

BEFORE THE HEARINGS PANEL

IN THE MATTER

the Resource Management Act
1991

AND

IN THE MATTER

of Proposed Plan Change 9 to
the Operative Hamilton City
District Plan

**STATEMENT OF EVIDENCE BY
JACOB ROBB ON BEHALF OF
SUBMITTER 301 - DAVID AND
BARBARA YZENDOORN**

**(SUBMISSIONS 301.1, 301.2, AND
301.4)**

**Session 1: Historic Heritage Areas, Significant Natural Areas, and Notable Trees
Monday 22 May to Wednesday 7 June 2023.**

DATED 28th DAY OF April 2023

Introduction

1. My name is Jacob Robb. I am a Resource Management Planner currently employed by Blue Wallace Surveyors Ltd (BWS) in Hamilton City. I hold a bachelor's degree in Environmental Planning from the University of Waikato, and I am an intermediate member of the New Zealand Planning Institute.
2. I have approximately 5 years' experience in planning roles. I have been employed by Blue Wallace Surveyors Ltd for the past 4.5 years where my experience has included regular involvement in plan changes and preparing resource consents for subdivision and land development within Hamilton City and the wider Waikato Region.

Involvement in the project

3. I have been asked to prepare planning evidence on behalf of Submitter 301 Barbara and David Yzendoorn who have sought changes the Hamilton City Council's Plan Change 9 via their submissions.

Expert witness code of conduct

4. Whilst this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with the code. My evidence in this statement is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter to detract from the opinions which I express.

Purpose and scope of evidence

5. Submission 301 sought changes to the activities that could be undertaken in protected root zones and opposed the introduction of notable trees T172 (172.1-172.20) on public land adjoining the Submitter's property at 189 Fox Street.
6. The purpose of my evidence is to respond to the matters raised by the Council Planner within the s42a report, the technical experts in the PC9 Arboricultural report, and also to the relevant expert evidence prepared on behalf of Council relative to Submission 301.
7. In particular, my evidence for Submission 301 focuses on submission points 301.1, 301.2, and 301.4.

Summary of evidence

8. The s42a report assessed each submission point raised by the Submitter

separately, however, this assessment was 'grouped' with various other, similar, submissions.

9. The identified trees (T172 (172.1-172.20)) have been determined to meet the notable tree criteria on reassessment and have been recommended to be retained on further assessment by Council's arborist (Mr Redfern). This was relied on by the Council planner with no apparent consideration beyond these matters.
10. The Council planner recommended changes to Rule 20.3(w) and other rules including 20.3(v) to limit the constraints of the Protected Root Zone. I generally concur with the changes recommended by the Council Planner as they provide some relief to the Submission and loosen the restrictions placed on common residential activities.
11. I do, however, believe that a further wording change is required to Rule 20.3(v) so that resource consent is only required for an expansion of the building footprint rather than the building 'envelope'.

Submission 301 - Comments on s42a report and relevant expert evidence relating to the sought removal of notable tree T172 (172.1-172.20) through Submission point 301.2 and 301.4.

12. For the submission point seeking that the notable trees be removed (301.2), the s42a report noted that Council's arborist reassessed each of the trees and that their resulting recommendations were relied on.
13. Unfortunately, no further discussion was provided on Submission 301; however, the Council Planner noted that "*Although it is acknowledged that some large trees have the potential to create risks and some inconveniences to landowners, the trees are providing significant benefits and ecosystem services to the wider community and trade-off environmental benefits are required. Trees are already threatened by urban intensification, infrastructure, and development and should be protected, unless there is a strong site-specific reason not to*" (Page 72, Hearing Session 1 Planning Report).
14. Following Submission 301, Council's agricultural experts reassessed trees T172 (T172.1-172.20) for their inclusion as notable trees. The reasoning included:
 - *These trees exceed the 130 STEM point requirement for inclusion in Schedule 9D.*
 - *No visual indicators of unacceptable risk were noted at the time of the assessment or the reassessment.*
 - *Leaf fall is generally a grounds-maintenance issue. There are some inconveniences that are generally accepted as a trade for the benefits*

gained.

- *Shading through leafy trees, although inconvenient in some cases, provides documented benefits such as cooling the environment and an urban heat island.*
- *Some trees have declined health and there is evidence of failure, however, overall, the tree group provides decent notable tree values that justify its inclusion in the Schedule.*

15. Acknowledging that the suitability of the trees, in terms of being considered notable, clearly lies with arboriculture experts, I have no issues with the assessment made by the Council arborist.
16. Whilst I cannot dispute this assessment as it is outside of my area of expertise, what I can state is that the subject cluster of trees are located on a Council owned reserve (Being Galloway Park) and thus are already afforded protection to some degree through the Reserves Act 1977. In this regard, a permit would need to be granted by Council following an assessment of any proposal to damage these trees.
17. On this particular site, the Protected Root Zone of the trees cover almost the complete property at 189 Fox Street and as such the constraints have a huge impact on what can be undertaken within the site. This is visible in the image below:

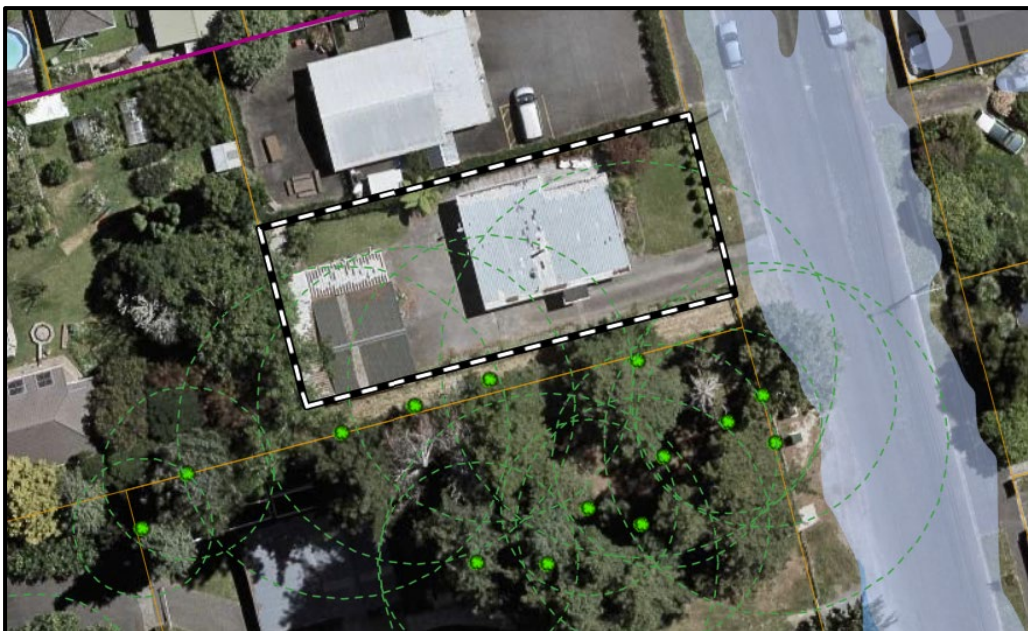


Image 1: 189 Fox Street with PC9 overlays.

18. I consider that the benefit that is obtained from providing superfluous protection above and beyond what is already present (i.e., HCC Open Space and Reserves Act Management Plans) is outweighed by the loss in development potential on this particular site. The restrictions this overlay will place on the site will prevent a prime development site from being available to intensify as sought by national documents

like the National Policy Statement for Urban Development (NPSUD) and the associated plan changes.

19. Notwithstanding the above, the accuracy of these trees as currently mapped do not appear to have been reconsidered in the s42A report despite this being explicitly raised through Submission 301.4. In this regard, several of these trees are shown as being located on private land when they are not, and the remaining notable trees in this cluster do not align with the aerial imagery in the planning maps.
20. Given the location of the trees dictates the location of the protected root zone (and consequent development restrictions), I believe that, if the notable trees are to remain, it is important that they are mapped accurately for properties such as 189 Fox Street where the Protected Root Zone will have such a significant impact on the use of the land.

Submission 301 - Comments on s42a report and relevant expert evidence relating to the sought changes to Rule 20.3(w) (submission point 301.1)

21. The s42a report acknowledged that there were many submissions received in relation to Rule 20.3w as a result of the constraints that the Protective Root Zones placed over adjacent properties. On review of the submissions, the Council Planner also acknowledged that the rules relating to Protective Root Zones were restrictive and recommended several changes to provide relief to the submissions sought.
22. In this regard, the Council Planner firstly recommended that a new permitted activity be included in Rule 20.3(v) which allows for additions and changes to buildings as well as the replacement of buildings, provided they are within the footprint or 'envelope' of the existing building. The resulting recommended changes are highlighted in the Chapter 20 Natural Environments Recommendations Version in **Appendix A** of the s42a report (page 14).
23. Whilst I generally support the recommendations of the Council Planner and agree that it provides an element of relief to the Submissions without compromising the protection of notable trees, I believe a wording change is required to Rule 20.3(v)(v-vi) to remove the reference to building 'envelope'. The building 'envelope' can be interpreted as the three-dimensional extent of the building, so the rule could require consent for additions to buildings above the ground even if the footprint were to remain unchanged. If the intent is to protect the roots located within the ground, I believe it appropriate to only control expansions happening at ground-surface level that have the potential to interfere with tree roots.
24. It is my opinion that controlling changes above ground is too restrictive in this instance, so the reference to envelope should be removed.
25. The Council Planner also recommended changes to Rule 20.3w to allow for

resealing and paving where it does not exceed existing impervious areas, to clarify that non-permanent storage of vehicles and equipment would remain permitted activities, and that the planting of vegetation that does not grow higher than 3m would remain a permitted activity.

26. Whilst the rules are still very restrictive for property owners affected by Protected Root Zones, I believe the recommendations go some way to alleviating these constraints without completely compromising the effect of the Protected Root Zone. Given they provide the clarity sought through Submission 301.1 they are supported to this extent.

Conclusion

27. Council Arborist Mr Redfern reassessed notable trees T172 (172.1-172.20) and confirmed his position to Include them in schedule 9D. This was relied on by the Council planner with no apparent assessment beyond this.
28. Whilst I cannot dispute the assessment by Mr Redfern, I believe the trees are already afforded sufficient protection under the Reserves Act 1977 especially when considering the significant constraints placed on the Submitter's site as a result of the proposed overlays.
29. Notwithstanding the relief sought to remove notable trees T172 (172.1-172.20) from Schedule 9D, I generally concur with the Council Planner's recommended changes to Rules 20.3(v) and 20.3(w) with the exception of the word 'envelope' in Rule 20.3(v).