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Protected Trees



Wanganui District Council District Plan Review

Proposed Plan Change 31 Protected Trees

Section 32 Report –

(May 2014)

1. Introduction

Proposed Plan Change 31 proposes amendments to the provisions in the District Plan relating to the Protected Trees and updating the Protected Trees register in Appendix C.

This report evaluates the proposed Plan Change in terms of the Resource Management Act 1991 (the Act), with specific consideration given to the requirements outlined in Section 32 and whether or not the proposed Plan Change achieves the purposes of the Act.

This report considers:

- The existing relevant District Plan provisions;
- Background to proposed Plan Change 31;
- An evaluation of each of the proposed amendments to the Protected Trees rules and definitions; and
- The costs and benefits associated with each of the proposed methods.

2. The existing relevant District Plan provisions & proposed provisions

The Protected Trees rules sit within the Natural Environment Rules in the District Plan. These rules apply throughout the Wanganui District irrespective of zones. The rules specifically responds to the statutory obligation of Council under the Act in relation to outstanding natural features (Section 6(b)), historic heritage (Section 6(f)) and amenity values (Section 7c).

Currently there are no Issues, Objectives, Policies and Methods that guide the management of Protected Trees.

The proposed changes to the Issues Objectives, Policies and Rules include (changes underlined):

7.2.6 Tree protection

Recognition and protection of trees with significant historical, cultural, amenity or ecological value to the community.

7.3.14 Retention of Trees

To recognise and protect significant trees (or groups of trees) that contribute to the history, ecology, character or amenity for the Wanganui community as identified in Appendix B.

7.3.15 Protection of Trees

To manage land use and development to avoid, remedy or mitigate any adverse effect on protected trees.

7.3.16 Protected Tree Promotion

To promote the history, location and special features of significant trees to the public.

7.3.17 Length of Tree Protection

Protected Trees shall be retained for their natural life unless this would create an immediate risk to life or property.

7.3.18 Propagation of Trees

To recognise that trees have a finite lifespan and to require the re-planting of prodigy in the same or related location, when a protected tree has reached the end of its life.

7.3.19 The removal of Protected Trees

Any application to modify or remove a Protected Tree shall be assessed against the following:

- a. Whether the tree is near the end of its natural lifespan or if the work will extend the life of the tree
- b. The ability to replant with off-spring from the tree with a root ball of no less than PB40 (note that some species have a higher requirement)
- c. How the location is to be cleared and restored after removal of the tree
- d. The historical, cultural, amenity or ecological value of the tree
- e. An independent Arborist* assessment on the condition of the tree and any works to be completed
- f. The mulching and definition of the extent of the root/drip line to prevent future damage to the tree or its replacement

The following rules apply to any tree shown as a protected tree in Appendix A2 C- Protected Trees.

7.6.1 Permitted activities

The following are permitted activities throughout the District:

- a. Minor maintenance to any protected tree. This is limited to:
 - i. clearance of foliage or branches no greater than 100mm in diameter from existing utility networks, street lights or land boundary encroachments that does not alter the shape or health of the tree;
 - ii. clearance of foliage or branches no greater than 100mm in diameter from roads, footpaths and driveways that does not alter the shape or health of the tree;
 - iii. removal of deadwood from trees;
 - iv. the removal of dead or diseased vegetation;
 - v. clearance and clean-up after storm damage including broken branches;
 - vi. Fencing of Protected trees within the dripline when the location of the fence is approved by an Arborist and the assessment submitted to Council;
 - vii. Controlling pest plants and weeds within the dripline by methods not harmful.
- b. Destruction or removal of any protected tree with an Arborist assessment submitted to Council stating the work is:
 - i. An emergency work to maintain or restore existing power or telecommunication links, or
 - ii. To safeguard life or property.

7.6.2 Controlled activities

The following are controlled activities throughout the District:

- a. Alteration of the shape or health of a protected tree as part of a Tree Maintenance Program.

b. Removal of a protected tree that will be replaced with the progeny of the same tree.

7.6.4 Discretionary activities

The following are discretionary activities throughout the District:

a. The modification, destruction or removal of any protected tree except as provided for above.

b. Any activity including Excavation, construction or reconstruction work within the drip line* of a protected tree, unless stated as a permitted activity.

Link to more [Protected Trees](#) information.

3. Background to proposed Plan Change 31

There are currently 110 protected tree listings (of which 13 listings are no longer there) within the Wanganui District that are protected through rules in the current Wanganui District Plan. These rules require resource consent is obtained prior to:

- More than minor maintenance work;
- The destruction or removal of any protected tree except as an emergency work; or
- Any activity including Excavation, construction or reconstruction work within the drip line of a protected tree.

The rules became operative in 2004 and therefore under Section 79(1) of the Act, Council is required to review the Protected Trees provisions of the Wanganui District Plan.

In 2012 the Wanganui District Council began consultation with the members of the public to discuss potential issues with the current provisions and listings for Protected Trees.

Consultation was held at:

Date	Location	Comments
15/09/2012	River Traders Market	Introduced Protected Trees at a stall as part of the District Plan review and created a mailing list of interested parties.
18/09/2012	Kai Iwi Hall	Introduced Protected Trees at a meeting as part of the District Plan review and created a mailing list of interested parties.
20/09/2012	Mangamahu Memorial Hall	Introduced Protected Trees at a meeting as part of the District Plan review and created a mailing list of interested parties.
26/09/2012	Kakatahi School	Introduced Protected Trees at a meeting as part of the District Plan review and created a mailing list of interested parties.
27/09/2012	Brunswick Hall	Introduced Protected Trees at a meeting as part of the District Plan review and created a mailing list of interested parties.
2/10/2012	Fordell Community Hall	Introduced Protected Trees at a meeting as part of the District Plan review and created a mailing list of interested parties.
4/10/2012	Horrocks Park Hall	Introduced Protected Trees at a meeting as part of the District Plan review and created a mailing list of interested parties.

22/04/2013	Wanganui Council	District	Introduced Protected Trees at a meeting to the Rural Community Board and what the potential issues are.
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A consultation newsletter sent in September and November 2012 referred to the Protected Trees and was sent to all listed interested parties as well as being available at Council's main building at 101 Guyton Street, Wanganui.

Letters were sent to the owners and interested parties in regards to protected trees on:

Date	In regards to:
September 2012	Stating that a review of the Protected Trees would be undertaken.
January 2013	The Arborist assessing each currently listed Protected Tree.
May 2013	The Issues, Objectives and Policy document available for comment on the website.
June 2013	A copy of the STEM assessment for current trees and a proposal to restrict tree listings in the District Plan to minimum level.

After the STEM tree results were in, it was concluded that 75 trees from the existing list of 110 are worth protecting in the proposed District Plan. As part of the submission process for this plan change, the public will be able to submit recommendations for additional trees or groups of trees to be assessed and potentially added to the Protected Tree Inventory.

A review of best practice and the results of the consultation in regards to Protected Trees determined that the following improvements could be made:

1. Revise the Objectives, policies, methods and rules to specifically include the protection of trees and what is sought by the protection. Make the links between the objectives, policies, rules and methods easy to understand.
2. Consider if there are non-regulatory methods that could be used to help achieve compliance.
3. Provide clear information to tree owners on the outcomes sought by the District Plan, particularly in relation to pruning, trimming and maintenance.
4. State why a tree is protected.
5. Clear up what 'minor' permitted activities are, by setting maximum cutting diametres for branches.
6. Remove trees from the list that have gone and assess new trees for inclusion based on what the community suggests and societies/groups that take a strong interest in trees.
7. Provide assessment criteria for determining consent applications.

Thus, this Plan Change is a result of Council's statutory obligation to review the District Plan, and concerns raised by the community in terms of how the current Protected Tree list is updated and used.

4. Resource Management Act (1991) Section 32 Evaluation requirements

Section 32 of the Resource Management Act 1991 (the Act) establishes a process for local authorities to test the appropriateness of any proposed provisions, in preparing new plans, plan changes and reviews. This report has been prepared to fulfil the requirements of Section 32(2) of the Act, which requires local authorities to undertake a further evaluation before making a decision under the First Schedule.

Section 32 requires:

32 Consideration of alternatives, benefits, and costs

- (1) *In achieving the purpose of this Act, before a proposed plan, ... change, or variation is publicly notified, ... an evaluation must be carried out by—*
 - ...
 - (c) *the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Schedule 1); or*
- (2) *A further evaluation must also be made by—*
 - (a) *a local authority before making a decision under clause 10 or clause 29(4) of Schedule 1; and*
 - ...
- (3) *An evaluation must examine—*
 - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives*
 - ...
- (4) *For the purposes of the examinations referred to in subsections (3) and (3A), an evaluation must take into account—*
 - (a) *the benefits and costs of policies, rules, or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*
- (5) *The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.*

Under Section 32 of the RMA, it is Council's duty before adopting any objective, policy or rule to consider alternatives to the change, and to assess any benefits and costs. The Council must, amongst other things, have regard to the extent to which the particular objectives, policies and rules or other methods are necessary in achieving the purposes of the Act.

The purpose of the RMA is to promote the sustainable management of natural and physical resources. In achieving the purpose of the Act, section 6 lists the protection of historic heritage (which may include protected trees) as a matter of national importance. Trees have long been intertwined with heritage, being commemorative of special events, places or people, sites of historic importance and attached to matters of cultural importance, etc.

Section 7 also requires particular regard to be given to the maintenance and enhancement of amenity values, the intrinsic values of ecosystems and the maintenance and enhancement of the quality of the environment.

The current objective and policy does address sections 5, 6 and 7 of the Act; however it is only in a board term, with little relevance to Protected Trees. In order for the objectives and policies behind the rules to carry more weight, it is intended to create an additional objective and several policies that outline what is sought by the community by listing particular trees and how the Council seeks to achieve this.

5. Consideration of Methods

While the use of non-regulatory methods such as Council’s Tree Policy, Management Plans, education and information provisions have been taken into account, as a primary option these were not considered to be an appropriate standalone option for achieving the objectives of the Plan. It is therefore deemed most appropriate to maintain non-regulatory methods as supplementary to regulatory approaches. In investigating the best regulatory method of achieving the objectives of the Proposed Plan Change, three options were identified and considered.

The options considered are as follows:

Options		Explanation
Option 1	Maintain the Status Quo – Do nothing	Leave Plan as it is – no additional trees added or updated. Just remove the trees from the list that are no longer there.
Option 2	Update the Tree Inventory list-only	Update the Tree Inventory using STEM (national standard).
Option 3	List additional Trees and develop specific rules and policies	Update the Tree Inventory in conjunction with amendments to the objectives, policies and rules which are relevant to these updates.

Each of these identified options is discussed in detail below.

6. Evaluation

The objective and policies of this plan change have been developed from the consultation with the public and owners of Protected Trees and changes to the RMA in 2009.

The Proposed Objective of this Plan Change is as follows:

- Tree protection

One of the aims of Section 32 analysis is to identify a preferred approach as being more efficient and effective approach than other options in achieving the key objectives listed above which reflect the objectives of the Wanganui District Plan and the RMA. The Benefits and costs of each option are illustrated below.

	Benefits	Costs
Option 1 – Status Quo- Do Nothing	Least financial cost in the short term as no requirement for Plan Change or additional assessments. Retain familiarity with the existing objectives, policies and rules.	Increased costs on developers/property owners with the requirement to prove location and value of tree due to lack of Council information. Increased risk of losing trees as reason for protection is not clear on the assessment or the Objectives and Policies. Council not fulfilling obligations under the Act.
Option 2 – Update the Tree Inventory only	No changes to the rules. Correct locations and names of tree protected meaning more	Cost of Plan Change Process. Council’s obligations to ensure effectiveness and efficiency of

	certainty to the public.	provisions not achieved as reasons for tree protection not clear. Shortcomings in current rules and policies not addressed.
Option 3 - List additional Trees and develop specific rules and policies	<p>Statutory obligations of Council fulfilled.</p> <p>District Plan corrected and updated.</p> <p>Council would be able to refuse approval or apply conditions to consents for activities that mitigate adverse effects on specific trees.</p> <p>More certainty for developers and owners on the type of work permitted and how applications will be assessed.</p> <p>Provides for future management of Protected Trees and not just the one activity.</p> <p>Cost efficient in terms of updating the list and addressing provisions at the same time.</p> <p>Plan effectiveness and efficiency addressed.</p>	<p>Cost of the Plan Change Process.</p> <p>Loss of private land use rights for landowners of new trees listed.</p> <p>Potential to impose on private property rights by increasing regulatory protection.</p>

6.1 Maintain the Status Quo (Do nothing)

Maintaining the status quo is an option that needs to be considered. This would simply involve the retention of the existing District Plan provisions and list (less the trees removed over the past 10 years). This option ignores the currently unlisted trees that may be worthy of District Plan protection, thus not giving effect to Part 2 of the RMA.

Maintaining the status quo would also result in a situation where trees worthy of protection throughout the District continue to be lost as a result of urban development or unfortunate pruning and/or maintenance.

As a result of these findings and taking into account the risk of acting or not acting it is considered that maintaining the status quo would not provide sufficient protection for the District's valued trees, nor would it fulfil Council's statutory obligations under the RMA. Therefore, it is not considered to be the best method available.

6.2 Listing of additional Trees only

Five of the current protected trees have been removed in the past two years, with thirteen trees lost since the last plan review. This is partly due to the age of the tree stock, but has also been due to damage to the trees, of which they have not recovered. It has been identified that the current provisions of the District Plan are not clear in terms of what is considered healthy work able to be carried out on the trees, and what the protection of the trees seek to achieve in the objections.

If Council was to proceed with the option of updating the tree inventory list (which would address the identifying and location shortcomings) without updating the objectives, policies and rules, then the protection of the trees would be ineffectual. The objectives, policies and rules are vague and are not specific enough to trees in order to protect them.

This option is not therefore considered to be an efficient and effective approach for addressing current inaccuracies and meeting the statutory obligations of the Act.

6.3 Listing of additional Trees and development of specific objectives, policies and rules

This method would build on option 2 by addressing the shortcomings of the objectives, policies and rules in relation to the protection of trees.

As stated in section 2.1 of this report, the proposed objectives, policies and rules seek to provide clarification to Council staff and owners as to what is permitted and safe work on trees and what Council will consider during a consent for removal. The proposed rules clarify that trees cannot be protected forever as they all will eventually die of disease or old age.

This method also clarifies when a tree is of sufficient value to the community to be protected. In order to determine which trees have value, Appendix 1 of this report outlines a flowchart that is used to determine if a tree should be listed. A STEM score of over 150¹ indicates that the tree is of a significant form and value that its loss would impact the amenity of the area. The flowchart also identifies that some trees can have significant value to the community for reasons other than identified fully in STEM, but should still be protected, in accordance with what the District Plan seeks to achieve.

7. Analysis of Options

Of the three options, Option 1; Maintain the Status Quo (Do nothing) is not believed to be an appropriate means to achieve the objectives as stated in section 6. It does not encourage the protection of new trees which contribute to the community's sense of place or history. Maintaining the status quo would result in an environmental cost of lost trees and a social/cultural cost in people's experience if the trees were lost or detrimentally altered.

Option 2 while addressing the lack of recognition of potential new trees and dated nature of the inventory in the District Plan, is not considered adequate enough to fulfil the purpose of the RMA. This is primary because the values of the trees would not be reflected in the rules, policies, objectives or issues of the plan and would become even more inconsistent with the objectives and purposes of the act by failing to provide for the regulatory protection of Protected Trees.

Therefore, option 3; Listing additional trees and amendments and development to the objectives, policies and rules, is recommended because it is considered to be the most efficient and effective way to protect the trees identified, with the best outcomes in terms of the environmental, social/cultural and economic costs and benefits.

Various council staff have been involved in undertaking a significant amount of work and consultation to ensure that Council has sufficient information to prepare a Plan Change. The Council has not relied on any uncertain or insufficient information, but has undertaken research and technical assessments such as STEM to ensure the subject is adequately understood and recommendations are wisely founded.

¹ A STEM score of 150 is based on a recommendation from the Arborist who carried out the assessments, along with research into what other Council's use and the previous Notable Trees New Zealand Tree Registration Manual.

8. Appropriateness of the Plan Change

Whether or not the plan change is necessary or appropriate is directly linked to Sections 5, 6 and 7 of the Resource Management Act 1991. This plan change is considered necessary to achieve the purpose and principals of the Act because:

It promotes the sustainable management of the Wanganui District's environment whilst avoiding, remedying or mitigating any adverse effects that removal or alteration to the trees may have.

The addition of trees through the submission process in combination with the proposed controls will assist in ensuring that the adverse effects on the Wanganui community will be avoided, remedied or mitigated.

9. Conclusion & Recommended Option

It is considered that the inclusion of additional trees in combination with the proposed amended objectives, policies, rules and methods is the most efficient and effect means available to Council to preserve and enhance the key trees of the Wanganui District.

Appendices

Appendix One: Criteria diagram for consideration of Protected Trees

Appendix 1 – Criteria diagram for consideration of Protected Trees

