

Recommendation of Statutory Management Committee to Council

22 May 2014

WANGANUI DISTRICT COUNCIL

Subject: Plan Change 31 – Protected Trees Decision on Submissions

Meeting Date: 18th March 2014

1.0 INTRODUCTION

- 1.1 The Resource Management Act 1991 (RMA) requires each part of the District Plan to be reviewed not later than 10 years after the Plan becomes operative. The Plan was made operative on 27 February 2004. In accordance with Section 73(3) of the RMA, Council is presently reviewing the District Plan in Phases. This Plan Change is part of a series of changes proposed as part of Phase 4.
- 1.2 This report records the public notification and hearing process in relation to Plan Change 31. It records the Statutory Management Committee's recommendations and Council's decisions on submissions.

2.0 PROCEDURAL MATTERS

- 2.1 The Committee was convened to hear submissions on 18th March 2014. The Committee then closed the meeting at 12 noon on the 18th March 2014, and deliberated on relevant submissions on the 18th March 2014.
- 2.2 The Committee members were: Councillors Hamish McDouall (Chair), Rob Vinsen, Jenny Duncan, Helen Craig, Martin Visser, and Charlie Anderson.
- 2.3 Submitters who presented or tabled information to support or expand their submissions were:
 - John Anderson (Submitter 3.1 and 3.2)
 - Craig Cleveland (Submitter 5)
 - Federated Farmers (Submitter 2)
 - Powerco Limited (Tabled letter)
- 2.4 Proposed Plan Change 31 was publicly notified in accordance with Clause 5 of the 1st Schedule of the Resource Management Act 1991 on Thursday 12 September 2013, with the period for submissions closing on Friday 11 October 2013.
- 2.5 A total of 35 submissions were received. All submissions were summarised along with the decisions requested, and this document was publicly notified in accordance with Clause 7 of the First Schedule of the Act.
- 2.6 The further submission period closed on Friday 29 November 2013. Four further submissions were received. Further submissions have been summarised, in Appendix 1 to this report, under the relevant original submission.

3.0 SCOPE OF THE PROPOSED PLAN CHANGE

- 3.1 Plan Change 31 is the result of a review of the existing Plan provisions relating to Protected Trees.
- 3.2 This Plan Change proposed to amend the existing list of Protected Trees to delete the trees that have been removed since the list was last updated, identify which trees should be protected via the new objective and policies and provide methods for dealing with requests to modify or remove Protected Trees.
- 3.3 New numbering of the Protected Tree section of the District Plan and the list of Trees is also proposed to bring the section in line with the reviewed parts of the District Plan.
- 3.4 All trees have now been assessed against the nationally preferred method of tree evaluation, known as STEM (Standard Tree Evaluation Method). This method identifies trees with high value in terms of condition, amenity and how notable it is. Therefore the reasons for the community protecting a particular tree under the District Plan are clear.

4.0 RELEVANT STATUTORY CONSIDERATIONS

4.1 RMA PART II CONSIDERATIONS

Sustainable management is defined in the Resource Management Act 1991 as meaning “*managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while –*

- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

4.2 In accordance with Section 5 of the Resource Management Act, Proposed Plan Change 31 has been developed with a focus on protecting and preserving trees whilst avoiding or mitigating any adverse effects of activities on the environment, including people and property.

4.3 The purpose of Plan Change 31 is to update the District Plan objectives in relation to Protected Trees generally and to specifically change the tree assessment method to the nationally preferred method. This has resulted in many trees from the existing list being removed and the identification of additional trees to be listed.

4.4 Section 6 of the Resource Management Act 1991 requires all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, to recognise and provide for matters of national importance, including:

...

- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development*
- (c) *The protection of areas of significant indigenous vegetation and significant habitats*

of indigenous fauna

...
(f) *The protection of historic heritage from inappropriate subdivision, use and development.*

4.5 Plan Change 31 is considered to be consistent with Section 6 of the RMA 1991 as it introduces objectives, policies and rules that requires the safeguarding of trees of significance, as follows:

“Objective 7.2.6

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

Policy 7.3.14

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 C.”

4.6 Under Section 7 of the Act, the Council must also “have particular regard to” matters including:

...
(b) *the efficient use and development of natural and physical resources;*

...
(c) *the maintenance and enhancement of amenity values:*

...
(f) *maintenance and enhancement of the quality of the environment;*

(g) *any finite characteristics of natural and physical resources:*

4.7 Plan Change 31 identifies a nationally preferred method of assessment which in turn will facilitate maintenance of the quality of the environment. The STEM method of assessing trees takes into account amenity value and the tree’s effect on the surrounding environment as a habitat/foodsource. The Plan Change also recognises that the life of a tree is finite and that provisions for replacement or removal due to ill health can be considered.

4.8 With regards to Section 8, no specific concerns relating to Treaty issues have been raised during consultation or through submissions on the Plan Change.

5.0 RELEVANT POLICY STATEMENTS AND PLAN PROVISIONS

5.1 Horizons Regional Council – Regional Policy Statement/ Regional Plan

Sections 75(2) of the Act require that a district plan must not be inconsistent with the regional policy statement or any regional plan. Horizons Regional Council’s One Plan is considered to be relevant to this Proposed Plan Change in that it relates to Biodiversity.

An assessment of how the provisions in Plan Change 31 compare with the objectives and policies of the Operative Regional Policy Statement and the Proposed One Plan are considered in Table 1 below.

Table 1

Operative Regional Policy Statement (RPS)

Plan Change 31

Objectives 10	Policy	Evaluation
To protect heritage resources of regional significance	<p>Policy 10.1 To identify and promote the protection regionally significant natural and cultural heritage resources. These include places or natural resources which:</p> <ul style="list-style-type: none"> a. have a high degree of importance or are part of history of the Region; or b. have a high degree of importance in the provision of knowledge of the Region's history; or c. are rare or unique to the Region; or d. have special cultural or spiritual significance to tangata whenua; or e. are already protected by a national protection mechanism; or f. exhibit a high degree of technological accomplishment <p>Policy 10.2 To promote the protection of sites of significant cultural, historic and spiritual value to Maori, subject to consultation with nga hapu and nga iwi. This may include ways to safeguard confidential iwi and hapu knowledge where appropriate</p>	The provisions of plan Change 31 satisfy these requirements. Where a tree is considered to have value to the community for a cultural or natural reason the tree can be listed.
Regional One Plan		Plan Change 31
Objective 7-3	Policy	Evaluation
Objective 7-3: Historic Heritage[^] Protect <i>historic heritage[^]</i> from activities that would significantly reduce heritage qualities	<p>Historic Heritage[^] Policy 7-10: Historic Heritage[^] The <i>Regional Coastal Plan[^]</i> and <i>District Plan[^]</i> must include provisions to protect <i>historic heritage[^]</i> of national significance, which may include places of special or outstanding heritage value registered as Category 1 historic places, wāhi tapu, and wāhi tapu areas under the Historic places Act 1993</p> <p>Policy 7-11: Historic Heritage[^] identification (a) <i>Territorial Authorities[^]</i> must develop and maintain a schedule of known <i>historic heritage[^]</i> for their district to be included in their <i>District Plan[^]</i>. Indigenous biodiversity landscape and historic heritage Proposed One Plan as Amended by Decisions – Clean Version 7-11 (b) The Regional Council must develop and maintain a schedule of known <i>historic heritage[^]</i> for the <i>coastal marine area[^]</i> to be included in the <i>Regional Coastal Plan[^]</i> (c) <i>Historic heritage[^]</i> schedules must include a statement of qualities that contribute to each <i>site[*]</i></p>	Overall Plan Change 31 satisfies these requirements. With regard to 7-11 (c) the inclusion of links to individual detailed reports for each tree to discuss any heritage value is considered adequate

5.2 This Plan Change proposes to amend the existing list of protected trees, to delete the trees that have been removed since the list was last updated, identify which trees should be protected via the new objectives and policies and provide methods for dealing with requests to modify or remove protected trees.

- 5.3 New numbering of the Protected Tree section of the District Plan and the list of Trees is also proposed to bring the section in line with the reviewed parts of the District Plan.
- 5.4 Plan Change 31 recommends the removal of 13 trees from the list because they no longer exist and that 21 trees or groups of trees be removed as their value to the District was low.
- 5.5 The objectives and policies also set out to raise public awareness about protected trees whilst addressing how a protected tree can be managed.
- 5.6 Plan Change 31 introduces a new method for assessing the suitability of a tree to be added to the protected list. Each Tree on the list has had an assessment to its value under STEM as well as any known information regarding the history and health of the tree.

6.0 SUMMARY OF SUBMISSIONS

- 6.1 Refer to Appendix 1 to this report for a summary of each submission.

7.0 PRINCIPAL ISSUES IN CONTENTION

The submitters identified the following concerns about the Plan change:

7.1 Methods

- Submission from Mr Anderson supports in part the method of analysis however seeks a different approach for groups of trees.
- The submission from Federated Farmers supports Method 25.5.4, regarding waiving of resource consent fees, however, Federated Farmers seeks an expansion of this for Council to cover all costs associated with resource consents.

7.2 Permitted Activities

- The submission from Federated Farmers requested additional permitted activities within the dripline of Protect Trees. These are:
 - Fencing within the dripline;
 - Control of pest plants and pasture weeds within the dripline; and
 - Cultivation within the dripline to a maximum depth of 200mm unless large roots are present

7.3 List of Trees

- Submissions were received from Mr Anderson requesting the retention of Tree No.4 (Pohutukawa). Further submissions on these trees related to submissions both for and against the inclusion of the Halswell Street Oak Trees.
- Submissions were also received from Cleveland Funeral Home and Mr McArthur requesting the removal of two existing trees no.59 and no.96 from the Protected Trees list.

8.0 SUMMARY OF EVIDENCE HEARD

8.1 Key evidence presented by Submitters:

8.1.1 Methods

- Submitters feel that the method of analysis does not take into account the collective value of individual trees in the area.
- A different form of analysis is needed for groups of trees.
- Federated Farmers would like to see that if a tree is of significance to the community then the Council should waive all consent fees for properties with Protected Trees. This is due to farmers requiring consents more often than other members of the public therefore when a protected tree is within the area it costs time and money for the farmer.

8.1.2 Permitted Activities

- The Federated Farmers would like to see more autonomy given to farmers with protected trees, so that resource consent is not needed when work near a protected tree is proposed. This includes activities such as fencing under the dripline to keep stock out, spraying pest control near the tree, and the ability to cultivate under the dripline as larger trees take a wide area for their drip line and prevent large sections of cultivation.

8.1.3 List of Trees

- Mr Cleveland sought the removal of Tree no.59 as it is a risk to life and property. There is no proven historical link to the community and the amenity value is limited due to its poor health and limb failure. It is also a risk to members of the public using the site.
- Mr Anderson wished to reinstate Tree no.4 Pohutukawa at the corner of Liverpool Street and Somme Parade as combined with the Northern Rata it enhances the amenity of the area.

8.2 **Key evidence presented in the Officer's report:**

8.2.1 Methods

- STEM is a national evaluation system that is the most appropriate method today for assessing the value of trees. However provision is made in the methods section of the Plan Change to provide for trees that do not meet the 150 minimum STEM score.
- The Federated Farmers submission removes the need for the works to be of benefit to the tree, in order for the community to pay for the resource consent. The summary provided with the submission, could also be interpreted to mean the Council would have to pay for the Arborist report and the works on the tree also.

8.2.2 Permitted Activities

- The trees listed in the District Plan are deemed worthy of protection because of their value to the community. This includes the root zone within the dripline of the canopy. To carry out cultivation, fencing and chemical control of plants within the dripline could potentially shorten the life expectancy of the tree and its value to the community. Therefore it is better to assess any activity within the dripline on a case by case basis through the Resource Consent process. Control of pest plants and weeds by hand will not affect the life of the tree.
- It is also important to note that of the current Protected Tree list, there are only 8 in the Rural Zone, outside of Bushy Park.

8.2.3 List of Trees

- Tree No.4

The Pohutukawa at Liverpool St corner did not score enough as an individual tree to warrant protection in the Plan. Its growth affects the proposed Protected Tree no.T115.

- Tree No.59

Council's Roading Team have stated that the existing tree, provides no traffic safety value and causes no issues with the roading network.

The tree has a score of 132 under the District Plan. It was recommended to be included despite having a STEM score below the minimum based on a suggested history of who planted it. No further evidence has been found to support this; therefore it is unreasonable to continue to list this tree, when its value to the community is minimal.

- Tree No.96

The tree has started to decline due to cultivation in the past. There are no significant features to recommend it specifically being listed in the Plan, apart from its maturity which has resulted in the high STEM score.

- Halswell Street Oaks

The condition and lack of space between the trees means that the amenity value of these trees as an avenue is in decline. Unless major work (including removal) is carried out the value of the trees will continue to decline. Therefore a management plan rather than listing might achieve a better outcome. The trees are currently listed in Council's Tree Policy.

9.0 **MAIN FINDINGS ON PRINCIPAL ISSUES**

9.1 The Committee considered each submission and confirmed a decision for each. Refer to Appendix 1 for the decisions on submissions.

9.2 Methods

- Groups of trees can add amenity value beyond what is identified by STEM. However the proposed method 16.6.46 allows for trees with a low STEM score to still be included as long as the value to the community is recognised. Therefore the Pohutukawa at Liverpool Street mentioned by Mr Anderson can be included.
- The Committee considered that the Council should cover cost of consent if it is for the benefit of the tree (subject to funding from the Annual Plan). However if the tree is being cut down the Council will not cover this cost.
- The submission from Federated Farmers gave the impression that if a protected tree was on the property, issues with regards to resource consents came through. However with clarification this is incorrect. Therefore the Committee considered the Federated Farmers submission as putting separate rules on a specific group and did not benefit the entire community.

9.3 Permitted Activities

- The Committee supported in principal the idea of adding a rule to state that fencing within the dripline be a permitted activity provided an arborists report is obtained and submitted to Council.

- The control of weeds and pest plants is a valid activity and should be listed as permitted as long as the method used does no harm to the tree.
- The issue of cultivation under the dripline of trees is minor as few trees are in the Rural Zone. The Committee considered on balance that it was unnecessary to change the rule for only a small portion of the community.

9.4 List of Trees

- The Committee decided that the Pohutukawa (tree no.4) at Liverpool Street had amenity value in conjunction with the Northern Rata (T115) and should be listed in the District Plan, with a comment that should the Pohutukawa cause health issues to the Northern Rata, that the Pohutukawa should be trimmed.
- The Committee considered the Officers opinion in the case of the trees no.59 (Red Flowering Gum) and no.96 (Bunya Bunya) and approved the removal of the trees from the list.
- That the Halswell Street English Oaks be listed in the District Plan as the amenity value of the avenue of trees is significant and warrants protection in the District Plan.

10.0 Section 32 REPORT EVALUATION

- 10.1 The S.32 report has been updated to include an evaluation of the amendments to the Plan resulting from Council's Decision on Submissions. These changes as recorded in the report attached as Appendix 4.

11.0 STATEMENT OF DECISIONS AND REASONS

- 11.1 Refer to Appendix 1 to this report for the Council's decision and reasons relating to each submission. Refer to Appendices 2 and 3 for the complete version of the Plan change text and maps.

12.0 Appendices:

- 1: Decisions on Submissions and Reasons for Decisions –**
- 2: Marked- Up Version of Plan Change 31 following Decisions on Submissions–**
- 3: Planning Maps affected by Decisions on Submissions–**
- 4: Section 32 Evaluation**

Signature of Chairman

Councillor Hamish McDouall