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## **Notice of Motion (Paturua Road Kauri)**

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In accordance with Standing Orders, please place the following Notice of Motion on the agenda for the Waitākere Ranges Local Board meeting being held on 18 April 2019.

### **Recommendation/s**

That the Waitākere Ranges Local Board:

- a) urges Auckland Council to:
  - i) reinstate the Significant Ecological Area on 40 Paturua Road so that Awhi Awhi is protected.
  - ii) reinstate the Significant Ecological Area on the road reserve outside of 40 and 42 Paturua Road so that the significant Kauri on the road reserve have further protection.

### **Background**

The fate of a 400 year old Kauri at 40 Paturua Road (who has been named “Awhi Awhi”) has been a significant local issue for the past four years. Such was the intensity of feeling for the tree two people took up residence in the tree to prevent it from being cut down.

The issue has arisen again recently following an Environmental Court decision where the uplifting of a restraining order preventing its felling has been approved. An injunction against the felling of the tree is to expire shortly.

The Court showed a great deal of sympathy for the tree’s plight and the plight of Kauri generally.

In its judgment it said this:

“The Environment Court has taken a particular interest in the maintenance of Kauri trees as a consequence of the invasive pathogen (phytophthora agathidicida) commonly referred to as Kauri Dieback. Where such trees are protected and where there is the potential for them to be protected from Kauri dieback or other adverse effects, this court has been anxious to ensure that this charismatic megafauna (some might say iconic as the oldest living tree in New Zealand) is protected into the future.”

The Court held essentially that as Awhi Awhi is not within a significant ecological area it is not protected. The removal of blanket tree protection which occurred in 2009 through changes made to the Resource Management Act mandated this result.

The properties at 40 and 42 Paturua Road were partially cleared in accordance with a resource consent issued allowing for building on the property. The original consent was issued on a non-notified basis and without reference to the neighbours.

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Following High Court action the consent has been surrendered by the consent holders. There have been concerns raised as to proposed works to stabilise the edge of the property adjacent to the road and also about the building of a driveway over the roots of two roadside Kauri. Defects in relation to the mapping of Kauri root zones were also alleged.

There are three significant Kauri potentially affected by the work. Not only is Awhi Awhi affected but two other Kauri on the road reserve are also seriously threatened. It was claimed in the High Court case relating to the consent that the original proposal for stabilisation of the bank was hopelessly inadequate and that what would be required is a significant retaining wall that would require the roadside Kauri to be felled or at least have their roots systems severely impaired.

Concerns have also been raised about the circumstances of the lifting of the Significant Ecological Area from the property. The Draft Unitary Plan retained the existing SEA over the property. It was contended by the landowner that it should be removed from the cleared area which included Awhi Awhi. The agreement would have kept the SEA in place to cover the more significant Kauri in the road reserve.

The memo submitted to the Unitary plan hearings panel said this:

“Summary of relief sought by submitter:

- reduce extent of SEA\_T\_5539 from ... 40-42 Paturoa Road, Titirangi where vegetation removal has been undertaken as a result of approved resource consent conditions associated with the titles.

The consent also said that “[t]he remainder of the SEA overlay on all properties where vegetation remains is accurate.”

The attached plan was attached to the submission as is the resulting change to the SEA overlay.

Note that the horseshoe shape has gone. The Kauri to the right on the roadside is protected as it is partially covered. But the Kauri in the centre is not. I understand this is because the Council staff thought the SEA should be contiguous to neighbouring areas but I note that the Kauri’s root system would extend to neighbouring Kauri.

Given that the resource consent has been surrendered it can be asked why the change to the SEA should remain.

Council is under an obligation to consider applications in a timely manner. There was an application for Awhi Awhi to be listed as a notable tree lodged two years ago.

There is a legitimate expectation that these sorts of applications should be considered in a timely manner. To delay consideration of protection of a significant tree because of bureaucratic considerations is not appropriate.

Also Awhi Awhi is within 10 metres of the edge of the road reserve. A fresh application will not necessarily result in permission to construct a dwelling where Awhi Awhi is.

As said by the Environment Court:

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"Given that the consent has now been surrendered, it is clear that any application to build on this site would require the applicant to comply with the standards within the plan or seek resource consent. [Counsel for the landowners] Ms Stienstra tells us that there is a 10 m setback from the front boundary of this property for any building and a 6m setback from side boundaries. It is clear from the diagram we have attached as B that the subject Kauri tree is within 10 m of the front boundary and may even be within 6m of the side boundary (although we are not clear on this). In practical terms therefore, it may not be necessary for the owner to remove the tree to construct a home. We appreciate that this simply means that the owner may not have to remove the tree to build a house but would still be entitled to do so as a permitted activity."

There is no harm to anyone by reinstating the SEA either over Awhi Awhi or over the road reserve. If this does not occur, the fate of three significant Kauri is under threat.

**Signatories:**

Author	Greg Presland
Mover	Greg Presland
Seconder	Sandra Coney

Agreement reached

Submitter Name:

Sub. No.: 851



PAUP SEA Hearings Unique ID: SEA 5539	Ecologist: Jane Andrews Comments: Remove SEA from areas granted resource consent. Retain remainder of SEA at 40/42 Paturoa Road.	Date assessed: 28-07-15
Legend	<input type="checkbox"/> Scanned <input type="checkbox"/> Map changes completed	
Auckland Council Date: 23/07/2015 Published Name: Biodiversity	0 0.0075 0.015 0.03 Km	

Submission review

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Agreed SEA overlay  
Removal from 40 and 42 Paturoa Road  
Titirangi. Hatched area shows area of  
SEA removal.

SEA Overlay under Unitary Plan

