.3.1 Objective

To recognise and protect resources of natural, cultural and scientific heritage value.

5C.7.1.1 Objective

To recognise and protect particular buildings, objects, properties and places valued as part of the district’s heritage.”

It is considered that the proposal to schedule 42 St Stephens Avenue is consistent with these Objectives of the Isthmus Plan and that these objectives are consistent with the purpose of the Act.

2.1.2 Whether the proposed rules assist the Council to carry out its function of control of actual or potential effects of the use, development or protection of land

Section 31 of the Act states that a function of Council is to control any actual or potential effects of the use, development, or protection of land and associated natural and physical resources of the district. As a means for carrying out these functions, the District Plan includes the technique of scheduling for heritage items.

The control of the actual or potential effects in this context is achieved through the requirement for a resource consent for works to any scheduled heritage building, item, object or place. This enables the Council to be satisfied that works proposed to any scheduled feature do not detract from or destroy its heritage characteristics.

The proposed plan change seeks to schedule a single building and its surrounds. This will increase the number of protected heritage buildings within the Isthmus area, which better safeguards Auckland City’s heritage resources. Scheduling 42 St Stephens Avenue provides a mechanism for controlling the actual or potential effects of the use, development or protection of land. It also increases the variety of heritage resources offered protection so that the preservation of a representative sample of heritage buildings in Auckland City is ensured.

It is therefore considered that the proposed plan change assists the council in carrying out its functions set out in section 31 of the Act.

2.1.3 Whether the proposed rules have the purpose of achieving the objectives and policies of the Plan

The objectives and policies in the District Plan which are of particular relevance to this proposed plan change are set out below:

“5C.3.1 Objective

To recognise and protect resources of natural, cultural and scientific heritage value.

- *By identifying, assessing, and protecting important heritage buildings, objects and places including landscape, trees, landforms, historic places and waahi tapu by scheduling such features in the Plan.*

- *By encouraging an awareness that the City's existing heritage is a finite and sensitive resource.*

5C.7.1.1 Objective

To recognise and protect particular buildings, objects, properties and places valued as part of the district's heritage.

- *By identifying and protecting important heritage buildings, objects, properties and places by scheduling them in the Plan.*
- *By encouraging the use of protected buildings while ensuring that their valued features are not impaired or destroyed."*

It can be seen from the above objectives and policies that the emphasis is on protecting buildings of significant heritage value.

It is considered that the proposed plan change is consistent with this emphasis as it is proposed to schedule a building in the isthmus that has been evaluated as having sufficient heritage value to warrant protection.

By scheduling this building, it is ensured that the heritage value and historic elements of the building will be preserved for current and future generations. A resource consent will be required for works to the building, which allows Council to be satisfied that any works proposed do not detract from or alter the valued heritage characteristics of the building.

2.1.4 Whether the policies, rules, or other methods are the most appropriate for achieving the objectives-

- *Having regard to their efficiency and effectiveness*
- *Taking into account the benefits and costs of policies, rules, or other methods*
- *Taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

The Auckland Regional Policy Statement 1999, lists a number of methods or means that can be used for protection of heritage buildings. These are:

- (i) *Advocacy and the provision of information;*
- (ii) *Providing for voluntary heritage preservation and protection;*
- (iii) *Providing for incentives and economic instruments;*
- (iv) *Discretionary controls to facilitate protection;*
- (v) *Regulatory controls;*
- (vi) *Land acquisition and designation;*
- (vii) *The provision of esplanade reserves and marginal strips;*
- (viii) *Disincentives which penalise non-compliance with controls;*
- (ix) *Prohibition of activities;*
- (x) *Provision of works and services; and*
- (xi) *Use of rates relief.*

In the preparation of the proposed plan change the building proposed to be scheduled was evaluated against a set of proven and standard heritage criteria that are outlined in the Isthmus Plan. The evaluation confirmed that the building has sufficient heritage value that warrants it's scheduling in the Plan.

Scheduling as a tool has been the accepted primary method of heritage protection in the District Plan since 1993. Consequently, if an alternative option other than scheduling was to be adopted for protection of the building and future identified heritage buildings, the policies and provisions of the District Plan may be undermined. As such, any other means of protecting heritage buildings, other than scheduling, may have significant costs in terms of the integrity of the District Plan. Notwithstanding that, in accordance with the requirements of the Act, other methods have been given consideration.

Status quo

The 'status quo' approach involves retaining the existing plan provisions. This approach has the advantage of not imposing additional controls and associated costs on the property owners/occupiers, such as the requirement for resource consent applications to be made for the removal of existing buildings or for additions or alterations to buildings. There would, therefore, be certainty to the property owners in that the removal of a building of heritage value would only be required to comply with the existing Isthmus Plan provisions.

As indicated, the building has been evaluated against a set of proven and standard criteria. The points that have been attributed to each criterion indicate that the heritage value and features of the building are of such significance, that if the building were destroyed or unsympathetically altered or damaged, valuable elements of the City's heritage resources would be lost. Therefore, to "do nothing" is not an appropriate option.

Non-regulatory methods

Non-regulatory methods could include research, education, providing information, and brochures.

Research has been undertaken as part of the assessment process to determine whether the building is suitable for scheduling. The provision of information to developers and property owners would provide them with an idea as to the qualities and special nature of the building and what aspects need to be preserved. However, consideration of these matters would be at their discretion as they would be non-statutory. It is considered that these methods could be used in conjunction with the proposed plan change rather than being the only approach to be taken. In terms of increasing the awareness of the matters covered in the plan change, education and information sharing will be needed once this plan change is notified and included in the District Plan.

Other regulatory methods

Scheduling buildings is not the only approach for providing regulatory protection. Consideration could be given to applying a Conservation Area, however these are applied to historic areas rather than specific heritage buildings. Alternatively, Residential zones 1 and 2 of the Isthmus Plan promote the survival of historic buildings and try and conserve landscape qualities. However, again these zones are applied to specific areas that exhibit particular built form, streetscape, patterns of subdivision and landscape qualities rather than site-specific heritage buildings. Also, when the area in which 42 St Stephens Ave is located was assessed under the current Isthmus Plan it was not considered appropriate to apply one of these zones to the site and surrounding area.

The Isthmus Plan also has provisions for Centre Plans and Character Overlays. However, these mechanisms have generally been used for commercial areas, are applied to areas

rather than specific sites and have generally sought to retain character rather than protecting specific heritage resources.

Therefore, it is considered that scheduling 42 St Stephens Avenue is the most appropriate form of regulatory protection.

Financial incentives

Council could consider purchasing buildings of heritage value or the provision of monetary incentives. However, Council does not have the funds to purchase those buildings that are considered to be worthy of scheduling, especially with the high land costs, nor has this approach been taken with other heritage buildings.

Conclusion

The benefits of scheduling the buildings at 42 St Stephens Avenue are quite clear. The Isthmus Plan would provide protection of the buildings on an ongoing basis. Further, the plan change process will involve public notification, which will allow members of the public to become involved in the process.

In terms of risk, the building has been identified as having significant heritage worth and features, and if the building is not scheduled then this may result in the loss of a significant part of the City's heritage. Such a loss would be contrary to the provisions of the Act, the Regional Policy Statement and the Isthmus Plan. It is considered that available other mechanisms would not be as successful in protecting the City's heritage resources. Overall, scheduling of the building is the most effective and efficient way of ensuring the continuing protection of the City's built heritage.

2.1.5 Regional Planning Documents

The protection of heritage resources as required by the Act is also recognised in the Auckland Regional Policy Statement 1999. This includes:

“2.5.1 Strategic Objectives

7. To preserve and protect a representative range of the Region's heritage resources.

6.3 Objectives

1. To preserve or protect a diverse and representative range of the Auckland Region's heritage resources.

6.4.2 Methods

1. Regional and district plans shall include provisions which preserve or protect (as appropriate) heritage resources identified in Appendix B of the RPS and the values of those identified as significant using criteria in Policies 6.4.7-1 and 2, and 6.4.13-1 and 6.4.16.”

The above provisions give further weight to the proposed scheduling of the building in the plan change. Accordingly, the intention to schedule this building is consistent with the relevant regional planning documents.

The proposed plan change is therefore in keeping with section 75(2) of the Act, which states:

“A district plan must give effect to any national policy statement or a New Zealand coastal policy statement and must not be inconsistent with-

(a) a water conservation order; or

- (b) *the regional policy statement; or*
- (c) *a regional plan for any matter specified in section 30(1)”*

2.1.6 Consultation

Consultation has been undertaken with the Auckland Regional Council and the Ministry for the Environment. No response was received at the time of notification.

2.1.7 Conclusion

It can be seen that the necessity for this plan change is drawn from the fact that the proposed building to be scheduled has been identified as having heritage value. The value is such that if the building were to be destroyed or unsympathetically altered or damaged, a valuable element of the City's heritage would be lost. It is therefore considered that a plan change to schedule the building is required.