

RMA FORM 5

## Submission on publicly notified Proposed

## Porirua District Plan

Clause 6 of the First Schedule, Resource Management Act 1991



To: Porirua City Council

1. Submitter details:

Full Name	Last Clark	First Thomas Charles and Claire Louise	
Company/Organisation <i>if applicable</i>			
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2. This is a **submission** on the **Proposed District Plan** for Porirua.

3. I could  I could not   
gain an advantage in trade competition through this submission.  
(Please tick relevant box)

If **you could** gain an advantage in trade competition through this submission please complete point four below:

4. I am  I am not   
directly affected by an effect of the subject matter of the submission that:  
(a) adversely affects the environment; and  
(b) does not relate to trade competition or the effects of trade competition.  
(Please tick relevant box if applicable)

Note:

*If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991.*

5. I wish  I do not wish   
 To be heard in support of my submission  
 (Please tick relevant box)

6. I will  I will not   
 Consider presenting a joint case with other submitters, who make a similar submission, at a hearing.  
 (Please tick relevant box)

Please complete section below (insert additional boxes per provision you are submitting on):

<b>The specific provision of the proposal that my submission relates to:</b>
Part 2 Selection of Notable Trees  Definition of Root Protection Area  Tree p1 -Application of the Standard Tree Evaluation Method (STEM)  SCHEDULE 5 TREE08 –  TREE-P4 – Potentially appropriate works  TREE - R4- removal of a notable tree  TREE- S1 - activities in the root protection area of a notable tree  TREE-S2 - trimming and pruning of a notable tree
<b>Do you: Support? Oppose? Amend?</b>
Part 2 Selection of Notable Trees - Amend  Definition of Root Protection Area – we oppose the definition of the root protection area as being the canopy cover or half the height of a columnar tree  TREE -P1 We oppose the use of the STEM methodology in that the methodology fails to recognise the significant adverse financial effects that can be imposed of landowners by the methodology  SCHEDULE 5 TREE08 We oppose the inclusion of the group of trees on 24 Whanake Street as being Notable Trees.  We oppose the definition of the Root Protection Area as being the canopy coverage  TREE-P4 We oppose the limitations of the P4 policy  TREE - R4 - we oppose the limited range of reasons for the removal of a Notable Tree

TREE- S1 we oppose the limited activity that can be undertaken within the root protection of a Notable Tree  
 TREE-S2 we oppose the limitation on trimming activity

**What decision are you seeking from Council?  
 What action would you like: Retain? Amend? Add? Delete?**

Part 2 Selection of Notable Trees - We recommend the general policy on Notable Trees be amended to ensure decisions on notable trees do not impose significant adverse financial effects on landowners and either exempt properties where the application of those conditions that will have significant adverse financial effects on the landowner or, that where such effects are imposed, the landowner is adequately compensated for the adverse effects:

Definition of Root Protection Area – we want to see the definition of the root protection area amended to restrict the size

TREE -P1 - we want to see the STEM methodology and Council’s use of it recognise the significant adverse financial effects that can be imposed of landowners by the methodology and in such cases agree a site specific application of the methodology

SCHEDULE 5 TREE08 - We request you delete the proposed classification of the group of trees on 24 Whanake Street as being Notable Trees.

TREE-P4 - We request that the list be extended to include works necessary to ensure that adverse effects of the trees are mitigated eg impact on streambeds and potential flooding

TREE - R4 - We request where a Notable Tree imposes significant financial adverse effects on a landowner, the removal of the tree should be permitted

TREE- S1 - We request  
     Machinery should be able to be used without the need for protective surfaces  
     New impermeable surfaces should be permitted subject to 50% maximum coverage

TREE-S2 - We recommend the maximum branch diameter should be removed.

**Reasons:**

The reasons for the objections are provided in the attached submission.

Please return this form no later than **5pm on Friday 20 November 2020** to:

- Proposed District Plan, Environment and City Planning, Porirua City Council, PO Box 50-218, PORIRUA CITY or
- email [dpreview@pcc.govt.nz](mailto:dpreview@pcc.govt.nz)

Date: 20 November 2020



Signature of submitter  
(or person authorised to sign  
on behalf of submitter):

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*A signature is not required if  
you make your submission by  
electronic means*

**SUBMISSION OF THOMAS CHARLES AND CLAIRE LOUISE CLARK  
RE PORIRUA CITY DISTRICT PLAN  
20 November 2020**

**The Submitters**

This submission is presented by Thomas Charles Clark and Claire Louise Clark, joint owners of 24 Whanake Street, Titahi Bay.

The submission content relates to the Council's findings that the property contains 9 Notable Trees, being 8 Nikau Palms and 1 Puriri. Two of the nikaus are actually on Council land and their management is the responsibility of the Council. But as the stewards of the block we shall comment on all 9 trees.

The trees effectively cover the bottom 20% of 24 Whanake Street and, if the designations stood and the proposed rules and standards applied, the owners would be significantly adversely affected and would be unable to exercise their rights to use the property, including some redevelopment of the remaining 80%. The property would be effectively worthless. That is an adverse effect that should have been advised to the Council and the Council should have had regard to in establishing the draft District Plan.

We also have serious concern that the roots of 6 nikaus, planted along the streambed frontage of 24 Whanake Street in a designated >1m flood zone, have begun, in their maturity to raise the level of the streambed and encroach into the stream channel and that the expansion of surface root pads are nurturing hundreds of juvenile nikaus. Their impact is a reduction in stream profile and capacity to handle high water flows. This mature growth habit is a risk to increased flooding of properties upstream to 28 Whanake and downstream across Whanake, John and Richard Streets. The costs associated with maintaining the stream flow to accommodate these trees is, in our view, unsustainable in the long term.

We object to:

- a. The Notable Trees policy when its application would impose significant financial adverse effects on landowners
- b. the use of the STEM methodology when applied to a group of trees of differing species and qualities
- c. the use of the STEM methodology when potential conflicts/adverse effects exist
- d. the classification of the puriri as a notable tree for reasons given in the submission;
- e. the classification of 8 nikaus as notable trees for reasons given in the submission;
- f. the definition of the root protection zone which we consider is unnecessarily extensive;
- g. the rules and standards, which relate to notable trees, are unnecessarily restrictive and need to provide for reasonable use of the land.

We believe the problems that exist in respect of 24 Whanake Street result from a breakdown in the processes of the Council and a failure to recognise the adverse effects of the proposed plan on us as landowners. We consider the circumstances are probably unique to 24 Whanake Street and we wish to meet with Council officers to discuss and resolve the matter in a collaborative, mutually agreed manner.

We are considering development options that would involve leaving the nikaus in place, trimming the northern side of the puriri to allow vehicle access to the remainder of the section and allowing the stormwater to enter a trench above the "piece of bush" to maintain the health of the bush.

We wish to be heard in respect of our objections.

**The Content of the Submission**

1. The submission contains the following sections:
  - a. A description of the Property
  - b. The designated Notable Trees
  - c. Failings in the Notable Trees Programme
  - d. Failings in the Arborlabs Methodology and Assessment for 24 Whanake Street
  - e. Our objections to and our recommendations for the proposed provisions

The Arborlabs assessment forms Appendix 1

There are 3 Appendices of photographs

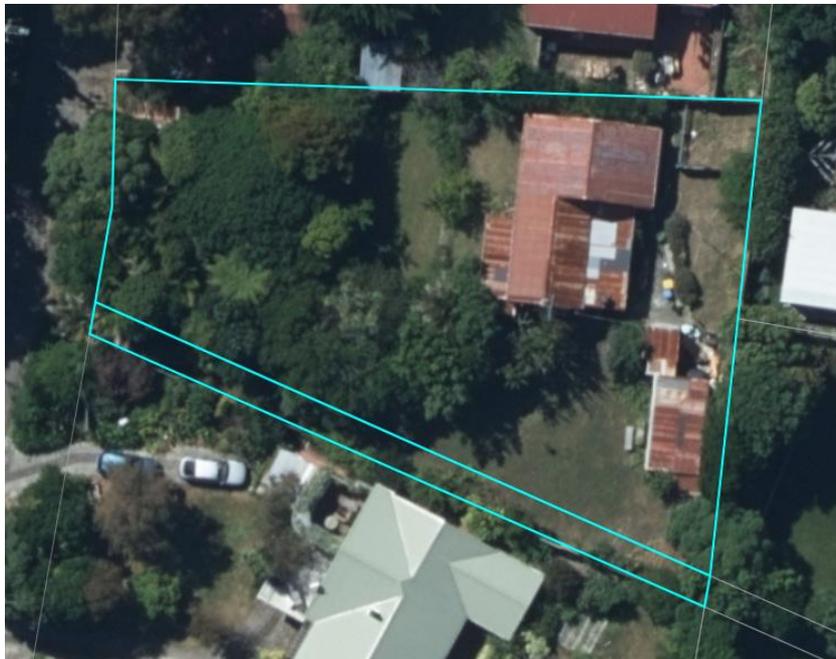
Appendix 2 History of flooding 24 Whanake Street

Appendix 3 History of the Culvert 24 Whanake Street

Appendix 4 Growth of Nikaus 24 Whanake Street

## THE PROPERTY

2. The property in question is 24 Whanake Street, which consists of Lot 46 DP 7626 and the privatised right of way Reserve DP 1072 to the south of the property (as shown in the diagram below). Together, the property covers 1,108m<sup>2</sup>.
3. The property has an upward slope from the road with building platforms cut for the dwelling and the lawn below the front of the dwelling. A poorly maintained piece of bush occupies the bottom 17 metres of the property and covers 31% of the total property. The proposed notable trees are located in that space. Other trees in the space include spindly pittosporums, ngaios, pohutawa, kawakawa, cabbage trees and juvenile nikaus. Due to the overcrowding and the wet nature of the ground, most trees eventually succumb to rot.
4. At the bottom of the property adjacent to the roadway is an open section of stream. The legal boundary for 24 Whanake Street is the middle of the stream. There is pedestrian access only onto the property via a narrow wooden bridge over the stream. There is NO vehicle access onto the property beyond the roadside garage.



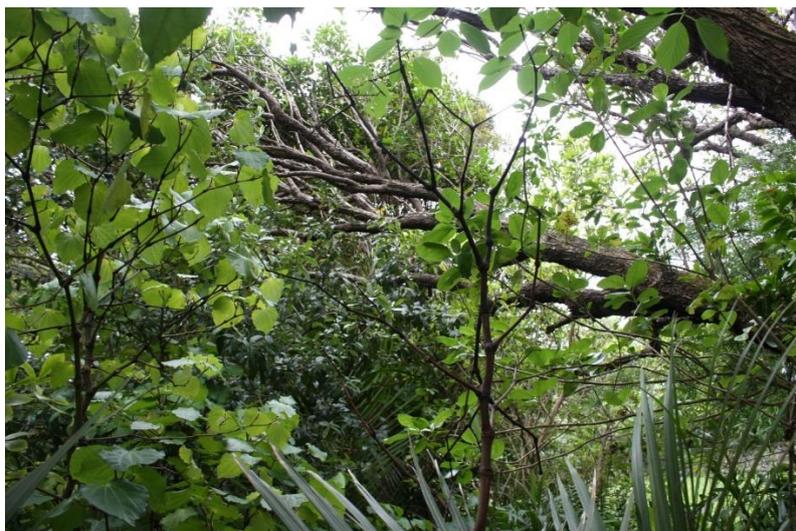
Aerial Image of 24 Whanake St, Titahi Bay

5. The property is wet and poorly drained. There are two areas of significant wetness, the first to the front of the dwelling on the northern side and the second towards the middle of the property. These keep the area of lawn between the dwelling and the piece of bush in a permanently wet and often boggy state. These wet spots are either springs or where a sand aquifer has been exposed to allow a continuous flow of water across the surface. The northern wet spot resulted in the retaining wall slumping in 2006. The wet spot in the middle of the property has not been drained. The two houses above, uphill, on Thornley Street have no stormwater piping to the Council drains and rely on soak pits at the bottom of their sections. These inevitably overflow in periods of high rain and have an overland flow into 24 Whanake St. The area on which the piece of bush is present is notably wet at all times. While some of the area has good soil, other parts are covered in small chips and other building material discarded by a previous owner.
6. The property contains one small dwelling built in the 1930's in a relatively poor state and two sheds, one of which serves as the wash-house. There is a garage at the foot of the property adjacent to the northern boundary. The property is rented.

7. We live at 22 Whanake Street and acquired 24 Whanake Street (adjacent) in 2007 from the estate of Mabel Mexted, the wife of Alfred Mexted, a former Porirua City Councillor who predeceased her. Mabel acquired the property in 1943. The plantings on the property appear to date from post 1960. Dennis, the surviving son, remembers the bottom section of the property being lawn and a few planted trees in his younger days. The trees were allowed to grow and in time developed into the "piece of bush" that is there today.



8. The above photo from 1968 shows the garage and the dwelling beyond. The puriri was planted in the 1960s and now occupies the space beyond the garage.
9. We are not sure how to describe the area in which the trees stand. It is not an organised or structured planting. It has no ornithological value, botanical value or beauty. It is a tangle of vegetation, often self-planted. It is not regenerative vegetation and contains a variety of whatever can grow and survive. The trees in general are spindly and die regularly. The designated notable trees on the property are not naturally occurring, they were planted by the Mexteds. We refer to it in this submission as a "piece of bush" but that label is probably gratuitous to what is otherwise a tangle and an eyesore.



A General View



One year's dump of fallen nikau fronds

10. We purchased the property to prevent it falling into the hands of a developer who was seeking to bowl the "piece of bush" and build 8 units on the property. It is our retirement nest-egg, to be developed or sold as appropriate. The property is currently valued at \$550,000 and we are reviewing the decision whether to develop it or sell as is.
11. We have lived next to the property for the past 44 years and value the benefits it brings to the local environment. We regularly observe tuis, kereru, kingfishers and more lately rosellas in the neighbourhood. We have given permission for local conservation-minded friends to obtain juvenile nikaus for planting elsewhere in the neighbourhood. We have no intent to bowl the trees as the preservation of the "piece of bush" was the reason to purchase the property in the first place. But we do need to be able to use and develop the property.

**THE DESIGNATED NOTABLE TREES**

12. The trees in the Notable Trees correspondence of 28 August 2020 include 8 nikau palms and 1 puriri. The approximate positions are indicated on the map below, the smaller circles being the nikaus, the larger circle the puriri location. The trees in the draft classification cover approximately 230m<sup>2</sup>, approximately 20% of the property and their canopies extend across the width of the whole property. There is NO vehicle access onto the property and the close spacing of nikaus across the front of the property precludes any driveway being constructed through them.

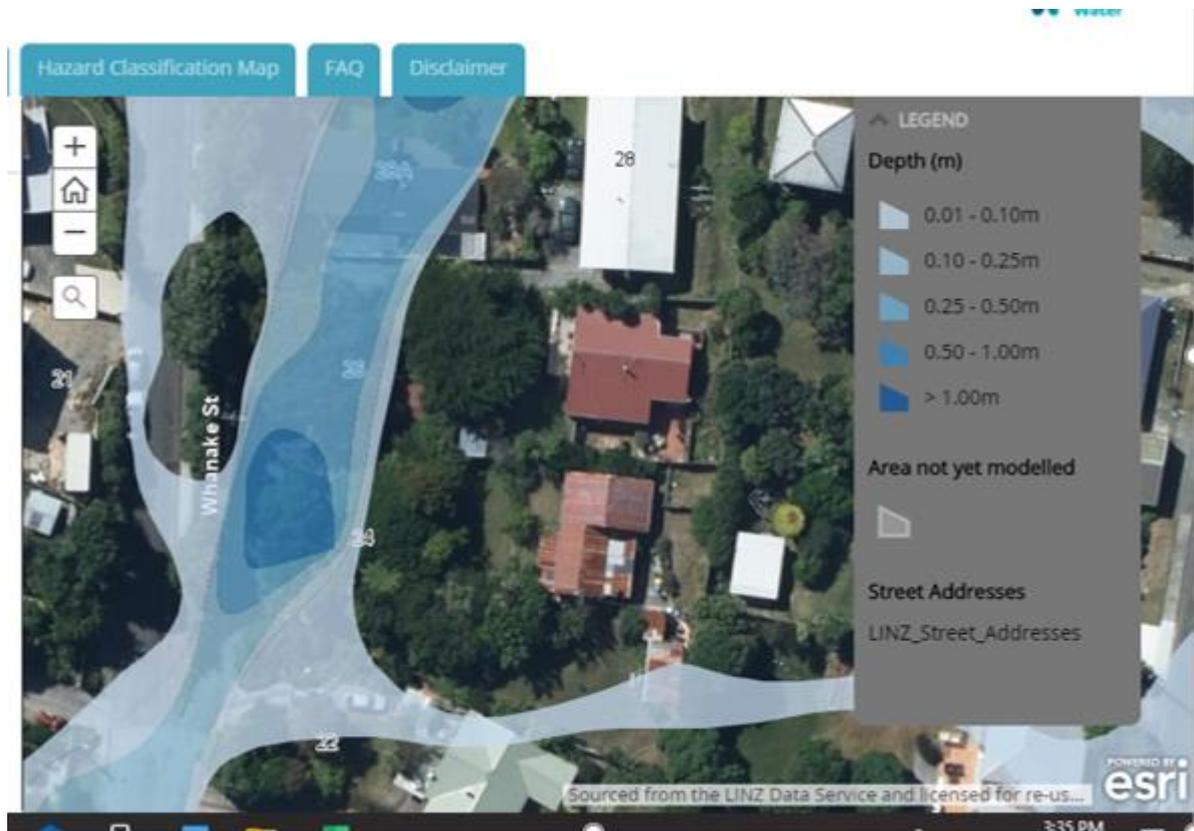


Location of Designated Notable Trees and the extent of their canopies.

13. Six of the nikau palms are located on the banks of the stream. Four on 24 Whanake Street's bank and 2 on Council property (berm). The other 2 nikaus are located further into the property, the furthest being 10 metres into the property. The only nikaus visible on the Council aerial image are the two furthest into the section as other vegetation is higher than all other nikaus. The nikaus are estimated to be 8 metres high with a crown spread radius of 2.5m. The 6 nikaus adjacent to the stream were planted by the Mexteds to assist to hold the banks firm. Nikaus do not have a central tap root and their habit is to send out multiple anchor roots with a network of fine feeding roots. The root systems for those mature nikaus are now growing over the stream banks and into the floor of the stream and are forcing the narrowing of the streambed as shown in the following images.



14. As the roots take hold in the streambed, they provide footing for more juvenile nikau to establish in the root masses becoming islands of new growth. We are having to remove the juvenile nikau to allow for the maximum waterflow. The nikau roots are contributing to the raising of the stream bed as the root pads and juvenile nikau are encroaching into the stream channel.
15. The stream currently floods beyond its banks on a frequent basis – see the appendix on the history of flooding. The flooding appears to have become more frequent in recent years and more severe. Alfred Mexted took a complaint to the Valuation Department in 1958 which described his concerns at the flooding of his property after the culvert in front of 24 / 22 Whanake Street was put in place. The risk of flooding was noted in 1963 when the state houses in Thornley Street and Dimock Street were built. The floodwaters bank back upstream to 28 Whanake Street and travel downstream across Whanake Street and into John and Richard Streets. The flooding of 24-28 Whanake Street is described and mapped in the Wellington Water Titahi Bay Stormwater Catchment Model Build Report 2018. If the nikau are designated Notable Trees under the proposed rules and standards and the roots in the streambed continue to impact the capacity of the stream, costs to property owners will be needlessly increased and in the long term become unsustainable, in terms of the Council's Tree and Vegetation Policy June 2009.



Rainfall flood risk mapping 24 Whanake St <http://wellingtonwater.maps.arcgis.com/>

16. We submit that the flood hazard rules are not the most appropriate way to give effect to the Resource Management Act; and that activities within the Stream Corridor should not be "non-complying" as there are various mitigation methods that can be used.
17. In 1976 we purchased 22 Whanake Street and assisted Alfred Mexted to ensure the culvert in front of 24/22 Whanake Street was kept clear of vegetation. We have now continued this task for 44 years and are acutely aware of the flood risks to properties upstream and downstream. The Council does not clear the culvert. Over the past 15+ years there has been a new vegetation risk factor blocking the culvert. These are the mature nikau fronds, 3 metres long and up to 1 metre wide falling straight down into the stream channel and impeding the flow of flood waters to the culvert. Refer to the appendices of photos of past

floods and the culvert. When the culvert is full during peak flooding the water level in the stream rises over 2 metres and floods across Whanake, John and Richard Streets.

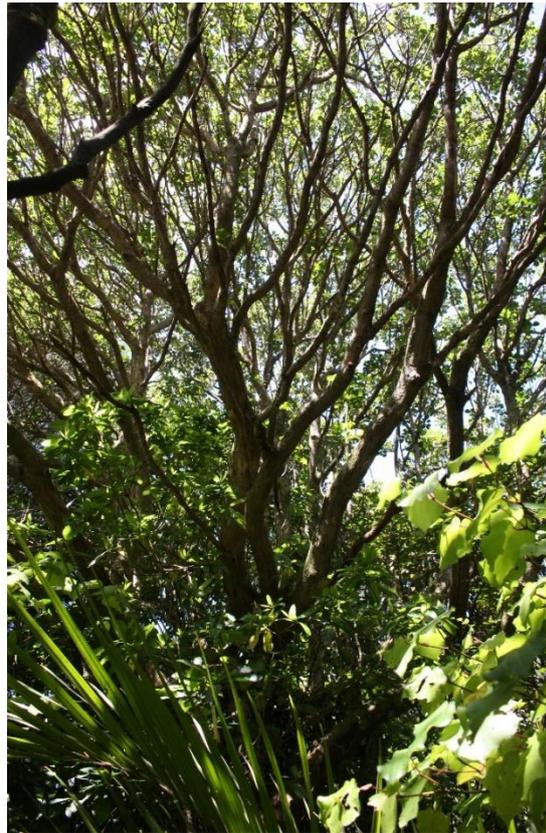


2016 flooding showing the nikaus on the stream bank , a nikau frond and stormwater flooding out onto Whanake Street.

18. The puriri is located some 10 metres into the property and has a canopy diameter of approximately 12 m, a canopy coverage of approximately 115m<sup>2</sup> , extending from the northern boundary to cover a significant area of the bottom of the property. It is uncertain how high the puriri is or its age. It is planted on a bank above the garage of 24 Whanake St with its lowest limbs being only 1.5 metres above the ground and in some instances being supported by the garage roof. The earliest it may have been planted as a juvenile tree is the 1960s as it does NOT show in the 1968 photo provided by the Mexted family. As can be seen from the following photos, the puriri has an open splayed appearance with no central trunk. The limbs are generally spindly and thin and move significantly in strong northerly winds.



The base of the puriri in 2020



The puriri canopy behind and above the garage in 2020.



1968

#### **FAILINGS IN THE NOTABLE TREES PROGRAMME**

19. The first we heard of the Notable Tree listing was 28 August 2020 when we received a letter from the Porirua City Council advising us the property had 9 notable trees and that these were listed in the Draft District Plan. Prior to that, we had had no advice of the proposal.
20. The Council contends that we would have been contacted earlier in 2018 when a letter was sent to landowners with potentially notable trees. We have searched all correspondence from Porirua City Council and have been unable to locate any information to that effect.

Had we received that correspondence, we would have engaged in the process to discuss the proposals and the trees in particular.

21. We note that the Arborlab report designates that they had no access to 24 Whanake Street. That reflects that we did not receive the letters as asserted by the Council.
22. That we did not participate in the review of the District Plan in 2019 also reflects that we were unaware of the notable trees programme and the implications for 24 Whanake Street.
23. We are concerned that a tree assessment was undertaken and that no copy of the report was provided by the Porirua City Council to us, as landowners, at that time. It would have prompted our engagement with the Notable Tree assessment process.
24. We note that this is the only substantial group of trees on private land where the spatial extent impacts on the landowner's financial value.
25. In August 2020, after receiving the advice from the Council, we requested that Council planners make a site visit to 24 Whanake Street. The planners visited but chose to make no comments other than we should make a submission on the matter.

#### **FAILINGS OF THE ARBORLABS ASSESSMENT**

26. We have a copy of the Arborlabs STEM assessment for 24 Whanake St (see Appendix 1) and have read the STEM Tree Evaluation methodology.
27. The Arborlabs assessment report for TREE008 as presented to Council for consideration is highly misleading.
28. We have the following comments on the assessment.

#### **Group Assessment vs Single Tree Assessment**

29. We note the STEM methodology does not specify how trees in a group are to be assessed.
30. The trees at 24 Whanake Street are the only group of mixed species presented to Council. All other groups are single species groups.
31. It is unclear how an assessment of one nikau can represent 8 nikaus and one puriri, the puriri being in far poorer condition than the nikaus.
32. When describing the physical features of the trees, they describe one nikau palm with a height of 8 metres and a crown spread radius of 2.5 metres. Nowhere do they provide the dimensions of the overall group which would cover approximately 220m<sup>2</sup> or 20% of the entire property and would restrict access to the remainder of the property. That should have been reflected in the report.
33. The right hand image of the puriri on the previous page is all that an assessor not having access to the property would have been able to see. Nor could the assessor view the condition or the canopy cover above the nikaus. We are at a loss to understand why given the significance and spatial extent of the designated trees why Arborlabs did not additionally approach us for access.

#### **Condition**

34. We note that Arborlabs did not enter the property to assess the trees. Without a close inspection, the condition cannot be reliably determined. For that reason, their assessment cannot be considered reliable.

#### **Form**

35. The assessment classes the trees as being specimens. They are not specimen quality.

36. The nikaus are average nikaus growing in a mixed "piece of bush" setting without the space or open canopy to develop as specimen trees. They grow in cramped conditions and have not developed the spread of a specimen nikau.
37. The puriri is particularly large in spread and is a very open tree with spindly limbs. It has no trunk as is characteristic of a puriri and does not have the form of a puriri as below. It has developed a low spreading canopy, possibly as a result of high wind impact and the impact of other trees on the puriri canopy.



24 Whanake St puriri



Specimen puriri

38. We contend that on average the group are only moderate in aggregate – the puriri is but poor.

#### Occurrence

39. We are unsure as to the classification of the tree [TREE008] as being infrequent. Puriri are more commonly a more northern tree. Nikaus are commonly found in the wider Wellington area. To assert that nikau in the wider Porirua City Council area are infrequent (noting that the assessment applies only to a nikau palm) first requires having an assessment of the abundance of nikau palms in Porirua. We see no assessment of the abundance to support the assessment of infrequent.

#### Vigour

40. We are uncertain as to how the vigour of the nikau palm was assessed as very good. The palm identified by the GPS co-ordinates is the smallest of the palms and on a comparative basis, given it was planted at the same time as the others but on the dry side of the streambank, cannot be very good.
41. We have some problem with the vigour scoring of the puriri tree as very good. Since they did not enter the property, Arborlab did not inspect the puriri and, as the previous image of the canopy demonstrates, the view of the puriri from the public roadway is very poor. Without a close inspection of the tree, a very good rating is speculative at best. It should be noted that the power services pierce the canopy of the puriri and its future form and vigour will need to be affected to clear those services.
42. The vigour status of the nikaus is highly dependent on the supply of ground water to the site. Any development of the site for residential purposes requires that all stormwater be piped to a Council service. At the time of the re-development, we would also need to address the inability of the soak pits of the properties above 24 Whanake Street to prevent

flooding and ensure that water too is piped to the street. That will deprive the nikaus of the water which has been the source of their vigour to date. Any pruning of the non-notable trees in the section will expose the nikaus to strong southerly and northerly winds. Their sustainability is not assured.

#### Function

43. As noted earlier, the puriri provides nutritional benefits to a range of birds. However, we have not noticed the nikaus providing the same range of benefits. We note that not only might the trees attract birds, they also attract vermin such as rats and we have to maintain a continuous trapping programme to keep them under control.

#### Summary

44. We consider the overall assessment of 93 points for condition of the group of trees is misleading and over-estimated for the reasons stated above. We contend the points should be significantly lower.

#### **Amenity**

45. In general, we agree with the scores for stature and visibility. The trees are not visible from other than the street servicing numbers 28, 28A, 26 and 24 Whanake Street. They are only visible when viewed from immediately in front of 24 Whanake Street. They are invisible to the wider public and play no role in the wider landscape.

#### Proximity

46. While the trees are in the midst of other trees, with the exception of Pohutukawa all other trees in this "piece of bush" are tall, spindly and inclined to rot. A recent storm has split the trunk of a substantial tree above the "piece of bush". The trees in the bush are poor specimens of trees and the undergrowth has on occasions been removed by previous property owners.

#### Role

47. It is not the nikaus or the puriri that contributes to the role of the "piece of bush" in 24 Whanake Street. It is the aggregate of the "piece of bush" and trees. Being but a trunk to the observer, the individual nikaus add nothing to the composition of the piece of bush.
48. The trees have no setting as such. The site is unknown to the general public, sits between fences on either side and is largely hidden down a side extension of Whanake Street. The STEM methodology poses the question for "Role" as *how would a particular scene or place look without the tree*. If the trees were not there, effectively no-one other than the residents of 24 Whanake Street would see any difference. The trees are invisible to passers-by and the general public.
49. The trees have no heritage, historical or even a local association for the residents. They are not associated with public facilities or public amenities. They provide no benefit to other than a few locals who might appreciate the existence of some "piece of bush" in their neighbourhood. In our near 50 years of residence, we have only ever had 1 person comment favourably on the "piece of bush" and he only did so recently, having lived in Whanake Street for over a decade and been unaware of the existence of the "piece of bush".
50. In the circumstances, a score of 15 for the role is unjustified. The score should be 3 – minor at best.

#### Climate

51. The trees are scored as having a positive climatic influence. To the residents and ourselves as owners, the trees and the puriri in particular provide a damp, cold, shaded area that prevents any other attractive vegetation being cultivated. We are unable to see any positive climate influences.

### Potential Conflicts/Adverse Effects

52. We note that the assessment methodology allows for conflicts to be noted. The Arborlab assessment notes there are no potential conflicts.
53. We are at a complete loss to understand how a group of trees, that make up 20% of the total property and if approved as notable trees would effectively deny access to the remainder of the property can be, deemed as having no potential conflict.
54. Had Arborlab sought permission to access the property or even bothered to enter the property to observe the trees from a better perspective, they would have become aware of the implications of the spatial extent and the conflict that their assessment would create.
55. The property is currently valued at \$550,000. That valuation estimates the land as having a value of \$440,000. That valuation is based on being able to use the land for residential purposes. If the land cannot be used for that purpose, then it is valueless.
56. We have enquired as to the worth of the property under different scenarios.
- a. If the "piece of bush" could be removed and the property developed into multiple residential units, the value would be significantly in excess of the current valuation.
  - b. If the notable trees designation stood and we were able to gain access to the remainder of the property for development of say three or four units, the property would have a value around the current valuation.
  - c. If however, the notable tree designations stood and we were unable to gain access to the remainder of the property, the property would be effectively worthless.
57. The effects of the Notable Tree listing are demonstrably adverse effects, not a potential conflict. The listing would prevent us as landowners developing the property and impose costs on us. That is not a potential conflict, it is in terms of the Resource Management Act an adverse effect. The Arborlab assessment is deficient in not recognising the adverse effects on the use of the property and the impact on the value to the landowners.
58. We note that this is the only group of trees on private land listed for Notable Tree status and Arborlabs should have brought that fact and the impact on the landowners' rights to the attention of the Porirua City Council in its assessment and report.

### Summary of Assessment

59. In summary, the Arborlab assessment is substantively flawed by
- a. not properly observing the trees at close quarters,
  - b. basing their assessment on 1 nikau,
  - c. not having a methodology that allows for a group or mixed species trees,
  - d. not having followed the STEM methodology
  - e. not highlighting the adverse effects that such a group of trees would have on the landowners access to and right to use the remainder of his property.
60. The draft district plan defines notable trees as
- those that are recognised and protected for one or more of their historic heritage, amenity or ecological values. These trees can be prominent natural features and landmarks, add character and identity to the neighbourhood, be rare species, spectacular specimens or have an association with special sites or events*
61. We fail to see how the nikaus and puriri at 24 Whanake Street fit any of those qualities. They have no historic heritage. Their amenity and ecological values are overstated and are no greater than other tree that provides nutrition to birds, e.g. a karaka or flowering cherry. They are not prominent natural features or landmarks, do not add character or identity to the neighbourhood, are not rare species, are not spectacular specimens and have no association with special sites or events.

62. We object to the trees being listed in Schedule 5 and the scores assigned by Arborlab.

## **OUR OBJECTIONS TO AND OUR RECOMMENDATIONS FOR THE PROPOSED PROVISIONS**

### The definition of Notable Trees

63. We do not accept that the Council should have the ability to impose significant financial costs on landowners through the Notable Trees policy. That is not acceptable.
64. The Resource Management Act, on which the district plan and the Notable Trees policy are based, provides for landowners to have control of their land subject to the need to satisfy environmental needs. It does not allow for the confiscation of significant tracts of private land nor reasonably deny landowners the right to benefit from the use of their assets.
65. We recommend the general policy on Notable Trees be amended to ensure decisions on notable trees do not impose significant adverse financial effects on landowners and
- a. either exempt properties where the application of those conditions that will have significant adverse financial effects on the landowner; or
  - b. allow for a special process to exist where specific circumstances, such as the case of 24 Whanake Street, require a collaborative, mutually agreed outcome between the Council and the landowner; or
  - c. that, where such effects are to be imposed, the landowner is adequately compensated for the loss of financial value.

### Definition of root protection area

66. The root protection area is used as the prime determinant of where activities may or may not take place. The definition proposed is as follows:

*Definition of root protection area means for a tree with a spreading canopy, the area beneath the canopy spread of a tree, measured at ground level from the surface of the trunk, with a radius to the outer most extent of the spread of the tree's branches and for a columnar tree, means the area beneath the canopy extending to a radius half the height of the tree.*

67. We object to the proposed definition of the root protection area. A tree with a spreading canopy is likely to have a tap root anchorage, not a shallow wide rooting system that extends to the edge of the canopy. Having viewed a number of images of canopied trees that have been toppled by wind or otherwise fallen over, there is no indication that the major root systems extend as far as the outer edge of the canopy. We consider this to be an unjustifiable extension that far exceeds the definitions of root or tree protection zones set in the AS 4970 2009 'Protection of Trees on Development Sites.
68. Equally, we consider the definition of root protection zone for a columnar tree such a palm to be unnecessarily excessive.
69. We are not expert arborists but we recommend that the Council reconsider the definition to be more appropriate to the long term viability of the tree.

### TREE -P1 Use of the STEM methodology

70. The STEM methodology fails to provide an accurate assessment of the group of trees at 24 Whanake Street. The STEM methodology is established for the assessment of a single tree or of multiple same species trees with the same characteristics. It is not appropriate for the assessment of a mixed species group of trees with mixed condition and amenity values such as is found at 24 Whanake Street. The STEM methodology does not provide any indication of how a group of such trees should be assessed. Using the measurements of one nikau palm to cover a group of trees with a group coverage of 190m<sup>2</sup> is not reasonable. Using the ecological value of a puriri to apply to nikau palms is equally unreasonable.

71. The STEM methodology as used for the designation of Notable Trees for the Porirua City Council fails to recognise that potential conflicts, such as significant adverse financial effects of such a designation, may result. This is the case with 24 Whanake Street where the proposed district plan will result in the value of the property being unreasonably impacted and any re-development of the property impossible.
72. We previously noted this impact in the policy statement and provided recommendations of how the situation might be addressed. Had Arborlabs provided a complete assessment that highlighted the existence of a conflict, the matter could have been addressed by the Council and the draft district plan appropriately amended to provide for special circumstances.
73. We recommend that Porirua City Council seek expert advice on the assessment of mixed species, mixed condition and mixed ecological values and re-consider their STEM assessments. In the absence of any methodological fix, we suggest the Council amend the policy to provide for a special process to be undertaken where special circumstances exist to make the STEM methodology inappropriate.

#### SCHEDULE 5 TREE08 Identification of the group of trees on 24 Whanake Street as being Notable Trees

74. For the reasons provided in this submission, we believe the trees proposed in Schedule 5 TREE08 for Notable Tree status should be removed from the Schedule.
75. We fail to see how the nikaus and puriri at 24 Whanake Street fit the qualities of a Notable tree. They have no historic heritage. Their amenity and ecological values are overstated and are no greater than other tree that provides nutrition to birds, e.g. a karaka or flowering cherry. They are not prominent natural features or landmarks, do not add character or identity to the neighbourhood, are not rare species, are not spectacular specimens and have no association with special sites or events.
76. The Arborlab assessments are substantively flawed by
  - a. not properly observing the trees at close quarters,
  - b. basing their assessment on 1 nikau
  - c. not having a methodology that allows for a group or mixed species trees
  - d. not having followed the STEM methodology
  - e. not highlighting the potential conflict/adverse effects that such a group of trees would have on the landowners access to and right to use the remainder of his property.
77. The assessment scores provided by Arborlab are inappropriately excessively high and provide false assessments of the trees.
78. For the reasons given earlier, the condition scores are inappropriate for trees not of specimen quality and in particular for the puriri which is a substandard tree.
79. The amenity scores are excessive for a group of trees that exist unbeknownst to the public, have no role in the landscape, have no visibility and only negative climate influences.
80. The conflicts for the individual trees – the impact of the nikaus on the streambed in a flood zone and the extent of the puriri, or for the group of trees as a whole denying the landowner the opportunity to use the remaining land in the property are not denoted in the assessment.
81. When the above points are taken into account, the trees (TREE08) should be removed from Schedule 5.

#### TREE P4 Potentially Appropriate Works

82. TREE P4 defines potentially appropriate works as those trimming and pruning of notable trees or undertaking activities in the root protection zone that:

1. *Do not compromise the long term health of the notable tree;*
2. *Do not compromise the values of the notable tree described in SCHED5 - Notable Trees;*
3. *Do not reduce the natural life of the notable tree;*
4. *Do not increase the risk of the notable tree being subject to wind damage; and*
5. *Do not impact the natural shape and form of the notable tree.*

83. We support the above statements (noting our objection to the definition of the root protection zone) and consider that it should be amended to provide for work to be undertaken where the trees are having an adverse effect on other matters such as increasing the risk of flooding.

84. We also note that Schedule 5 does not generally contain the values of the trees listed.

#### TREE P5 – Removal of Notable Tree

85. While we understand the desire of the Council to ensure the longevity of Notable Trees, we cannot support that the only grounds for the removal of notable trees is where they are an imminent risk to the safety of people or property if that was to exclude circumstances where the value of property was affected as against the safety of the property which we take to interpret as destruction of the land.

#### TREE- S1 Activities in the root protection area of a notable tree

86. We oppose the proposed exclusion of any machinery undertaking earthworks having to operate on ground protection measures. The requirement is excessive relative to policy P4 which relates to compromising the long term health. Compaction of some of the roots or removal of some of the roots will not compromise the long term health of the tree. We consider the restriction to be excessive but could see a possible amendment being to restrict such machinery within say 2 metres of the base of the tree.

87. We oppose the restriction to create new impermeable surfaces affecting more than 10% of the root protection zone. We have previously noted our objection to the definition of the root protection zone. We believe that providing an impermeable surface of up to 50% will in no way compromise the long term health of the tree. We draw the Council's attention to their own plantings within the Council area where trees are in close proximity with hard surfaces of paths, gutters and roading and show no adverse effects of their placement.

#### TREE-S2 trimming and pruning of a notable tree

88. We oppose the requirement that trimming and pruning must be restricted to maximum branch diameters of 50mm. That is excessive relative to the policy of not compromising the long term health of the tree. Trimming branches greater than that diameter can be undertaken in a way so as to maintain the essential shape and form of the tree.

89. S2 requires all trimming or alteration to retain the natural shape, form and branch habit of the tree. Those requirements would preclude any re-development of the remaining 80% of the property at 24 Whanake Street.

90. For the nikau palms, the root protection area, would at their present height, be a four metre circle about the trunk of the tree. That would prevent any action being taken to restrict the growth of roots in the streambed and thus increase the risk of flooding of the stream. The stream has flooded frequently in the recent past with major floods being recorded (see Appendix of photographs) around 1977-1980, 2011 and 2016. Continued lifting of the streambed and encroachment of growth into the stream channel will only increase the probability of and frequency of floods.

#### **THE WAY FORWARD**

91. We believe that the process followed by the Council to identify and assess Notable Trees has failed to provide a reasonable outcome in respect of 24 Whanake Street. It is not

acceptable that we cannot have access to and derive value from our investment in the property at 24 Whanake Street. The Council's proposal will effectively cost us in the order of \$500,000 of savings and deny us a reasonable standard of living in our retirement.

92. We have no current intent of removing the trees, as is evidenced by our decision to purchase the property and protect the trees from the clear felling proposed by land developers in 2007.
93. In considering how we might develop the property, we are considering proposals that would leave the nikaus in place but prune the northern edge of the puriri in order to provide vehicle access to the remainder of the property. We are also giving consideration as to how we maintain the provision of water to the "piece of bush" including the possibility of draining the water into a trench below the development but above the "piece of bush".
94. Had the Council undertaken the consultation process properly in 2018 and contacted us, we might have been able to come to a collaborative agreed approach that would suit both parties. By not handling the matter in a proper manner and in not acknowledging the conflicts the designation of the group of trees and the puriri in particular causes, the Council has acted in bad faith towards us.
95. We request that the Council re-consider the consequences of the proposed District Plan in respect of 24 Whanake Street and agree to meet with us to discuss a collaborative, mutually acceptable outcome. We need to be able to address the impact of the 6 nikau palms on the streambed, reasonably address the issues created by the spatial extent of the puriri and reconsider how we will be able to redevelop the remainder of the property. In those discussions, the Council will need to detail how it will manage the 2 nikaus on Council land.
96. The intent of the Notable Trees programme is not to deny landowners their rights to the benefit of property ownership – it is to enable notable trees to be protected for their benefits.

**APPENDIX 1 ARBORLABS ASSESSMENT**

SCHED5 – NOTABLE TREES - PROPOSED PORIUA DISTRICT PLAN

RE: TREE/TREE GROUP NUMBER TREE008

Detail from Standard Tree Evaluation Assessment (STEM) for proposed TREE008

Latitude	-41.1004669888753
Longitude	174.838317744434
Geometry	POINT (174.838317744434 -41.1004669888753)
Botanical name	Rhopalostylis sapida*
Height m	8
Girth mm	800
Crown Spread Radius m	2.5
Crown spread radius	2.5
Health	Excellent
Age class	Mature
<b>Condition</b>	
Form	Specimen
Form calculator	27
Occurance	Infrequent
Occurance calculator	15
Vigour	Very good
Vigour calculator	21
Function	Important
Function calculator	15
Age years	40-79
Age calculator	15
<b>Condition evaluation total</b>	<b>93</b>
<b>Amenity</b>	
Stature m	3-8
Stature calculator	3
Visibility km	0.5
Visibility calculator	3
Proximity	Group 10+
Proximity calculator	15
Role	Important
Role calculator	15
Climate	Moderate
Climate calculator	9
<b>Amenity evaluation total</b>	<b>45</b>

Stature feature	
Stat feature calculator	0
Stature form	
Stat form calculator	0
Historic age 100	
Hist age calculator	0
Historic association	
Hist assoc calculator	0
Historic commemoration	
Hist commem calculator	0
Historic remnant	
Historic remnant calculator	0
Historic relict	
Hist relict calculator	0
Scientific source	
Scien source calculator	0
Scientific rarity	
Scien rarity calculator	0
Scientific endangered	
Scientific endangered calculator	0
Notable evaluation total	0
Further heritage assessment required	yes
<b>STEM EVALUATION TOTAL</b>	<b>138</b>
Scheduled status	Potential
Full access achieved	No
Tree worthy of scheduling	Yes
Potential conflicts	None observed
Potential conflicts other	

\* Note: included 8 nikau, 1 puriri tree

## Appendix 2 History of flooding 24 Whanake Street

### 1977-1980 event (date not recorded)



upstream 22-28 Whanake St



Downstream of 22 Whanake St



Flooded Garage 24 Whanake St

2011 event (date not recorded)

Photos taken at daybreak as the flood subsided



upstream 22-28 Whanake St



upstream 22-28 Whanake St.



24 Whanake St. Floating nikau frond

May 5 2016



upstream 22-28 Whanake after the water had begun to subside

upstream 22-28 Whanake after the water had begun to subside



Downstream of 22 Whanake St



downstream flooding 15 Whanake St

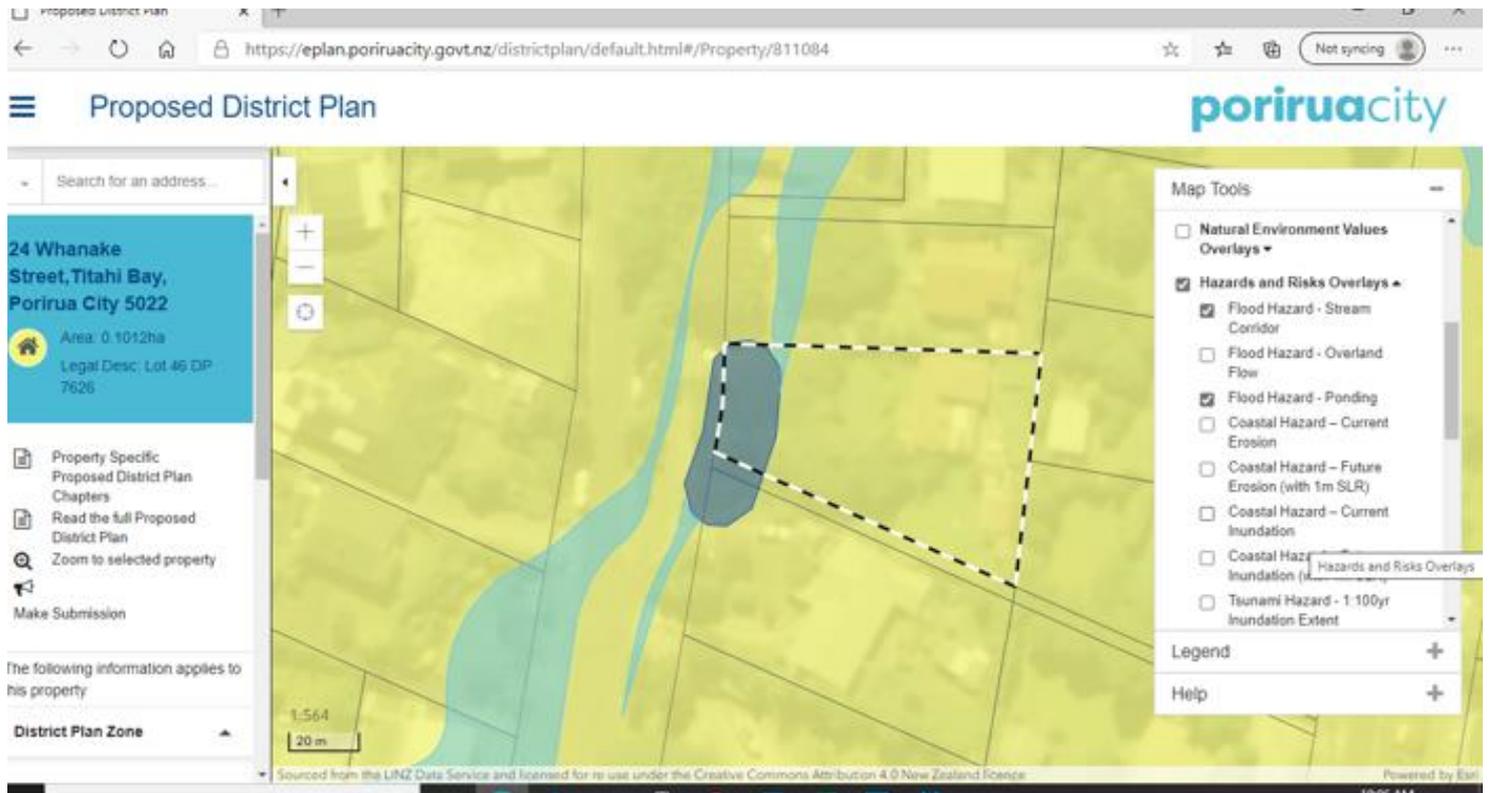


Nikau fronds in the flood waters at 24 Whanake St



Blocked culvert on boundary 24 and 22 Whanake St. Beside Nikau.

The Titahi Bay Stormwater Catchment Model Build Report published June 2018 recognised the severity of the flooding across the front of 24 Whanake Street.



## APPENDIX 3 History of the culvert on the boundary of 22/ 24

### Whanake St

Whanake Street was originally an unsealed road in Makara County Council. When the Council sealed the road open drains were maintained along the edges of Whanake Street. The stream across the front of 24 Whanake Street was piped through a ditch out to the main street. On or before 1958 footpaths and gutter drainage systems were installed by Makara County Council along the whole of Whanake St. The stream bed across the front of 24 Whanake St was left open, and it was not piped. A concrete culvert was installed on the boundary of 22/24 Whanake Street and the stream water piped under Whanake St through large concrete pipes. The water re-emerged as an open stream in the back garden of 13 John Street. The Makara County Council installed a 3 foot high grill of vertical bars as a debris arrester in the culvert. This was installed 8 inches in front of the culvert.

The impact has been that since 1958 the grill regularly fills with a solid mat of vegetation 3 foot high and this becomes an impermeable barrier that prevents the water reaching the pipe. In 1958 Alfred Mexted, owner of 24 Whanake St, laid a complaint to the government Valuation Department that the installation of the culvert now caused regular flooding of his property. The matter was finally resolved in 1963 when Mr Mexted accepted a lowered rateable value of his property.

After 1958 Alfred Mexted inserted metal rods a further 2m back from the culvert in an effort to keep vegetation clear of the grill and allow water to flow to the culvert.

The width of the pipe is sufficient for storm events, peak flow. But the grill prevents the water reaching the pipe and as the volume of water is impeded it rises nearly 2m above the stream bed with a waterfall allowing some water to enter the pipes and the rest spreading into a flood zone in Whanake Street. Floodwaters may bank up stream to residences at 24– 28 Whanake St and downstream by crossing Whanake street and flowing across John Street to Richard Street. The culvert is NEVER cleared by PCC or Wellington Water. For the past 44 years 1976-2020, the occupants of 22 Whanake Street have voluntarily cleared the stormwater channel and grill in the culvert. Their actions have averted minor flooding episodes all year round. The grills have to be cleared after every episode of moderate to heavy rains.

Alfred Mexted the long term owner of 24 Whanake St, attempted to stabilise the banks of the stream by facing it with rocks and chunks of concrete and young nikau palms.

The following photos taken in November 2020 show the culvert during high and low flows and how local residents clear the grill.



Debris arrester rods installed by Alfred Mexted.



Minor flooding. This is about 1 metre above the streambed. During major flooding the water level rises a further metre and is about 20cm deep when it flows across Whanake Street.



Debris build up after a storm.



Grill. Debris arrester installed by Makara County Council about 8 inches in front of the stormwater pipes.



A resident clearing the culvet.



Boundary peg of 24 Whanake Street is just below the fork.

The right bank of the stream is Porirua City Council property

## Appendix 4 Growth of nikaus 24 Whanake St



Photo taken 2007 clearly shows the plantings on the stream bank. Now 13 years later these mature nikau trees are encroaching on the stream bed which is a major storm water channel for Whanake street.



Photos taken November 2020. Nikau roots spreading over rock wall and into the stream water,



Young nikaus sprouting through the rock wall into the stream



Nikau roots reaching the stream.



Young nikaus grow from seeds that germinate in their hundreds around the base of the mature nikaus. These juvenile nikaus are growing out into the stream. The fronds can impede flow as eg after the heavy rain 8am 18 Nov 2020



Root pads being established around the base of the nikaus now that they are mature. Nikau seedlings germinate in the root pads. They are flourishing and the root pads are extending into the stream bed. They impeded the water flow after the heavy rains of 8am 18 Nov 2020.



2016 flooding showing the nikaus on the stream bank and stormwater flooding out onto Whanake Street.