

**QLDC Council
30 June 2015****Report for Agenda Item: 17****Department: Planning & Development****District Plan Review: Vegetation Chapter****Purpose**

The purpose of this report is to present the proposed District Plan vegetation chapter and accompanying section 32 evaluation reports for Council's acceptance. The vegetation chapter comprises three distinct sections: indigenous vegetation, wilding exotic trees and protected trees.

Recommendation

That Council:

1. Note the contents of this report and in particular:
 - i. The Resource Management issues associated with the current provisions.
 - ii. The RMA Section 32 evaluation.
 - iii. The proposed provisions.
2. Accept the provisions.
3. Note that the entire package will be brought back for Council's final approval along with other provisions forming stage 1 of the District Plan Review, prior to public notification.
4. Authorise officers to make further minor changes to the provisions and section 32 Evaluation reports, without further recourse to the Council, where this is necessary to:
 - i. Ensure consistent numbering and formatting of the proposed District Plan text; and
 - ii. To fix identified minor errors and / or omissions.
 - iii. Ensure continuity with other proposed provisions.

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Executive Summary

- 1 It is proposed to amend the general rules relating to indigenous vegetation clearance. These amendments will provide more certainty associated with the interpretation of the rules, reduce the area allowed to clear as a permitted activity where indigenous vegetation is over a certain height or within a threatened environment, and make the rules apply across all rural areas, not just the Rural General Zone.
- 2 The Council has completed a programme to identify significant indigenous vegetation and habitats of significant indigenous fauna, referred to collectively as 'Significant Natural Areas' (SNAs). This was a process directed by the Environment Court when the current District Plan was made operative. Eighty additional areas are recommended to be scheduled in the Proposed District Plan.
- 3 Wilding trees are spreading across parts of the District and have visually degraded parts of the landscape, biodiversity values and can threaten the productive values of the soil resource. The spread of wilding trees has left other areas vulnerable to landscape and biodiversity degradation.
- 4 It is considered that in order to effectively manage wilding tree spread there should not be any opportunity provided to obtain resource consent to plant trees with the potential for wilding spread. The planting of identified wilding tree species will be a prohibited activity.
- 5 The operative District Plan schedule of heritage trees has been surveyed by an arborist to confirm the location, species, status and extent of trees. It is proposed to amend the rules to provide clarification for undertaking permitted maintenance.
- 6 In the Residential Arrowtown Historic Management Zone (ARHMZ), the existing rules require that the felling of any tree greater than a height of 2.5m, or the pruning, trimming or topping of any tree greater than 4m in height requires resource consent. Changes to the Resource Management Act 1991 prevent Council from using such general protection rules.
- 7 Any trees considered worthy of protection must be identified and scheduled in the District Plan. A survey has been undertaken to schedule the trees that contribute to the character and amenity of the ARHMZ. In addition, rules are proposed to protect the trees in streets as public places, recognising their collective resource as a contributor the amenity and character of the zone.

Background

- 8 The District Plan Review was formally (and legally) commenced by a resolution of Council in April 2014. The Review adopts a changed approach to the structure and philosophy of the District Plan and is led by the Strategic Directions chapter.

Indigenous Vegetation

General Rule

- 9 The operative District Plan provisions for indigenous vegetation have recently been scrutinised by Environment Court proceedings (*Royal Forest and Bird Protection Society Incorporated (RFBPS) v Innes (2014) NZEnvC 201*) that criticised the rule that limits the permitted removal of indigenous vegetation and associated definitions.
- 10 The revised provisions seek to address the identified deficiencies and provide certainty and confidence with the interpretation of the rules. Changes are also proposed to make the rule apply in all rural areas, not just the Rural General Zone.
- 11 The existing permitted clearance limit for indigenous vegetation is 5000m². This is considered too high in situations where the vegetation is over 2.0 metres height, or the area is identified as an acutely or chronically threatened land environment as identified by the Land Environments of New Zealand classification system.

Significant Natural Areas

- 12 The identification and protection of SNAs is a matter of national importance (Section 6(c) Resource Management Act 1991). The Council has completed a programme to identify these areas for scheduling in the District Plan.
- 13 In its decision C76/2001, the Environment Court ordered a set of provisions be inserted into Appendix 5 of the District Plan. The provisions set out a five-stage process to identify SNAs in the District.
- 14 The five-stage process set out in the District Plan is:
 - Stage 1 – Initial Identification
 - Stage 2 – Consultation Process
 - Stage 3 – Assessment
 - Stage 4 – Final Consideration
 - Stage 5 – Adoption into the District Plan
- 15 Eighty areas located within 39 properties are recommended for scheduling in the Proposed District Plan as SNAs. The existing sites identified on the District Planning Maps and scheduled in Appendix 5 of the operative District Plan will be retained. The total number of SNAs in the District will increase to 97.

Wilding Exotic Trees

- 16 'Wilding' is the term used for the natural regeneration or seedling spread of exotic trees, occurring in unintended locations and not managed for forestry production.

- 17 The District values and relies on its distinctive landscapes, open spaces and rural productive land for its social, cultural and economic wellbeing. Wilding trees are spreading across parts of the District and have visually degraded parts of the landscape, biodiversity values and can threaten the productive values of the soil resource. The spread of wilding trees has left other areas vulnerable to landscape and biodiversity degradation.
- 18 The Council manages existing wilding trees through the non-statutory document, 'The Wakatipu Wilding Conifer Strategy'. The District Plan also has a role in reducing the potential for wilding tree spread by controlling the planting of wilding potential species.
- 19 In the Rural General Zone, the operative District Plan rules require a restricted discretionary resource consent to be obtained to plant identified wilding tree species. The proposed Strategic Directions chapter accepted by Council in May 2014 has the following overarching policy:

20 **Goal 4: The protection of our natural environment and ecosystems**

Objective 4 To avoid Exotic vegetation with the potential to spread and naturalise.

Policy 4.1 That the planting of exotic vegetation with the potential to spread and naturalise is banned.

- 21 Given the threats posed by wilding trees, and in the context of the efforts made by the Wakatipu Wilding Conifer Group, Council, Department of Conservation, and landowners to reduce the spread of wilding conifers, it is considered that there should not be any opportunity to obtain resource consent to plant trees with the potential for wilding spread.
- 22 Planting of the following will be a prohibited activity:
- (a) Contorta or lodgepole pine (*Pinus contorta*)
 - (b) Radiata Pine (*Pinus radiata*)
 - (c) Scots pine (*Pinus sylestris*)
 - (d) Douglas Fir (*Pseudotsuga menziesii*)
 - (e) European larch (*Larix decidua*)
 - (f) Corsican pine (*Pinus nigra*)
 - (g) Bishops Pine (*Pinus muricate*)
 - (h) Ponderosa Pine (*Pinus Ponderosa*)
 - (i) Mountain Pine (*Pinus mugo*)
 - (j) Maritime Pine (*Pinus pinaster*)
 - (k) Sycamore
 - (l) Hawthorn
 - (m) Boxthorn

Protected Trees – District Wide

- 23 The operative District Plan provisions that address protected trees have been the subject of environmental monitoring that investigated their effectiveness.

Issues identified include overlapping policies, the need for clarification associated with permitted maintenance activities, and the accuracy of the existing schedule of heritage trees. The operative District Plan's Planning Maps use one annotation to describe an avenue or group of trees. This method of scheduling is not effective and has resulted in a lack of certainty with respect to whether a tree is protected or not.

- 24 The existing schedule of heritage trees has been surveyed by an independent arborist to confirm the location, species, status and extent of trees. In addition, a number of trees identified by landowners, and trees identified through a previous Council Plan Change have been surveyed to determine whether they should be protected.
- 25 The list of scheduled items has increased from 190 to 651, mostly reflecting the individual identification of existing heritage trees previously scheduled in avenues groups.
- 26 It is proposed to amend the existing rules for scheduled trees as follows:
 - a. Clarification of what the root protection zone is and what can be undertaken as a permitted activity;
 - b. Clarification of what constitutes minor trimming to trees and hedgerows;
 - c. Provide the ability to remove or undertake significant trimming to a tree where it is diseased, dead or is a hazard to property or safety.

Protected Trees –Residential Arrowtown Historic Management Zone

- 27 The existing rules in the operative District Plan require that the felling of any tree greater than a height of 2.5m, or the pruning, trimming or topping of any tree greater than 4m in height in the Residential Arrowtown Historic Management Zone requires resource consent. Changes to the Resource Management Act 1991 require Councils to not use these types of general protection rules. Any trees considered worthy of protection must be identified and scheduled in the District Plan.
- 28 A survey has been undertaken to identify trees that contribute to the zone's unique character, amenity and heritage values. It is proposed to identify and schedule the identified character trees in the Proposed District Plan. As the identified character trees are already protected by 'blanket tree protection rules' in the Residential Areas section of the Operative District Plan, the proposed rules are not a significant change from what already exists.
- 29 A survey has also identified a further 17 trees in this zone that qualify as protected trees. These trees are included in the proposed District Plan schedule of protected trees.
- 30 The trees located within the road and public places collectively make a significant contribution to the amenity, character and heritage values of the zone.

- 31 Council Officers in the Parks Team have identified that more transparency and protection is favoured for the management of trees within the road and on Council land within the zone. Primarily, concern has been raised over the process and management of trees, and when approval from the parks team is required for trimming or works within the root protection area by persons including utility operators, and construction activities.
- 32 It is proposed to introduce provisions that manage these trees in a more transparent and effective way. Furthermore, due to the removal of protection for all trees currently over 2.5 meters high, the importance of the trees located within the road and public places as contributors to the amenity and character of the zone is increased.

Options

- 33 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002:

Option 1 Retain the Operative Provisions

- 34 This would allow for the familiarity of users to remain but would not address the fundamental resource management issues that have been identified in the section 32 evaluations. This option is not available for the management of trees in Arrowtown affected by the removal of blanket tree protection rules. Nor, in light of the recent criticism of the rule, is it considered appropriate in the case of the existing rules for indigenous vegetation.

Option 2 Amend Provisions

- 35 To undertake a critical analysis of the current provisions, but largely continue with the status quo with minor amendments. This would improve the usefulness of the Chapter to some degree, but would not provide the response suggested by the Proposed Strategic Directions Chapter.

Option 3 Critically examine and make changes

- 36 To critically examine all the provisions in light of the needs of the District, identified deficiencies and opportunities for improvement including providing more certainty and public confidence in the District Plan.
- 37 Option 3 is the preferred option.

Significance and Engagement

- 38 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because the District Plan has a direct influence on the environmental, economic, social and cultural wellbeing of the people of the District and there is a high level of public interest.

Risk

- 39 This matter relates to the strategic risk SR1 'Current and future development needs of the community (including environmental protection)' as documented in the Council's risk register. The risk is classed as high. This is because of economic, social, environmental and reputational risks, as documented in the Council's risk register.
- 40 The recommended option considered above mitigates the risk by undertaking to follow statutory consultation as required by the RMA and, overall, by improving the provisions to bolster public confidence in the District Plan. The option provides for growth in the District while seeking to maintain and enhance the key environmental and social attributes of the District.

Financial Implications

- 41 There is no budget or cost implications resulting from the decision. The work is accounted for in already approved budgets.

Council Policies, Strategies and Bylaws

- 42 The following Council Policies were considered:
- Annual Plan. This matter is included in the Annual Plan, under Environmental Management
 - Long Term Plan
 - Rates Remission and Postponement Policies – Adopted by Council 29 June 2012.
 - Heritage Strategy March 2010
 - Wakatipu Wilding Conifer Strategy 2013
 - Economic Development Strategy February 2015
- 43 The recommended option is consistent with the principles set out in the named policies.

Local Government Act 2002 Purpose Provisions

- 44 The recommended option:
- Will help meet the current and future needs of communities.
 - Can be implemented through current funding under the 10-Year Plan and Annual Plan;
 - Is consistent with the Council's plans and policies; and
 - Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

- 45 The persons who are affected by or interested in this matter are ratepayers and residents of the district, as well as business and landowners, and farming and

conservation advocacy people or organisations who may not be resident in the district.

46 Detail on the consultation is set out in the respective Section 32 reports. A summary of the consultation undertaken is presented in paragraphs 47-50.

47 Indigenous Vegetation:

- A set of draft provisions were circulated to identified stakeholders and interested groups in July 2014. Feedback was sought with an emphasis on the changes to the rule that restricts the amount of indigenous vegetation that could be removed as a permitted activity.
- Feedback was received from the following:
 - The Department of Conservation
 - Federated Farmers
 - Royal Forest and Bird Protection Society of New Zealand Incorporated (RFBPS)
 - Galloway Cook Allan Lawyers (Wanaka and Dunedin staff who were involved in (*RFBPS v Innes (2014) NZEnvC 72*))
 - The Otago Regional Council
 - Patterson Pitts Group (Wanaka) on behalf of several Upper Clutha based farmers
 - Sam Kane, A farmer of Luggate
 - Te Ao Marama

48 Significant Indigenous Vegetation:

- The process set out in Appendix 5 of the operative District Plan requires the Council to establish contact with landowners, and request feedback on the assessments.
- A 'stakeholder reference group' was established in 2009 and last met in 2012. The group comprised representatives from the farming sector, landcare groups, Kai Tahu Ki Otago, Te Ao Marama, Royal Forest and Bird Society and the Department of Conservation. The group provided valuable input to the process and provided Council officers with a platform to disseminate the approach to the identification of SNAs.
- Feedback has been ongoing with landowners and in the majority of situations has resulted in amicable agreements with the proposed significant natural areas.
- There are a number of landowners who are philosophically opposed to the concept and are not likely to support the scheduling of a SNA area on their property. The consultation process is sharing of information and listening to feedback and making adjustments where possible. It is reiterated that the Council is required by the Environment Court (decision C76/2001) to undertake the process and that reaching consensus with all stakeholders, although desirable, is not the end goal. Persons who are not supportive of

SNAs being identified on their property will be able to lodge a formal submission in accordance with RMA processes.

49 Wilding Exotic Trees:

- In 2012 a consultation brochure was sent to a forestry companies, forest owners, consent holders of forestry activities, the Department of Conservation the Otago Regional Council and the Wilding Conifer Group.
- Public drop in sessions were held in 2012
- The relevant Strategic Direction Chapter policy has been in the public realm since May 2014.

50 Protected Trees:

- All landowners with a protected tree on their property were notified of the survey.
- All landowners in the Residential Arrowtown Historic Management Zone with a tree that qualifies as a protected tree were advised of the survey, consulted on the results and possible changes to the rules.
- A small number of landowners have advised that they do not support a tree on their land being scheduled as a protected tree. Whilst respectful of their wishes there have not been any reasons presented so far that justifies not scheduling the trees. It is reiterated that the felling or pruning of these trees would require a discretionary resource consent, similar to the proposed rules for protected trees.

Legal Considerations and Statutory Responsibilities

51 Formal consultation will be undertaken in accordance with the statutory requirements set out in the RMA upon notification of Stage 1 of the Proposed District Plan. There will be an initial 40 working day submission period and then a 10 working day submission period for further submissions.

Attachments

- A Proposed Vegetation Chapter
- B Section 32 Evaluation Report: Indigenous Vegetation
- C Section 32 Evaluation Report: Wilding Exotic Trees
- D Section 32 Evaluation Report: Protected Trees