

## COUNCIL WORKSHOP 8 MARCH

### Topic: 1 WHARO WAY AHIPARA

#### PURPOSE

To set out the background to this issue to assist the Elected Members in understanding the



background and understanding the issues.

#### BACKGROUND

- In 2003, Melville Holdings Limited applied a resource consent for the subdivision of land at what is now known as Wharo Lane at Ahipara. We have sought to obtain a historic report detailing when the property transferred to General title and will circulate it once it is to hand.
- NZ Historic Places Trust provided a report on the development as part of the consent process. It was recommended by FNDC that the tree on Lot 1 be protected by making that lot a reserve. The recommendation of the reporting planner was to protect the tree in perpetuity by way of consent notice under s221 of the RMA.
- Consent was granted by the **Joint Hearings Committee on the 18 July 2003** stated in its consent at X.

WORK IS TO BE UNDERTAKEN WITHIN THE DRIP LINE  
OF THE EXISTING POHUTUKAWA TREE WITHOUT THE  
APPROVAL OF COUNCIL, SUBJECT TO A REPORT

PREPARED BY A SUITABLY QUALIFIED ARBORIST  
ADDRESSING THE EFFECTS OF SUCH WORK ON THE TREE.

- The decision was issued on the 18 July 2003, but the condition regarding the protection of the tree was removed from the decision, however, in that decision Lot 1 and Lot 2 were to be made a Local Purpose (Historic) Reserve to be vested in Council under condition 3(B). Which would have resulted in the tree being on the reserve.
- On the 5 August 2003 Melville Holdings Ltd appealed the Decision on RC2030509 The appeal was against 3(A), 3(B) and 3(D).
- The Environment Court ruled that the appeal could be resolved between the parties and eventually it was on the 24 March 2005 with an order for the replacement of the consent notice.
- A letter dated 28 May 2004 from the then HPT stated that Lots 2 & 3 should become reserves and that Lot 1 (containing the tree although the tree was never discussed) could be developed.
- On the 24 March 2005 the Environment Court sent out the replacement consent notice stating that Condition 3(A) is deleted and replaced with the following  
*“Lot 23(should have read 2&3) encompassing the whole of the archaeological terrace identified in the Clough and Associates Limited, Archaeological Assessment dated 23 March 2003 and being shown as a Local Purpose (Historic) Reserve is to vest in the Far North District Council, with a minimum frontage of 20 metres.”*
- Lot 1 is the closest to the beach, so it is easy to understand the developer would not want to lose this to a reserve. It appears that at the time the main points of contention were the historic Pa that was thought to be in the vicinity of Lots 2 & 3, but no decision could be made until an archaeological authority was approved and the investigation undertaken. Eventually HPT confirmed Lots 2 & 3 should become Local Purpose (Historic) Reserve to be vested in Council.
- The Principal Planner advises that in negotiations between the developer and Council, it was agreed to make Lot 23 immediately next to Lot 1 a reserve because of “wahi tapu” sites on that lot (an Environment Court decision in 2005 refers to archaeological terracing identified by an archaeological assessment on Lot 23), (combining lots 2 & 3).
- He states further that there was agreement to make Lot 23 a reserve included protecting the tree on Lot 1 through a private covenant this was not recorded and unfortunately the tree is not mentioned again anywhere in the file.
- The assertion from Haami Piripi that Lot 23 has been desecrated is incorrect. Lot 23 is a reserve and Lot 1 is “able to be developed”.

### **Current landowner’s Actions**

- When the owners of 1 Wharo Way Ahipara (Marina & Cecil Williams) purchased the Lot in 2008, they as purchasers undertook due diligence when purchasing the land and would be aware of any restrictions on the title.

- In September 2021 Cecil Williams contacted Council because they wanted to prune the tree on this property. The land neighbours Council reserve.



- FNDC responded to the owner of the property indicating that the tree could be pruned but advised him to check covenants applied to the property specifically in relation to the Pohutukawa tree.
- The owners 'pruned' the tree – before & after photos:



- A complaint about the tree being cut down was received and an investigation by FNDC at the time showed partial removal of the tree.
- Normally cutting Pohutukawa tree on a residential property does not breach the District Plan rules. Therefore, there is no legal basis for enforcement action to be taken against the owner.

### **Cultural Sensitivity**

- The site is of cultural significance to Te Rarawa and Ngati Miru hapu, and the tree/land has sacred status of wāhi tapu. Tangata whenua have been occupying the land.
- Haami Piripi, Te Rarawa, had contacted Council outlining their intention to purchase the land and wanted Council's support.

- Property has been offered to iwi for \$500k, however Iwi don't want to purchase for that price. (Council records show the property was purchased in October 2007 for \$345k).
- In a good will Council offered to purchase a narrow strip of land adjacent to Lot 23 that has the tree growing on and combine it with Lot 23. This could be done by way of a boundary adjustment subdivision. This was put to the landowners, but they never responded to the proposal.

### **Current Issues**

#### 1. Land Ownership

- Mr Williams would like to sell the land and move. (Is this an issue Council should be getting involved in?)

#### 2. Rates

- a. Recently the property owners have been back in touch requesting a rates remission as the land is occupied and they cannot develop, sell, or use the land.
- S90A of the act gives CEO an option to write rates off.
  - It's not one to use lightly in terms of general title rates, and the circumstances here warrant consideration of whether this discretion should be applied (bearing in mind precedence)