

**REPORT ON AN INVESTIGATION INTO
WHANGAREI DISTRICT COUNCIL'S DECISION
TO REMOVE OAK TREES IN ONERAHI, WHANGAREI**

Parliamentary Commissioner
for the Environment
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Office of the
Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata

Introduction

This report presents the findings and remedial action recommended by the Parliamentary Commissioner for the Environment (the "Commissioner") following an investigation into a decision taken by the Whangarei District Council (the "Council") to remove oak trees located in the suburb of Onerahi, Whangarei.

Background to Commissioner's Investigation

Since March 1987 the Whangarei City Council and, following local government reorganisation in 1989, the Whangarei District Council, have been petitioned on three separate occasions by residents seeking topping and trimming of seven oak trees located on the corner of Church Street and Ormiston Road, Onerahi. The first application, lodged on 6 March 1987,¹ resulted in the Council authorising trimming of the trees subject to the applicant residents meeting the costs of crane hire.² No action resulted, as the residents concerned considered this request was unreasonable.³

The second application to have the trees topped, dated 25 July 1989, was declined by the Council's Community Activities Committee.⁴ Reasons given, as contained in the Parks Manager's report to the Community Activities Committee, were:

- "(a) This is a City of Trees and we want to enhance this.
- (b) Parks Division takes a responsible attitude not only in planting, but welfare of the tree it plants.
- (c) Consideration and planning is involved in the work the parks Division proposes, and this is for a long term effect.
- (d) These particular trees are not a dominant species."⁵

The report stated the oak trees were planted many years ago and were not dominant in the area but did have a tendency to spread wide.

¹ Whangarei City Council Community Activities Committee Agenda, 16 August 1989, p.53.

² *ibid* p.55.

³ *ibid* p.54.

⁴ Whangarei City Council Community Activities Committee Report, 16 August 1989, p.3.

⁵ Whangarei City Council Community Activities Committee Agenda, 16 August 1989, p. 51.

The third application, a petition asking the Parks Supervisor of the Whangarei District Council to inspect the oak trees and to advise the Council on action required to overcome problems created by some of these trees, was submitted to the Manager of the Council on 29 January 1993.⁶ Signed by 24 residents the petition claimed that the oak trees were causing the following problems:

1. Competition between the oaks and adjacent native trees was causing dieback to the native trees.
2. Neighbouring properties were affected by falling leaves for four months of the year causing blocked gutters and downpipes and general mess to their properties.
3. Residents on the western side of the oaks had their views obstructed.
4. Leaves caused roadway gutters and under-road pipe blockages requiring clearance by local residents.⁷

The petition and subsequent letters from concerned Onerahi residents requesting the trees not be removed, together with a report from the Council's Horticultural Supervisor were considered by the Council's Works and Services Committee at a meeting held on 28 April 1993. The report recommended:

"That Council resolves that:

- (a) The application for the removal of three oak trees located at the corner of Church Street and Ormiston Roads be declined.
- (b) Selected limbs to be pruned on the oak trees at the corner of Church Street and Ormiston Road to encourage development of the adjacent pohutukawa."⁸

The Committee declined its Horticultural Supervisor's recommendations and, by a majority decision, instead resolved to remove all the seven oak trees located at the corner of Church Street and Ormiston Road.⁹

A number of submissions and objections was made to the Council regarding the Committee's decision. These included approximately 30 phone calls, five letters, a petition containing 117 signatures and a formal request for protection of the seven oak

⁶ Whangarei District Council Report of the Horticultural Supervisor (Works and Services Committee Agenda, 28 April 1993, Item 21: Tree Removal - Church Street, Onerahi) p.1.

⁷ *ibid* p.1.

⁸ *ibid* p.3.

⁹ Whangarei District Council Works and Services Committee Minutes, 28 April 1993, p.7.

trees and other significant trees located on Council land in Onerahi.¹⁰ (Correspondence received from the Council also revealed the question of tree protection in the Whangarei District had been raised earlier. A submission to the City Plan Review in 1990 requested that Council consider a similar policy for the identification and protection of trees on Council land. The matter was then considered by Council's Judicial Committee and Environmental Services Committee but no further action taken.)¹¹

The submissions were considered by the Works and Services Committee at its meeting on 26 May 1993. It was decided:

"That seven Oak Trees be removed from the public reserve on Church Street, Onerahi."

Further, in another agenda item at the same meeting, it was decided:

"That the staff report back to this Committee on the options available for the protection of trees on public property."¹²

On 27 May 1993 Onerahi Tree Protectors, a residents' action group, which was formed to prevent the seven oak trees being felled, brought the issue to the attention of the Parliamentary Commissioner for the Environment. The group sought the help of the Commissioner in saving the oak trees, and alleged that removal of these trees would seem to be contrary to the aims of the Council's district scheme. It was also claimed that the oak trees in question were believed by some residents to have historical significance in that they were planted to commemorate the soldiers lost in World War I.

In a letter dated 14 June 1993 from an affected resident to the Director of this Office, it was stated that the cause of most of the problem was the situation where the trees were planted. The trees had now grown to become impossible for the resident to live with. Further, the letter had stated that the District Councillors (Works and Services Committee by implication) had carried out a site inspection of the oak trees, the majority of the Councillors deciding "to remove all the oak trees to alleviate ... all future problems and to give the pohutukawa and native trees a better existence."¹³ Council correspondence also showed that a number of Councillors and staff had made direct contact with some of the petitioning residents to help establish residents' wishes. In addition, Councillors had made contact with people to test the historical significance of the trees, and had discussed this matter as part of the debate prior to taking their

¹⁰ Whangarei District Council Report of the Horticultural Supervisor (Works and Services Committee Agenda, 26 May 1993, Item 10: Tree Removal - Church Street, Onerahi) p.1.

¹¹ Whangarei District Council Memo to Horticultural Supervisor from Senior Planner, Subject: Request for Protection of Trees, 10 May 1993.

¹² Whangarei District Council Works and Services Committee Minutes, 26 May 1993, p.5.

¹³ Letter received by the Office of the Parliamentary Commissioner for the Environment from A W & P Price, 14 June 1993.

decision on 28 April 1993.¹⁴

In a letter received from the Council on 21 June 1993, this Office was advised that Council now considered the removal of any or all of the oak trees would be inappropriate until the formal application to give the trees protected status via a District Plan change had been dealt with. Council's involvement in discussions to find a suitable agreement between the parties is continuing.¹⁵

Authority for the Commissioner's Investigation

Under Section 16(1)(b) of the Environment Act 1986 the Parliamentary Commissioner for the Environment is authorised:

- To investigate the effectiveness of environmental planning and environmental management carried out by public authorities (including any local authority) and advise them on any remedial action the Commissioner considers desirable.

The Commissioner undertook to investigate the effectiveness of the Whangarei District Council's environmental planning and management for trees of special value.

Investigation Procedure

The investigation has involved the examination of reports and other documents provided by the Whangarei District Council and Onerahi Tree Protectors, and consideration of written submissions made to the Commissioner by one of the residents adversely affected by leaf-drop and other problems caused by the oak trees.

Findings

Examination of the documents provided to the Commissioner reveal that there are several issues of concern.

(A) Status of Trees on Public Land and on the Council's Tree Register

The Council's Transitional District Plan does not appear to provide a clear policy for the identification and protection of trees of special value on Council land. The only guidance given is in Part 6 of the existing District Scheme, which allows for the protection of trees which are considered to be significant or noteworthy features of the

¹⁴ Whangarei District Council letter from Works and Services Manager to the Parliamentary Commissioner for the Environment, 16 August 1993.

¹⁵ Whangarei District Council letter from Works and Services Manager to the Director of the Office of the Parliamentary Commissioner for the Environment, 17 June 1993.

landscape.¹⁶ A request had been made in 1990 for Council attention to the identification and protection of trees on Council land, but elicited little response other than Committee consideration. A second request was made in May 1993 and is currently pending Council action.

According to one Whangarei resident, trees on parks or reserves throughout the city have not in the past been included on Council's Tree Register.¹⁷ If this assertion is correct, it indicates a re-examination of the intention and use of such a Register may be warranted. The same resident, in May 1993, applied to the Council seeking protection for the seven oak trees at the corner of Church Street and Ormiston Road by having them included in the Council's Tree Register.

The Commissioner awaits with interest on the implementation of the decision made at the Works and Services Committee meeting on 26 May 1993 "That the staff report back to this Committee on the options available for the protection of trees on public property."

(B) Management of Trees on Public Land

The Parks Manager, in his report to the Community Activities Committee meeting of 16 August 1989, gave as a reason for not having the seven oak trees topped, "Parks Division takes a responsible attitude not only in planting, but welfare of the tree it plants". However, complaints of nuisance were still being made to the Council from residents after this meeting. It seems to indicate that Council may require an annual tree maintenance programme (publicised) to help alleviate problems associated with nuisance complaints.

Council's procedures for the removal of trees are of relevance to this investigation. Part 6 of the existing Whangarei District Scheme sets out grounds for removal or modification of **protected trees**. As the seven oak trees do not presently have protected status, however, such provisions are not applicable. Council staff advised this Office that a resource consent was not required before removal of the seven oak trees, nor was there any other formal opportunity for public involvement. Council was working on the basis of receiving submissions from interested parties.¹⁸

¹⁶ Contained in a letter between a Whangarei resident and the Whangarei District Council, 5 May 1993.

¹⁷ *ibid.*

¹⁸ Whangarei District Council letter from the Works and Services Manager to the Director, Office of the Parliamentary Commissioner for the Environment, 17 June, 1993.

(C) Rights of Neighbours

The rights and responsibilities of residents who share a common boundary with Council land, where trees have been planted just inside the Council boundary, is not clear from correspondence received. Issues such as cost-sharing between Council and residents (which had arisen with the first application in 1987 to have the oak trees topped and trimmed), and the rights and responsibilities of neighbouring residents for trees which were either planted on Council land prior to the residents moving in (relevant to the 60-80 year old oak trees?), or for more recently planted trees, do not seem to have been adequately addressed by Council.

Conclusion

There appear to be two main issues:

1. Protection of trees of special value which are growing on public land.
2. Management of trees on public land which start to cause problems for adjoining land-holders.

Resolution of the first requires a policy to be developed and implemented by way of the District Plan.

Resolution of the second issue requires the Council to budget for such maintenance and make it clear in the Annual Plan which areas of the district will receive attention to its trees.

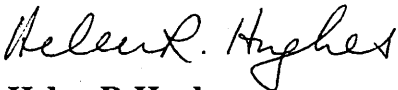
There is no doubt that careful maintenance by way of pruning would greatly reduce many of the complaints made by residents and would enhance the appearance of established trees.

In the case of the seven oak trees on Church Street, Onerahi, the absence of any clear Council policy regarding trees on public land led to some frustration experienced by ratepayers. It is hoped some immediate relief can be provided to residents in the form of tree maintenance until such time as the District Plan deals with the question of tree protection.

It is urged that Council provides for effective public consultation when it intends to make a decision into the protection, management or maintenance of trees of special value on public land.

IT IS RECOMMENDED that the Whangarei District Council

1. Confirm that trees of special value will continue to be protected in the District Plan.
2. Review its Tree Register for trees of special value which are growing on public land.
3. Review policies for the management of trees having aesthetic, recreational, scientific, historical, spiritual or cultural or other special value in the Whangarei District and develops a strategy which among other matters provides guidance for the establishment, retention and maintenance of such trees and for the avoidance of any adverse effects on the environment.
4. Defer implementing and reconsider, after the review of policies recommended above has been completed, the decision taken on 28 April 1993, and reaffirmed on 26 May 1993, to remove seven oak trees located at the corner of Church Street and Ormiston Road, Onerahi.



Helen R Hughes
Parliamentary Commissioner for the Environment

16 September 1993