

Section 32 Evaluation Report: Indigenous Vegetation

1. Strategic Context

Resource Management Act 1991

Section 32(1)(a) of the Resource Management Act 1991 requires that a Section 32 evaluation report must examine the extent to which the proposed objectives are the most appropriate way to achieve the purpose of the Act.

The purpose of the Act requires an integrated planning approach and direction:

5 Purpose

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means 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.*

Section 31 states (relevant areas underlined to emphasise the provisions relevant to this evaluation):

31 Functions of territorial authorities under this Act

- (1) *Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*
 - (a) *the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
 - (b) *the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—*
 - (i) *the avoidance or mitigation of natural hazards; and*
 - (ii) *the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and*
 - (iia) *the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:*
 - (iii) *the maintenance of indigenous biological diversity:*
 - (c) *[Repealed]*
 - (d) *the control of the emission of noise and the mitigation of the effects of noise:*
 - (e) *the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:*
 - (f) *any other functions specified in this Act.*

- (2) *The methods used to carry out any functions under subsection (1) may include the control of subdivision*

The proposed indigenous vegetation provisions help to achieve integrated management by:

- Identifying and providing rules to protect significant natural areas, while allowing the continuation of maintenance and management activities that would have a low environmental impact.
- Retaining the relatively permissive permitted clearance limit of 5000m² while reducing the permitted clearance to 500m² in areas that comprise indigenous vegetation that is greater

than 2.0 metres in height, and where the land environment (defined by the Land Environments of New Zealand at Level IV) has 20% or less remaining indigenous cover.

- Providing rules to protect the clearance of threatened plants.
- Amending the definitions of indigenous vegetation, and clearance of vegetation.

Local Government Act 2002

Section 14 - Principles relating to local authorities

Sections 14(c), (g) and (h) of the Local Government Act 2002 are also of relevance in terms of policy development and decision making:

(c) when making a decision, a local authority should take account of—

- (i) the diversity of the community, and the community's interests, within its district or region; and*
- (ii) the interests of future as well as current communities; and*
- (iii) the likely impact of any decision on the interests referred to in subparagraphs (i) and (ii):*

(g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets; and

(h) in taking a sustainable development approach, a local authority should take into account—

- (i) the social, economic, and cultural interests of people and communities; and*
- (ii) the need to maintain and enhance the quality of the environment; and*
- (iii) the reasonably foreseeable needs of future generations*

As per Part II of the RMA, the provisions emphasise a strong intergenerational approach, considering not only current environments, communities and residents but also those of the future. They demand a future focussed policy approach, balanced with considering current needs and interests. Like the RMA, the provisions also emphasise the need to take into account social, economic and cultural matters in addition to environmental ones.

Section 14(g) is of relevance in so far as a planning approach emphasising that indigenous biodiversity is a resource to maintain and protect, while having regard to the efficient use of land including any modification to it for economic wellbeing.

Having regard to these provisions, the planning approach is to not interpret these provisions through a single lens, but to reconcile the dichotomy that can arise between the maintenance and protection of indigenous biodiversity and the efficient use of natural and physical resources. The approach through this review is to provide a balanced framework in the District Plan to manage these resources appropriately. Furthermore, no less important is the need to ensure the provisions are presented in a manner that is clearly interpreted to facilitate effective and efficient District Plan administration.

2. National Planning Documents and Strategies

The New Zealand Biodiversity Strategy 2000

The New Zealand Biodiversity Strategy February 2000 was prepared in response to the state of decline of New Zealand's indigenous biodiversity and reflects New Zealand's commitment, through ratification of the international Convention on Biological Diversity, to help stem the loss of biodiversity.

The strategy has four goals for conserving and sustainably managing New Zealand's biodiversity. Of relevance, Goal Three is to '*halt the decline in New Zealand's Biodiversity*'.

Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land

In 2007 the Minister for Conservation and the Minister for the Environment issued a Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land - 'Protecting Our Places'.

The Statement consists of four national priorities:

- (1) To protect native vegetation associated with land environments, (defined by Land Environments of New Zealand at Level IV), that have 20 per cent or less remaining in native cover.
- (2) To protect native vegetation associated with sand dunes and wetlands, ecosystem types that have become uncommon due to human activity.
- (3) To protect native vegetation associated with 'originally rare' terrestrial ecosystem types not already covered by priorities 1 and 2.
- (4) To protect habitats of acutely and chronically threatened native species.

These matters and how they relate to the maintenance of indigenous biodiversity are discussed in the Council's 2009 Desktop Review of Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna in the Queenstown Lakes District¹.

Draft Proposed National Policy Statement on Indigenous Biodiversity 2011

The Draft Proposed National Policy Statement on Indigenous Biodiversity sets out the objective and policies about managing natural and physical resources to maintain indigenous biological diversity (biodiversity) under the Resource Management Act 1991. It was notified for consultation in 2011. There have been no further advancements to date.

The Draft Proposed National Policy Statement's accompanying s32 report cited a study undertaken² that identified the Queenstown Lakes District as the second ranking territorial authority in the country (behind Central Otago District) with the largest extent of native cover not legally protected in the five threatened LENZ categories.

3. Regional Planning Documents

Operative Regional Policy Statement 1998

Section 74 of the Act requires that a district plan prepared by a territorial authority must "*give effect to*" any operative Regional Policy Statement. The operative *Otago Regional Policy Statement 1998* is the relevant regional policy statement to be given effect to within the District Plan.

The operative RPS contains a number of objectives and policies of relevance to this plan change. Of primary relevance are Objectives 10.4.1 and 10.4.3 (Biota) which seek to maintain and enhance the life supporting capacity and diversity of Otago's biota, and to maintain and enhance the natural character of areas with significant indigenous vegetation and significant habitats of indigenous fauna.

Objectives 5.4.1 to 5.4.4 (Land) are also relevant because they promote the sustainable management of Otago's land resource by:

- Maintaining and enhancing the primary productive capacity and life supporting capacity of land resources;
- Meeting the present and reasonably foreseeable needs of Otago's people and communities.
- Avoid, remedy or mitigate degradation of Otago's natural and physical resources resulting from activities utilising the land resource;
- Protect outstanding natural features and landscapes from inappropriate subdivision, use and development.

The proposed plan change provisions are consistent with, and give effect to, the relevant operative RPS provisions.

Proposed Regional Policy Statement 2015

¹ Desktop Review of Potentially Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna in the Queenstown Lakes District, April 2009, Prepared by Davis Consulting Services limited for the Queenstown Lakes District Council.

² Walker, S.; Price, R.; Rutledge, D. 2008: New Zealand's remaining indigenous cover: recent changes and biodiversity protection needs. Science for Conservation 284. Department of Conservation, Wellington. 82 p.

Section 74 of the Act requires that a District Plan must “*have regard to*” any proposed regional policy statement.

The Proposed RPS was notified for public submissions on 23 May 2015, and contains the following objectives and policies relevant to indigenous vegetation:

Matter	Objectives	Policies
Kai Tahu values, rights and customary resources are sustained	1.2	1.2.1, 1.2.2, 1.2.3
The values of Otago’s natural and physical resources are recognised, maintained and enhanced	2.1	2.1.1, 2.1.2, 2.1.5, 2.1.6, 2.1.7
Otago’s significant and highly-valued natural resources are identified, and protected or enhanced	2.2	2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5, 2.2.6, 2.2.12, 2.2.13, 2.2.14, 2.2.15. Schedule 4, Schedule 5
Protection, use and development of natural and physical resources recognises environmental constraints.	3.1	3.1.1
Sufficient land is managed and protected for economic production	4.3	4.3.1, 4.3.2, 4.3.6
Otago’s communities can make the most of the natural and built resources available for use	4.4	4.4.3
Adverse effects of using and enjoying Otago’s natural and built environment are minimised	4.5	4.5.4, 4.5.5, 4.5.6, 4.5.7, 4.5.8

The evaluation and provisions have regard to the Proposed RPS. IN particular, there are consistencies in the application of the Proposed RPS Schedule 5 ‘*Criteria for the assessment of the significance of indigenous vegetation and habitat of indigenous fauna*’ and the proposed District Plan policy framework for guiding decision makers when consideration proposals to clear indigenous vegetation.

In broad terms the proposed Indigenous Vegetation Chapter supports the issues and direction identified by the Draft RPS.

4. Iwi Management Plans

When preparing or changing a district plan, Section 74(2A)(a) of the RMA states that Council’s must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.

The following iwi management plans are relevant:

The Cry of the People, Te Tangi a Tauira: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (MNRMP 2008)

Section 3.4 Takitimu Me Ona Uri: High Country and Foothills contain the following policies that have specific regard to vegetation clearance and burning:

3.4.2 High Country Pastoral Farming

Policy 6. Advocate for pastoral farm management decisions (including conversion to pasture) to take into account the protection and survival of indigenous species of flora and fauna in their natural habitats, particularly forest remnants.

Policy 8. Discourage the clearing of indigenous vegetation for boundary fencing. Where unavoidable, clearing of indigenous vegetation for boundary fencing must be kept to a minimum.

3.4.7 Vegetation Clearance and Burning

Policy 4. Protect indigenous vegetation in areas or adjacent to areas that are to be burned or cleared (e.g. forest remnant, peat bog area).

Policy 6. In areas where accidental burning (including climate induced) has occurred areas should be replanted to avoid soil exposure and erosion, nutrient loss, and invasion of undesirable plant and animal pest species by the landowner or person responsible for the land.

Policy 7. Avoid clearance of land for land management purposes in areas prone to high soil erosion and land instability.

Policy 8. Advocate for the restoration of damaged or destroyed areas of vegetation as a result of non compliant or unconsented activity by the landowner or person responsible for the land.

3.5.7 Subdivision and Development

Policies 1- 18 contain a range of policies that are relevant to Subdivision and Development cover iwi involvement in planning processing and plan development, interaction with developers and iwi, particularly where there may be significant effects, long term planning and cumulative effects, avoiding adverse effects on the natural environment and advocating for the use of esplanades reserves.

Kāi Tahu ki Otago Natural Resource Management Plan 2005 (KTKO NRMP 2005)

Part 10: Clutha/Mata-au Catchments *Te Riu o Mata-au* outlines the issues, and policies for the Clutha/Mata-au Catchments. Included in this chapter is a description of some of the Kāi Tahu ki Otago values associated with the Clutha/Mata-au Catchments. Generic issues, objectives and policies for all catchments across the Otago Region are recorded in Chapter 5 Otago Region.

The following policies are of particular relevance;

5.5.4 Mahika Kai and Biodiversity *Te Rereka Kētaka o kā Kaiao me te Mahika Kai*

Policy 3. To encourage collaborative research into indigenous biodiversity.

High Country:

Policy 18. In the management of the high country provide for:

- i. the identification of Kāi Tahu ki Otago values;*
- ii. no burning above 1000 metres;*
- iii. the re-vegetation and enhancement of high altitude and other significant indigenous ecosystems using indigenous flora of local genetic origin.*

Earth Disturbance:

Policy 19. To require all earthworks, excavation, filling or the disposal of excavated material to:

- i. Avoid adverse impacts on significant natural landforms and areas of indigenous vegetation;*

5.3.4: Bank Erosion:

Policy 43. To discourage activities on riverbanks that have the potential to cause or increase bank erosion.

Policy 44. To encourage the planting of indigenous vegetation from the local environs to help reduce continual erosion of the edge of rivers.

5.3.4: Land Use and management

Policy 56. To oppose the draining of wetlands. All wetlands are to be protected.

5.5.3 Mahika Kai and Biodiversity Objectives

i. Habitats and the wider needs of mahika kai, taoka species and other species of importance to Kāi Tahu ki Otago are protected.

ii. Mahika kai resources are healthy and abundant within the Otago Region.

iii. Mahika kai is protected and managed in accordance with Kāi Tahu ki Otago tikaka.

iv. Mahika kai sites and species are identified and recorded throughout the Otago Region.

v. Indigenous plant and animal communities and the ecological processes that ensure their survival are recognised and protected to restore and improve indigenous biodiversity within the Otago Region.

vi. To restore and enhance biodiversity with particular attention to fruiting trees so as to facilitate and encourage sustainable native bird populations.

10 Clutha/Mata-au Catchments Te Riu o Mata-au (pp127)

9. To encourage the adoption of sound environmental practices, adopted where land use intensification occurs.

10. To promote sustainable land use in the Clutha/Mata-au Catchment.

11. To encourage all consents related to subdivision and lifestyle blocks are applied for at the same time including, land use consents, water consents, and discharge consents.

5. Resource Management Issues

This review seeks to address three key issues associated with the management of indigenous biodiversity in the Queenstown Lakes District. Two issues relate to the effective and efficient interpretation of the provisions, and the maintenance of biodiversity values. The third issue is the completion of a project initiated under the Operative District Plan to identify and schedule the Districts Significant Natural Areas.

An overarching goal is to strengthen and clarify the existing provisions by providing more targeted objectives and policies that address matters such as assessing the effects of, and balancing the efficient use of land with the maintenance of indigenous biodiversity. Other important issues include making the Plan easier to understand and improving certainty to what activities are permitted and whether they require resource consent.

The analysis and approach to managing the resource management issues have been identified from the following sources:

- Guidance on Good Practice Biodiversity Offsetting in New Zealand, August 2014.
- Ministry for the Environment 2011. Draft Proposed National Policy Statement on Indigenous Biodiversity. Wellington: Ministry for the Environment
- Ministry for the Environment 2011. Draft Proposed National Policy Statement on Indigenous Biodiversity: Summary of Submissions. Wellington: Ministry for the Environment.
- Ministry for the Environment November 2010. Regulatory Impact Statement. Improving the protection of indigenous biodiversity on land outside the public conservation estate.
- Ministry for the Environment 2011. National Policy Statement for Renewable Electricity Generation. Wellington: Ministry for the Environment.
- Ministry for the Environment 2011. National Policy Statement for Renewable Electricity Generation 2011: Implementation Guide. Wellington: Ministry for the Environment.

- Relevant Environment Court decisions including (RFBPS v Innes (2014) NZEnvC 72) involving the QLDC, and relevant decisions arising from the Waitaki and Mackenzie district councils.
- Otago Regional Council Regional Policy Statement 1998.
- Proposed Regional Policy Statement 2015.
- Kai Tahu ki Otago Natural Resource Management Plan 2005.
- Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008.
- Relevant legislative changes enacted since the District Plan became operative
- Desktop review of Potentially Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna in the Queenstown Lakes District, April 2009. Prepared by Davis Consulting Services Limited for the Queenstown Lakes District Council.

Consultation

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

Of note, groups with potentially divergent views (RFBPS, and Federated Farmers and Patterson Pitts Group (Wanaka)) both suggested a suitable rule to replace the existing is that used in the Waitaki District Council District Plan. This advice has influenced the proposed rules, as detailed in issue 1 below.

The key issues are:

Issue 1: Definitions and rules that can be understood and are practical to apply.

Recent Environment Court proceedings highlighted deficiencies with the Plan's definition of 'indigenous vegetation' and the rule (Site Standard 5.3.5.1x) which controls the amount of indigenous vegetation that can be cleared as a permitted activity.

A complicating factor, which appears to be shared by other 'high country' territorial authorities located in drier, inland areas of the South Island, is that indigenous vegetation habitats include low-growing plants such as cushion fields and tussock grasslands. Management of these plant communities cannot be addressed by the more general rules used by other territorial authorities which rely on a simple definition of indigenous vegetation and control the permitted removal of indigenous vegetation based on the height of the vegetation.

In addition, tussock and cushion field communities could be present within areas used for pastoral farming, amidst naturalised or exotic grasses and weeds. It is recognised that the identification of these plant communities and applying practical ways to ascertain the presence of this vegetation can be complex. Particularly in the context of applying parameters to determine whether indigenous vegetation located amidst other vegetation including exotic pasture grasses requires a resource consent to be removed.

Another issue is what constitutes the clearance of indigenous vegetation. It is generally accepted that the clearance of vegetation includes cutting, crushing, burning, spraying with herbicide, and cultivation.

It is also recognised that, in certain situations, irrigation would have a detrimental effect on some indigenous vegetation, such as cushion field communities which are accustomed to growing in dry conditions. Irrigation alters the ecological conditions of seasonally dry habitats and promotes the growth of taller, denser, and more rapidly growing species. Under irrigated conditions, these species out compete the stress-tolerant 'dryland' species, which are killed by being deprived of light and other resources, a process known as competitive exclusion.

To date, the majority of applications for resource consent have been for the removal of indigenous bracken fern and shrubland located on large 'dry' (not irrigated) pastoral farms and for general 'farm maintenance' activities including spraying and/or burning on large landholdings to promote pasture grass growth and enable access for grazing stock.

None of these applications appear to have created issues with the interpretation and/or application of the definitions and rule.

Environment Court enforcement order proceedings associated with the discing of land containing dryland tussock and cushion plant communities at a property in South Hawea (Royal Forest and Bird Protection Society Incorporated (RFBPS) v Innes (2014) NZEnvC 201)) is understood to be 'a test case for the rule.' The decision on the enforcement order, released in March 2014, highlighted deficiencies in the definition and rule (RFBPS v Innes (2014) NZEnvC 72)). At paragraph 21 of the decision, the Court noted:

... the rule owes its origins to compromise and poor regulatory process. Consequently, it is unacceptably fraught with complexity and uncertainty. In this context, we stop short of declaring it ultra vires. Firstly, that is because we have only had opportunity to apply the lens of Mr Innes' unfortunate circumstances to it. Secondly, in that context and with the help of Court directed expert witness conferencing amongst the three ecology and botany experts, we have elicited a meaning as we later address. We have no jurisdiction to declare it void for unreasonableness. The Council most certainly has capacity to reconsider it on that basis, and we encourage it to do so with urgency.

At paragraph (65) the Court stated:

We were informed of the genesis of Site Standard 5.3.5.1.x and the associated definition of "indigenous vegetation". That included changes that were made in response to a particular submitter, and further changes by consent orders. While this is not uncommon, in process terms, in this case it appears to have resulted in a provision which is woefully difficult to understand and apply.

The uncertainty surrounding the provisions is exacerbated because the RFBPS considered that the area cleared contained indigenous vegetation which was of national importance in terms of s6(c) of the RMA. However, it is clear from reviewing the decision that a significant amount of evidence and consideration was required to determine which areas cleared qualified as 'indigenous vegetation' as defined in the Operative District Plan and were subject to the rule. A disparity of this proportion should not arise from varying interpretations of the provisions of the District Plan.

Section 31(1)(b)(iii) of the RMA states that the maintenance of indigenous biological diversity is a function of the Council. Where rules are considered necessary to manage this resource, it is fundamental that the rules are legible and practical to apply and administer. The existing definition of indigenous vegetation, clearance of vegetation and the Site Standard 5.3.5.1x are overly complex and uncertain.

Currently Site Standards 5.3.5.1v (significant indigenous vegetation) 5.3.5.1x (indigenous vegetation) and 5.3.5.1xii (Alpine Environments) do not provide a parameter that clarifies the clearance of indigenous vegetation over time. The absence of such a parameter can lead to a lack of certainty over whether an activity is permitted.

Site standard 5.3.5.1v (indigenous vegetation) contains the following qualifiers that have the potential to cause uncertainty and subjectivity when determining whether clearance of indigenous vegetation would be a permitted activity:

There shall be no clearance of indigenous vegetation except for:

(a) *The clearance of indigenous vegetation that is:*

(i) *Totally surrounded by pasture and other exotic species; and*

(ii) *less than 0.5 hectares in area; and more than 200 metres from any other indigenous vegetation which is greater than 0.5 hectares in area; and*

A further complicating element is the Operative District Plan's definition of indigenous vegetation. It states:

Means a plant community in which species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity.

An issue with this definition is that it is clearly subjective in that only indigenous vegetation that is 'important' meets the definition and is subject to the rules. In this sense, the definition is acting a rule.

Issue 2: The maintenance of indigenous vegetation biological diversity (biodiversity)

Other issues associated with applying the existing indigenous vegetation rules are the amount of vegetation that can be cleared as a permitted activity and where in the District the rules apply.

Amount of vegetation to be cleared as a permitted activity

Site Standard 5.3.5.1x permits the removal of up to 5000m² of indigenous vegetation and it is questionable whether the removal of this amount of indigenous vegetation as a permitted activity best serves the purpose of the RMA, including the Council fulfilling its function under s31(1)(b)(iii), the maintenance of indigenous biological diversity. It is considered that a lower permitted limit could be set for vegetation that is over a certain height and likely to comprise shrub and tree species.

The importance of reviewing the appropriateness of areas in which the removal of indigenous vegetation is a permitted activity is emphasised by the amount of and, areas of land in the District that include environments defined by Land Environments of New Zealand as Level IV (have 20% or less remaining in indigenous vegetation cover³).

Where the rules apply

Currently there are three distinct rules pertaining to managing indigenous vegetation, Site Standards:

- 5.3.5.1v Significant indigenous vegetation; scheduled in Appendix 5 of the District Plan and identified on planning maps.
- 5.3.5.1x Indigenous vegetation; permits up to 5000m² of indigenous vegetation clearance providing certain qualifiers are met, including that it does not involve the removal of a threatened plant listed in Appendix 9.
- 5.3.5.1xii Alpine environments; does not allow the removal of any indigenous vegetation as a permitted activity on land above 1070 meters above sea level.

These rules pertain to the Rural General Zone and cannot be applied in any other zone including the Ski Area Sub-Zone, and the Gibbston Character Zone. There are substantial areas of land outside the Rural General Zone which contain indigenous vegetation. These include Rural Lifestyle and Rural Residential zoned land, for example, on the northern side of Mt Iron and throughout the Rural Lifestyle Zone in Makarora.

³ Refer to Landcare Research Threatened Environment Classification:
http://www.landcareresearch.co.nz/_data/assets/pdf_file/0007/21688/TECUserGuideV1_1.pdf

In addition, land currently zoned Gibbston Character Zone and the Rural Residential Zone on Mt Iron have been identified as containing potentially significant natural areas. Under the existing rules, only indigenous vegetation in the Rural General Zone is subject to the rules.

It is considered more appropriate to apply the indigenous vegetation rules on a district-wide basis and reconsider the amount of indigenous vegetation that can be cleared as a permitted activity.

Issue 3: The identification and protection of significant natural areas

The identification and protection of significant indigenous vegetation and significant habitats of indigenous fauna, referred to collectively as significant natural areas (SNAs), is a matter of national importance. The Council has undertaken a study to identify these areas for scheduling in the District Plan.

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 the Council has to follow to identify SNAs in the District.

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.

The Environment Court ordered the process to begin within 18 months of the District Plan becoming operative, which was in 2003. The process was started in 2008 and the Council completed a desktop review of significant indigenous vegetation in the Queenstown Lakes District in 2009. This study informed the method for the identification of potential SNAs and stage 1 – initial identification – was completed.

A stakeholder reference group was formed to assist with further refining the areas, and to help communicate the purpose of the desktop review and the SNAs to their stakeholder organisations and the general community. This process helped Council meet the requirements of Stage 2 – consultation.

The process set out by the Environment Court, to be followed by the Council, is as follows:

Stage 1 – Initial Identification

Initial identification of significant areas will involve:

- (a) Review of existing environmental databases and information on the Districts biodiversity to identify potentially significant sites.
- (b) Identification of information and data gaps on the district's biodiversity and those parts of the district where potentially significant sites may exist but which have not yet been studied or assessed.

Stage 2 – Consultation Process

Before commencing an assessment under Stage 3 the Council will:

- (a) Initiate personal consultation with the affected landowner and occupier.
- (b) Consult with the Department of Conservation and other interested parties regarding suitable ecological experts.
- (c) Arrange in conjunction with the landowner and occupier for a professional ecological assessment of the site to be carried out.
- (d) Discuss with the landowner and occupier, the Department of Conservation and other interested parties the scope and nature of the brief used to undertake the assessment and the sharing of information.

Stage 3 – Assessment

Stage 3 involves the determination of whether a site is significant in terms of section 6(c) of the RMA, utilising criteria detailed below.

Stage 2 – Consultation Process Continued

Having completed an assessment under Stage 3 the Council will:

- (a) Discuss the results of any assessment with the landowner and occupier and where necessary, appropriate methods of management or protection.
- (b) Make the outcomes of any ecological assessment part of the public record.

Stage 4 – Final Consideration⁴

Before deciding whether or not to adopt any area identified in Stage 3 as being significant into the District Plan the Council will have regard to the following matters:

- (a) existing land use and the degree of modification associated with the site
- (b) the economic effect on the landowner including development costs and lost potential (If these are relevant under section 7(b) of the Act)
- (c) consideration of non regulatory and regulatory methods which ensure the identified values and their needs are recognised and protected
- (d) presence and level of animal pests and weeds
- (e) resources required to implement effective protection
- (f) whether or not identified values are under threat
- (g) the extent to which values are or are not protected elsewhere

Stage 5 – Adoption into the District Plan

This process will include a Plan Change to the District Plan. The completion of the project has coincided with the review of the District Plan.

Determining Significance

For stage 3, to determine whether an area is significant in terms of Section 6(c) of the RMA, the following criteria were used to determine ecological significance:

(i) Rarity & Distinctiveness Whether the area supports or is important for: <ul style="list-style-type: none">• an indigenous species, habitat or community of species which is rare or threatened within the Ecological District or is threatened nationally,• indigenous species at their distribution limit,• endemic species,• indigenous fauna for some part of their life cycle (e.g. breeding, feeding, moulting, roosting), whether on a regular or infrequent basis,• migratory indigenous fauna.	OR
(ii) Representativeness Whether the area contains one of the best examples of an indigenous vegetation type, habitat or ecological process which is typical of its Ecological District.	OR
(iii) Diversity and Pattern The degree of diversity exhibited by an area in terms of vegetation and habitat types, ecotones and sequences along ecological gradients,	OR
(iv) The Ecological Context of the Area The relationship of the area with its surroundings in terms of maintaining or enhancing connectivity due to its location and connections to a neighbouring area, or as part of a network of areas of fauna habitat, or as part of a corridor or stepping stone for movement/migration of species between or to areas of important habitat, or; The role the area plays in buffering the ecological values of an adjacent area or site of significant ecological value, or; Its size and shape in providing for predominantly intact habitats (with evidence of healthy ecosystem functioning) thereby providing for seasonal or “core” habitat for threatened species.	OR
National Priorities for protecting rare and threatened native biodiversity	

⁴ Refer to Environment Court decision C76/2001, attachment 3.

	<p>In addition to the above, the following have been identified as National Priorities for protecting rare and threatened native biodiversity on private land (MfE & DOC 2007) and in the Draft proposed National Policy Statement on Indigenous Biodiversity and have therefore been considered as criteria for significance:</p> <p>National Priority 1: To protect indigenous vegetation associated with LENZ land environments that have 20 % or less remaining in indigenous cover;</p> <p>National Priority 2: To protect indigenous vegetation associated with sand dunes and wetlands; ecosystem types that have become uncommon due to human activity;</p> <p>National Priority 3: To protect indigenous vegetation associated with “originally rare” terrestrial ecosystem types not already covered by priorities 1 and 2;</p> <p>National Priority 4: To protect habitats of acutely and chronically threatened indigenous species.</p>	
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Land Environments of New Zealand (LENZ)

LENZ is a national environment classification system used to map New Zealand's landscape. LENZ uses modelling to classify New Zealand into broadly similar environments, based on 15 climate, landform and soil parameters which reflect geographic variation in biological diversity.

A plant or animal species tends to live in areas with similar environmental conditions, rather than randomly. Therefore similar environments tend to support similar groups of plants and animals, providing they have not been substantially modified by human activity. LENZ can therefore identify sites which are likely to have a potentially similar ecosystem character.

LENZ maps have been compared with information about where indigenous vegetation cover remains (e.g. the Landcover Database) and with information on publicly or privately managed conservation land (e.g. reserves, QEII covenants). This has provided an indication of the amount of indigenous vegetation cover remaining across the defined land environments, and how much of these environments are formally protected. Five categories of threatened environments have been established based on the criteria, including:

Threat Category	Criteria
Acutely threatened:	<10% indigenous vegetation cover remaining*
Chronically threatened:	10-20% indigenous vegetation cover remaining*
At risk:	20-30% indigenous vegetation cover remaining*
Critically under protected:	>30% indigenous vegetation cover remaining* and less than 10% protected
Under protected:	>30% indigenous vegetation cover remaining* and 10-20% protected
No threat:	>30% indigenous vegetation cover remaining* ⁵ and >20% protected.

The five threat categories are likely to contain some of New Zealand's most severely reduced and poorly protected ecosystem habitats and species.

National Guidance

The Government has identified the protection of the areas in the 'acutely' and 'chronically' threatened categories in the National Priorities for Protecting Rare and Threatened Biodiversity (2007) and, more importantly, as areas to be classified as significant indigenous vegetation or significant habitat of indigenous fauna under the Draft Proposed National Policy Statement on Indigenous Biodiversity (2011). To date the draft NPS on indigenous biodiversity has not advanced.

* 'Percentage cover remaining' means the percentage of indigenous vegetation cover which remains across New Zealand in that particular LENZ environment.

6. Purpose and Options

The District contains a diverse range of habitats that support indigenous plants and animals. Many of these are endemic, comprising forests, shrubland, herbfields, tussock grasslands, lake and river margins. Indigenous biodiversity is also an important component of ecosystem services and the District's landscapes.

The Council has a responsibility to maintain indigenous biodiversity and to recognise and provide for the protection of significant indigenous vegetation and significant habitats of indigenous fauna, which are collectively referred to as Significant Natural Areas (SNAs).

Activities involving the efficient use of land including ski-field development, farming, fence, road and track construction can be reasonably expected to be undertaken providing such activities maintain or enhance the District's indigenous biodiversity values.

The limited removal of indigenous vegetation is permitted, with discretion applied through the resource consent process, to ensure that indigenous vegetation clearance activities exceeding the permitted limits protect, maintain or enhance indigenous biodiversity values. Where the removal of indigenous vegetation cannot be avoided or mitigated and would diminish the District's indigenous biodiversity values, opportunities for the enhancement of other areas are encouraged to offset the adverse effects of the loss of those indigenous biodiversity values.

Alpine environments are identified as areas above 1070m and are among the least modified environments in the District. Due to thin and infertile soils and severe climatic factors, establishment and growth rates in plant life are slow, and these areas are sensitive to modification. In addition, because these areas contribute to the District's distinctive landscapes, and are susceptible to exotic pest plants, changes to vegetation at these elevations may be conspicuous and have significant effects on landscape character and indigenous biodiversity.

The District's lowlands comprising the lower slopes of mountain ranges and valley floors have been modified by urban growth, farming activities and rural residential development. Much of the indigenous vegetation habitat has been removed and these areas are identified in the Land Environments of New Zealand Threatened Environment Classification as either acutely or chronically threatened environments, having less than 20% indigenous vegetation remaining.

The provisions in this chapter address the Council's functions under section 31(1)(b)(iii) of the RMA, being the control of any actual or potential effects of the use or development of the land, including for the purposes of the maintenance of biodiversity.

Section 6 of the RMA identifies matters of national importance and requires that all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, recognise and provide for (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

Strategic Directions

The following goals, objectives and policies from the Strategic Directions chapter of the Proposed District Plan are relevant to this assessment:

Goal 4: The protection of our natural environment and ecosystems

Objective 1 To promote development and activities that sustain or enhance the life-supporting capacity of air, water, soil and ecosystems.

Objective 2 To protect areas with significant Nature Conservation Values.

Policy 2.1 Identify areas of significant indigenous vegetation on the District Plan maps and ensure their protection.

Policy 2.2 Where adverse effects on nature conservation values cannot be avoided, remedied or mitigated, consider environmental compensation as an alternative.

Objective 3 To maintain or enhance the survival chances of rare, endangered, or vulnerable species of indigenous plant or animal communities.

Policy 3.1 That development does not adversely affect the survival chances of rare, endangered, or vulnerable species of indigenous plant or animal communities

Goal 5: Our distinctive landscapes are protected from inappropriate development.

Objective 5 To recognise that agricultural land use is fundamental to the character of our landscapes.

Policy 5.1 Give preference to farming activity in rural areas except where it conflicts with significant nature conservation values.

Policy 5.2 Recognise that the retention of the character of rural areas is often dependent on the ongoing viability of farming and that evolving forms of agricultural land use which may change the landscape are anticipated.

In general terms, and within the context of this review, the strategic directions are met by:

- Identifying significant natural areas and scheduling them in the District Plan.
- Identifying the District's rare or threatened indigenous species and scheduling them in the District Plan.
- Provide objectives and policies that will maintain the Districts indigenous biological diversity, while recognising and reconciling two potentially divergent aspects:
 1. The efficient use of land and overarching purpose of the RMA to promote the sustainable management of natural and physical resources and;
 2. That much of the District's low lands are the most highly modified, are favoured for expansion of improved pasture and development, yet are identified as LENZ land environments that have 20% or less remaining in indigenous cover.
- Provide provisions in the District Plan for indigenous vegetation that are not identified as a significant natural area or threatened plant, which are practical to apply and that permit the removal of a limited area of indigenous vegetation.

Determining the most appropriate methods to resolve the issues identified will enable the Plan to give effect to the Otago RPS, the relevant parts of the Strategic Directions chapter, and ultimately meet the purpose of the RMA.

As required by section 32(1)(b) RMA, the following section considers various broad options considered to address each issue, and makes recommendations as to the most appropriate course of action in each case.

Broad options considered to address issues

Issue 1: Definitions and rules that can be understood, and are practical to apply.

Option 1: Retain the operative provisions

Option 2: Maintain the majority of the provisions with modification where necessary

Option 3: Comprehensive modification to the operative provisions (**Recommended**)

	Option 1: Status quo/ No change	Option 2: Amend some provisions	Option 3: Comprehensive changes
Costs	<ul style="list-style-type: none"> The existing objectives and policies do not give effect to proposed Strategic Directions chapter. Many of the existing District Wide policies are no longer considered fit for purpose. The interpretation of the definition and rule relating to the clearance of indigenous vegetation under site standard 5.3.5.1x is not effective or efficient. The permitted amount of indigenous vegetation to be cleared under rule 5.3.5.1x may no longer be appropriate. 	<ul style="list-style-type: none"> The objectives and policies do not give effect to proposed Strategic Directions chapter. The permitted amount of indigenous vegetation to be cleared under rule 5.3.5.1x may no longer be appropriate. Retaining the rules only within the Rural General zone is not considered the most appropriate method for the Council to fulfil its functions. Many of the existing District Wide policies are no longer considered fit for purpose. Reviewing only some of the provisions is not an effective use of the District Plan Review. 	<ul style="list-style-type: none"> Costs associated with going through the District Plan Review process (but this is required by legislation).

Benefits	<ul style="list-style-type: none"> Retains the established approach which parties are familiar with. Potential lower cost for Council to make fewer changes. 	<ul style="list-style-type: none"> Retaining but improving the existing provisions may reduce some of the ambiguity with the application of the existing rules. Council has already budgeted for a complete review of the District Plan so there are no significantly greater costs imposed upon the Council to undertake this process. 	<ul style="list-style-type: none"> Strengthens linkages with the proposed Strategic Directions chapter. Removes identified inefficiencies with the existing provisions. Provides opportunity to revisit the amount of indigenous vegetation to be removed without the need to obtain a resource consent. Removes lengthy District Plan text and provides opportunity for more concise statement of objectives and policies. Provides opportunity to consider other changes such as completing the identification and scheduling of the significant natural areas as part of the review, instead of dealing with this aspect in a vacuum as a separate plan change.
Ranking	3	2	1

Issue 2: The maintenance of indigenous vegetation biological diversity (biodiversity)

Option 1: Retain the operative provisions

Option 2: Maintain the majority of the provisions with modification where necessary

Option 3: Comprehensive modification to the operative provisions **(Recommended)**

Option 1: Status quo/ No change	Option 2: Amend provisions where necessary	Option 3: Review the entire rules
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Costs	<ul style="list-style-type: none"> • The existing objectives and policies do not give effect to proposed Strategic Directions chapter. • Many of the existing District Wide policies are no longer considered fit for purpose. • The permitted amount of indigenous vegetation to be cleared under rule 5.3.5.1x may no longer be appropriate. • Retaining the provisions within the Rural General zone is not the most appropriate method for the Council to fulfil its functions. • The rules associated with significant natural areas may no longer be appropriate. 	<ul style="list-style-type: none"> • The objectives and policies do not give effect to proposed Strategic Directions chapter. • The permitted amount of indigenous vegetation to be cleared under rule 5.3.5.1x may no longer be appropriate. • Retaining the provisions within the Rural General chapter is not considered the best manner for the Council to fulfil its functions. • Many of the existing District Wide policies are no longer considered fit for purpose. • Not reviewing the entire suite of provisions where it is probable there can be gains in effectiveness and efficiencies is not an effective use of the District Plan Review. 	<ul style="list-style-type: none"> • Costs associated with going through the District Plan Review process (but this is required by legislation).
Benefits	<ul style="list-style-type: none"> • Retains the established approach which parties are familiar with. • Potential lower cost for Council to make fewer changes. 	<ul style="list-style-type: none"> • Retaining but improving the existing provisions may reduce some of the ambiguity with the application of the existing rules. • Council has already budgeted for a complete review of the District Plan so there are no significantly greater costs imposed upon the Council to undertake this process. • Potential lower cost for Council to make fewer changes. 	<ul style="list-style-type: none"> • Strengthens linkages with the proposed Strategic Directions chapter. • Removes identified inefficiencies with the existing provisions. • Removes lengthy District Plan text and provides opportunity for more concise statement of objectives and policies. • Provides the opportunity to complete the identification and scheduling of the significant natural areas as part of the review, instead of dealing with this aspect in a vacuum as a separate plan change.

Ranking	3	2	1
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Issue 3: The identification and protection of significant natural areas (SNA's).

Option 1: Encourage and rely on non-regulatory methods such as open space covenants to protect SNAs. Rely on tenure review to identify and protect SNAs where applicable, encourage Council initiates outside the intervention/resource consent mechanisms of the District Plan.

Option 2: Identify and protect SNAs in the District Plan, but complete the project and notify the plan change outside of the District Plan Review

Option 3: Identify and protect SNAs in the District Plan, complete the project and make the changes as part of the District Plan Review **(Recommended)**

	Option 1: Rely on non-regulatory methods	Option 2: Include SNAs in District Plan but complete plan outside of the review	Option 3: Include SNAs in District Plan and initiate plan changes as part of the review
Costs	<ul style="list-style-type: none"> • Inefficient use of resources already spent by the Council undertaking the project to identify SNAs. • Is at odds with a direction from the Environment Court and provisions in Appendix 5 of the operative District Plan. • Environment Court decisions have confirmed that tenure review outcomes do not remove the obligation for territorial authorities to identify SNAs or protect indigenous vegetation on private land (RFBPS V Waitaki District Council (2010) NZEnvC (252)). • Would be at odds with the Council's functions as required by s31 of the RMA and Section 6 of the RMA. 	<ul style="list-style-type: none"> • Inefficient to notify and process a private plan change so close to the project being completed and coinciding with the notification of the District Plan. • Does not provide the opportunity to look comprehensively at all the provisions associated with the maintenance of indigenous vegetation. 	<ul style="list-style-type: none"> • Would impose a development constraint on landowners, however this matter in principle is anticipated as the Environment Court has directed the Council to identify SNAs and initiate a plan change.

Benefits	<ul style="list-style-type: none"> • May provide incentives for landowners to take up non-regulatory methods. • Lower cost for the Council to administer and maintain the District Plan. 	<ul style="list-style-type: none"> • Potential for more time to discuss reports and potential SNA sites with landowners, in particular where properties have recently changed ownership (however the majority of the reports were first sent to landowners in mid 2013, and again in November 2014). 	<ul style="list-style-type: none"> • Lower costs to Council to initiate the plan change as part of the District Plan review. • Ensures the Council fulfils its obligations and functions required by the RMA (ss31 and 6(c)). • Notification of the SNAs for scheduling in the District Plan at the same time as the review of other zones provides landowners to assess how other proposed District Plan provisions may constrain or enhance the development opportunities on their land. • The conclusion of the process set out in Appendix 5 of the district plan coincides with the notification of the District Plan.
Ranking	3	2	1

7. Scale and Significance Evaluation

The level of detailed analysis undertaken for the evaluation of the proposed objectives and provisions has been determined by an assessment of the scale and significance of the implementation of the proposed provisions. In making this assessment, regard has been had to the following, namely whether the objectives and provisions:

- Result in a significant variance from the existing baseline.
- Have effects on matters of national importance.
- Adversely affect those with specific interests, e.g. Tangata Whenua, Royal Forest and Bird Protection Society of New Zealand, Farming lobby groups.
- Involve effects that have been considered implicitly or explicitly by higher order documents.
- Impose increased costs or restrictions on individuals, communities or businesses.
- Whether the proposed provisions are more appropriate than the existing.

8. Evaluation of proposed Objectives Section 32 (1) (a)

<i>Proposed Objective</i>	<i>Appropriateness</i>
23.3.1 Objective 1 – Protect, maintain and enhance indigenous biodiversity.	<p>Recognises the Council’s function required under s31 of the RMA.</p> <p>Establishes the basis for policies and rules to manage land use activities that have potential for an impact on the maintenance of indigenous biodiversity.</p> <p>Establishes a basis for policies to assist with consent decision making.</p> <p>Consistent with Goal 4 of the proposed Strategic Directions chapter, in particular Objectives 1- 3.</p> <p>Gives effect to the following RPS Objectives:</p> <ul style="list-style-type: none"> • 4.4.4 and 4.4.5 (Manawhenua) • 5.4.1 and 5.4.2 (Land) • 10.3.1, 10.3.4 and 10.3.5 (Biota)
<i>Proposed Objective</i>	<i>Appropriateness</i>
23.3.2 Objective 2 – Protect and enhance significant indigenous vegetation and significant habitats of indigenous fauna (significant natural areas).	<p>Recognises the Council’s function required under s31 of the RMA, in particular the protection of matters of national importance under section 6c.</p> <p>Establishes the basis for policies and rules to manage activities that have the potential to adversely affect significant indigenous vegetation and significant habitats of indigenous fauna.</p> <p>Establishes a basis for policies to assist with resource consent decision making.</p> <p>Consistent with Goals 4, and 7 of the proposed Strategic Directions chapter, in particular Objectives 1- 3 of Goal 4.</p>

	<p>Gives effect to the following RPS Objectives:</p> <ul style="list-style-type: none"> • 4.4.4 and 4.4.5 (Manawhenua) • 5.4.1 and 5.4.2 (Land) • 10.3.1, 10.3.4 and 10.3.5 (Biota)
<i>Proposed Objective</i>	<i>Appropriateness</i>
<p>23.3.3 Objective 3 – Ensure the efficient use of land, including farming activities and infrastructure improvements do not reduce the District’s indigenous biodiversity values.</p>	<p>Establishes a basis to manage the maintenance of indigenous biodiversity with activities seeking to develop land involving the clearance of indigenous vegetation.</p> <p>Establishes a basis for policies to assist with resource consent decision making, including the LENZ threatened environment status.</p> <p>Consistent with Goals 4 and 7 of the proposed Strategic Directions chapter.</p> <p>Gives effect to the following RPS Objectives:</p> <ul style="list-style-type: none"> • 4.4.4 and 4.4.5 (Manawhenua) • 5.4.1 and 5.4.2 (Land) • 10.3.1, 10.3.4 and 10.3.5 (Biota)
<i>Proposed Objective</i>	<i>Appropriateness</i>
<p>23.3.4 Objective 4 – Protect the indigenous biodiversity and landscape values of alpine environments from the effects of vegetation clearance and exotic tree and shrub planting.</p>	<p>Establishes policy and rules to manage activities in alpine environments that have the potential to affect indigenous biodiversity values and landscape values.</p> <p>Consistent with Goals 4, 5 and 7 of the proposed Strategic Directions chapter.</p> <p>Gives effect to the following RPS Objectives:</p> <ul style="list-style-type: none"> • 4.4.4 and 4.4.5 (Manawhenua) • 5.4.1, 5.4.2 and 5.4.3 (Land) • 10.3.1, 10.3.4 and 10.3.5 (Biota)

The above objectives are considered to be the most appropriate methods of achieving the purpose of the Act, as they identify and give direction as to the how the specific issues that pertain to the District’s indigenous biodiversity are managed.

9. Evaluation of the proposed provisions Section 32 (1) (b)

The following tables consider whether the proposed provisions are the most appropriate way to achieve the relevant objectives. In doing so, it considers the costs and benefits of the proposed provisions and whether they are effective and efficient. For the purposes of this evaluation the proposed provisions are grouped by the resource management issue.

(Also refer to the Table detailing broad options considered in Section 4, above)

Issue 1: Definitions and rules that can be understood, and are practical to apply.

23.3.1 Objective 1 – Protect, maintain and enhance indigenous biodiversity.

Summary of proposed provisions that give effect to these objectives:

Policies:

- Identify the Districts significant natural areas and threatened plants and schedule them in the District Plan.
- Provide rules in the District Plan for indigenous vegetation that is not identified as a significant natural area or threatened plant, which are practical to apply and that permit the removal of a limited area of indigenous vegetation.

Rules:

- The redrafting of all rules. Changes have been made in particular to the rule providing limitations on the amount of indigenous vegetation to be cleared as a permitted activity, where it is not either identified as a significant natural area or threatened plant. The rule is accompanied by a provision clarifying (23.4.1) in what instances indigenous vegetation would be applicable to the rule.
- The existing District Plan provisions rely on a definition which states '*Means a plant community in which species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity*'. This definition is not adequate because it does not provide any certainty as to what is 'important'. The proposed determinant of whether indigenous vegetation is applicable to the rule are based on established principles utilised in other District Plans (Waitaki, Waimate and Mackenzie District Plans), and suggested by Federated Farmers and the Royal Forest and Bird Protection Society Incorporated during consultation undertaken in 2014 on potential changes to the provisions. The phrasing has been improved, however the parameters have not been changed. This provides a quantifiable benchmark to apply the rule, a parameter that is missing from the existing definition of indigenous vegetation.
- Note, Wetlands have not been taken forward for scheduling where they are scheduled in the Otago Regional Plan Water, as a Regionally Significant Wetland or provided for in the rules of that plan.

Definition:

- The definition of indigenous vegetation will be changed so that it is not subjective and does not place a value on the vegetation for it to qualify under the District Plan, which is the case with the existing definition.

<i>Proposed provisions</i>	<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness & Efficiency</i>
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<p>Policies:</p> <p>23.3.1.1 to 23.3.1.3</p> <p>Rules:</p> <p>All rules in part 23.4</p> <p>Definitions:</p> <p>Revised definitions of 'indigenous vegetation' and 'clearance of vegetation'.</p>	<p>Environmental</p> <ul style="list-style-type: none"> The proposed changes to the phrasing of the rule will allow indigenous vegetation to be removed where it does not meet the parameters in 23.4.1. However, this situation already exists with the existing definition and more (or less) could be removed if it is determined that the vegetation could be cleared if it is not 'important'. <p>Economic</p> <ul style="list-style-type: none"> The rephrasing of the rule will not add any economic costs, particularly when compared to the existing provisions. <p>Social & Cultural</p> <ul style="list-style-type: none"> None identified. 	<p>Environmental</p> <ul style="list-style-type: none"> The rephrased provisions will provide certainty as to what constitutes indigenous vegetation that is subject to the rule. This would reduce the potential for the clearance of indigenous vegetation without resource consent. <p>Economic</p> <ul style="list-style-type: none"> The rephrased provisions provide more certainty determining whether indigenous vegetation would be subject to the rule. This would remove potential significant costs associated with managing enforcement and compliance associated with unlawful indigenous vegetation clearance. The provisions would provide more certainty for landowners (including their agents/ecologists) when providing advice on whether potential land cultivation or clearance would involve indigenous vegetation subject to the rules. <p>Social & Cultural</p> <ul style="list-style-type: none"> Provides certainty to people which benefits social and cultural values. Both in terms of a landowner seeking certainty on the permitted standards and persons who may have an interest in the avoidance of indigenous vegetation. 	<ul style="list-style-type: none"> By including measurable parameters, the provisions will be effective at providing certainty as to what constitutes 'indigenous vegetation' that is subject to the rules that limit clearance. The use of measurable parameters will increase efficiency associated with the regulatory process, both in terms of the Council's administrative duties and for landowners seeking compliance with or whether the indigenous vegetation on their land would be subject to the rules.
<p>Alternative options considered less appropriate to achieve the relevant objectives and policies:</p>			

<p><i>Option 1: Utilise the definition used in other territorial authorities such as the Waitaki, Waimate and Mackenzie District Plans, as suggested by the RFBPSI and Federated Farmers.</i></p>	<ul style="list-style-type: none"> • <i>The definition is:</i> <ul style="list-style-type: none"> • <i>means a plant community in which species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity. For these purposes, coverage by indigenous species or number of indigenous species shall exceed 30% of the total area or total number of species present, where structural dominance is not attained. Where structural dominance occurs (that is indigenous species are in the tallest stratum and are visually conspicuous) coverage by indigenous species shall exceed 20% of the total area.</i> • <i>The definition is poorly phrased and would not assist with an effective and efficient regulatory process. However, the parameters in this definition have been used in the application of the relevant rule. It is these parameters that provide the quantifiable criteria as to whether the indigenous vegetation is subject to the rule.</i>
<p><i>Option 2: Include a simple height or area parameter to control the permitted removal of indigenous vegetation.</i></p>	<ul style="list-style-type: none"> • <i>This may not recognise low growing plants such as tussock grasslands and cushion field species.</i> • <i>This would capture all indigenous vegetation and would be too limiting for vegetation clearance associated with farm maintenance activities.</i>

Issue 2: The maintenance of indigenous vegetation biodiversity (biodiversity)

23.3.1 Objective 1 – Protect, maintain and enhance indigenous biodiversity.

23.3.2 Objective 2 – Protect and enhance significant indigenous vegetation and significant habitats of indigenous fauna (significant natural areas).

23.3.3 Objective 3 – Ensure the efficient use of land, including farming activities and infrastructure improvements do not reduce the District’s indigenous biodiversity values.

23.3.4 Objective 4 – Protect the indigenous biodiversity and landscape values of alpine environments from the effects of vegetation clearance and exotic tree and shrub planting.

Summary of proposed provisions that give effect to these objectives:

- Policies that identify and schedule in the District Plan significant natural areas, and the opportunity for landowners to be exempt from the areas being scheduled if the area is protected by a QE II open space covenant.

- A policy that identifies and schedules the District's threatened flora and fauna.
- Policies that encourage assessments and decision making on resource consent applications to consider the impacts of clearance on indigenous biodiversity values, including:
 - the LENZ threatened environment status;
 - Accepted criteria that identify and values of indigenous vegetation: representative, rarity, diversity, distinctiveness, ecological context.
 - where adverse effects cannot be avoided, mitigated or remedied, whether there is opportunity to grant consents that offer a offset to result in a net biodiversity gain;
 - the manner and methods of vegetation clearance and how this impacts on the District's biodiversity values;
 - removal of vegetation near waterbodies, and the benefits of erosion and sediment control from indigenous vegetation on steep slopes and as buffers around water bodies;
 - Whether there are any visual effects associated with indigenous vegetation clearance, including the alpine environments are also visually vulnerable to degradation;
 - acknowledge that the maintenance of indigenous vegetation needs to be considered against other provisions in the RMA which promote the sustainable management of natural and physical resources, including s7(b), the efficient use of land.
- The provisions will apply to all zones as a district wide rule (existing provisions are located in the Rural General Zone)
- Rules which allow the limited removal of indigenous vegetation not scheduled as a SNA or threatened plant, specifically;
 - Permit the removal of up to 5000m² the same as the operative District Plan.
 - New rules that recognise indigenous vegetation over 2.0 metres in height is likely to have biodiversity values and would include regenerating shrub and forest by introducing a lower threshold for permitted removal:
 - Permitted clearance of 500m² generally, and
 - Permitted removal of 50m² on sites less than 10ha in area.
 - A new rule recognising indigenous vegetation cover within acutely and chronically threatened land environments (as defined by Land Environments of New Zealand Level IV) by reducing the permitted clearance limit to 500m² and to 50m² on sites less than 10ha.
 - The existing District Plan rules allow the removal of 5000m² and do not specify different vegetation communities).
 - The rules will apply to all land in the District with the exception of the limitations required by s76(4A) of the RMA which, excludes indigenous vegetation that is not scheduled and is located on an urban allotment:

S76(4C) ...

urban environment allotment or allotment means an allotment within the meaning of [section 218](#)—

 - (a) that is no greater than 4 000 m²; and*
 - (b) that is connected to a reticulated water supply system and a reticulated sewerage system; and*
 - (c) on which there is a building used for industrial or commercial purposes or as a dwellinghouse; and*
 - (d) that is not reserve (within the meaning of [section 2\(1\)](#) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the [Conservation Act 1987](#) or the [Reserves Act 1977](#).*
- Changing the existing provisions relating to significant natural areas as follows:
 - Removing the 1000m³ allowed earthworks volume, this seems meaningless in that there is an area limit of 50m². Therefore, to undertake a

permitted activity in the confines of 50m², would comprise a excavation 20 metres deep. It is the area of earthworks that is most likely to affect indigenous vegetation.

- Removing the rule requiring that no building would be constructed, this is irrelevant because it is the clearance of vegetation removal not a peripheral land use, that would potentially impact the SNA values.

- Changing the class of resource consent required from restricted discretionary, to discretionary..
- Recognising that some indigenous vegetation communities can be adversely affected by irrigation and providing for this in the definitions.
- Changing the definition of 'indigenous vegetation' and clearance of 'vegetation clearance'.

Proposed provisions	Costs	Benefits	Effectiveness & Efficiency
<p>Policies: All policies in part 23.3: 23.3.1.1 – 23.3.4.2.</p> <p>Rules: All rules in part 23.4.</p>	<p>Environmental</p> <ul style="list-style-type: none"> • The rules allow the removal of up to 5000m² indigenous vegetation to be cleared as a permitted activity, and 500m² of vegetation over 2m in height, and within land environments with less than 20% indigenous vegetation cover. • This could have an effect on biodiversity values, including a cumulative effect in the context of areas where there is an acutely threatened environment based on LENZ land environments. • The rules allow the removal of 50m² indigenous vegetation in SNAs. This could involve the clearance of trees with stature although, the impact on indigenous biodiversity values of the SNA and District would be low. <p>Economic</p> <ul style="list-style-type: none"> • Has the potential to restrict the creation of new areas of improved 	<p>Environmental</p> <ul style="list-style-type: none"> • Promotes the maintenance of indigenous biodiversity in the District. • Recognises significant natural areas and their protection under s6(c) of the RMA. • Recognises the LENZ threatened land environments status. • Phrasing of the rules provide certainty as to what constitutes clearance of indigenous vegetation and when the rule is applied. • The permitted clearance is relatively low, recognising the values that could otherwise be lost, where the vegetation is >2.0m height and within land environments (as defined by Land Environments of New Zealand) under the current rules that allow removal of 5000m². • Recognising there is indigenous 	<ul style="list-style-type: none"> • The provisions will be effective at maintaining indigenous biodiversity. In particular the identification of scheduling of SNAs, and balancing the impacts of retaining indigenous vegetation against the efficient use of land to achieve the integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. • The provisions will be effective in terms of providing a robust regulatory process by providing clear and quantifiable parameters. • The provisions will be efficient in terms of providing certainty to landowners when administering the rule.

	<p>pasture/productive land.</p> <ul style="list-style-type: none"> • Has the potential to restrict the cultivation of previously cultivated land into improved pasture, particularly where there is the opportunity to utilise the land for more intensive forms of grazing, where this could be supported by irrigation. • Costs for landowners to apply for resource consents. In particular, the rule reducing permitted clearance to 50m² on sites less than 10ha could increase the amount of resource consents required, however, the sites would need to have indigenous vegetation that is applicable in terms of the proposed rule. <p>Social & Cultural</p> <ul style="list-style-type: none"> • Restrict the ability of landowners to provide for social aspects associated with economic wellbeing where the indigenous vegetation provisions would restrict the efficient use of land. 	<p>vegetation, including SNAs located in zones other than Rural and providing for the maintenance of indigenous biodiversity across the entire District, not just the Rural General Zone.</p> <p>Economic</p> <ul style="list-style-type: none"> • With regard to the ability to clear indigenous vegetation for development, the proposed rule for indigenous vegetation that is not scheduled will allow for unlimited indigenous vegetation clearance where the rule qualifiers are not met. • Maintains the intrinsic value of land containing indigenous vegetation and the important value of the District's landscape image, albeit at a cost to individual owners who may want to undertake clearance activities. • The phrasing will provide certainty to the regulatory process, both in terms of landowners seeking to ascertain compliance with activities, and Council administering the rule. There is less potential for persons to undertake unlawful clearance of indigenous vegetation under the misunderstanding of it being permitted, and when required, the respective technical experts are more likely to agree on whether indigenous vegetation is subject to the rule, because the rule is based on quantifiable parameters, and a simple definition. 	
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		<ul style="list-style-type: none"> The permitted removal (except in the case of threatened plants) provides a 'safety margin' and ability for small scale removal with limited impact for land owners who mistakenly clear vegetation. This is favoured over not begin able to remove any indigenous vegetation without resource consent. <p>Social & Cultural</p> <ul style="list-style-type: none"> Maintains intrinsic value of indigenous biodiversity. The maintenance of indigenous biodiversity provides for tangata whenua values Supports sustainable management of natural and physical resources in the context of the ethic of stewardship. 	
<p>Alternative options considered less appropriate to achieve the relevant objectives and policies:</p>			
<p><i>Option 1: Provide specific rules for a range of indigenous vegetation communities with differing parameters for indigenous vegetation removal, e.g.: tussock grasslands, cushionfield, grey shrubland, bush, forest.</i></p>	<ul style="list-style-type: none"> <i>This method has been utilised by other territorial authorities in their District Plans such as the Waitaki District Plan. Rules such as these would be specifically tailored for different indigenous vegetation communities, but it also has the potential to result in unwieldy provisions and ambiguous definitions.</i> <i>For example, the above mentioned District Plan's provisions define shrubland for the purposes of whether the vegetation would be applicable to the rule as follows: 'difficulty avoiding either standing on, or touching, the shrubs when walking through the majority of the area'.</i> <i>A definition such as this would have the potential to create uncertainties and the purpose of this plan change is to improve all facets of legibility of the District Plan and to avoid provisions and definitions that are subjective and open to differing</i> 		

<p>Option 2: Reducing the existing permitted standard of 5000m² throughout all areas within the District.</p>	<p><i>interpretations.</i></p> <ul style="list-style-type: none"> • Reducing the amount of indigenous vegetation allowed to be cleared as a permitted activity could be more appropriate. However, it is also acknowledged that indigenous vegetation clearance often involves relatively large areas of land far in excess of the 5000m² limit, particularly where bracken fern clearance is undertaken as part of farm management. • Identifying land environments (as defined by Land Environments of New Zealand Level IV) and vegetation that is >2.0 metres height as being more appropriate to have a lower area for permitted removal is a informed response to the land and vegetation cover that is likely to have higher impacts on biodiversity values if cleared.
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<p><u>Issue 3: The identification and protection of significant natural areas.</u></p>		
<p>23.3.1 Objective 1 – Protect, maintain and enhance indigenous biodiversity.</p>		
<p>23.3.2 Objective 2 – Protect and enhance significant indigenous vegetation and significant habitats of indigenous fauna (significant natural areas).</p>		
<p>Summary of proposed provisions that give effect to these objectives:</p> <ul style="list-style-type: none"> • Policy that identifies and schedules SNAs • Policy that sets out the clearance of SNAs should be avoided unless indigenous biodiversity values would not be reduced. • Provides the opportunity for offsets to be considered where proposals would not be able to mitigate the effects of ‘on-site’ vegetation clearance. • Rules allowing the limited removal of vegetation within a SNA. The Operative District Plan allows the removal of 100m², it is proposed to reduce the permitted standard to 50m². • Allow exemptions to clear indigenous vegetation for the construction of walkways or trails up to 1.5 metres in width provided that it does not involve the clearance of any threatened plants listed in the District Plan or any tree greater than a height of 4 metres. • Allow exemptions for indigenous vegetation clearance for the operation and maintenance of existing and in service/operational roads, tracks, drains, utilities, structures and/or fence lines, but excludes their expansion. • Allow earthworks up to 50m² within any one hectare in a period of five years, on land with a slope up to 20°. • Note, Wetlands have not been taken forward for scheduling where they are scheduled in the Otago Regional Plan Water, as a Regionally Significant Wetland or provided for in the rules of that plan. 		
<p>Proposed</p>	<p>Costs</p>	<p>Effectiveness & Efficiency</p>

<i>provisions</i>		<i>Benefits</i>	
<p>Policies:</p> <p>Rules:</p>	<p>Environmental</p> <ul style="list-style-type: none"> • None identified. <p>Economic</p> <ul style="list-style-type: none"> • Will restrict the creation of new areas of improved pasture/productive land that involves SNAs. • Has the potential to restrict the cultivation of previously cultivated land to improved pasture, particularly where there is the opportunity to utilise the land for more intensive forms of grazing, where this could be supported by irrigation. • Costs for landowners to apply for resource consents. <p>Social & Cultural</p> <ul style="list-style-type: none"> • The protection of indigenous vegetation would restrict the efficient use of land and in this context would have a negative impact on those persons begin able to provide for their social and cultural wellbeing. 	<p>Environmental</p> <ul style="list-style-type: none"> • Promotes the maintenance of indigenous biodiversity in the District. • Recognises significant natural areas and their protection under s6(c) of the RMA. • Recognises the LENZ threatened land environments status and the originally rare terrestrial ecosystems <p>Economic</p> <ul style="list-style-type: none"> • Opportunity to take up the Council's rates remissions policy (noting this is outside the District Plan). • Maintains the intrinsic value of land containing indigenous vegetation and the contribution this makes to the District's landscape values and environmental image, albeit at a cost to individual owners. <p>Social & Cultural</p> <ul style="list-style-type: none"> • Maintains intrinsic value of maintain indigenous biodiversity. • The maintenance of indigenous biodiversity recognises tangata whenua values. • Supports sustainable management of 	<ul style="list-style-type: none"> • Completion of the five stage process established by the Environment Court for identifying areas of significant indigenous vegetation and significant habitats of indigenous fauna in the Queenstown Lakes District. • Fulfils the Council's functions under s31 of the RMA. • Recognises the importance of significant natural areas within the District in terms of Section 6(c) of the RMA.

		<p>natural and physical resources in the context of the ethic of stewardship.</p>	
<p><i>Alternative options considered less appropriate to achieve the relevant objectives and policies:</i></p>			
<p><i>None identified. The process of identifying and scheduling SNAs was directed by the Environment Court and is provided in Appendix 5 of the Operative District Plan. The Council has followed this process.</i></p>			

10. Efficiency and effectiveness of the provisions

The above provisions are drafted to specifically address the resource management issues identified with the current provisions, and to enhance those provisions that already function well. A number of areas of the existing chapter and the entire District Wide chapter (4.1 Natural Environment) have been removed to aid the readability of the Plan by keeping the provisions at a minimum, whilst still retaining adequate protection for the resource and guidance for decision making associated with resource consent applications and future plan changes.

The proposed provisions strike an appropriate balance to achieve the integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. In doing so, the proposed provisions are significantly more appropriate than the operative District Plan provisions.

By simplifying the objectives, policies and rules (the provisions), the subject matter becomes easier to understand for users of the Plan both as applicant and administrator (processing planner). Removal of technical or confusing words and phrases also encourages correct use and interpretation. With easier understanding, the provisions create a more efficient consent process by reducing the number of consents required and by expediting the processing of those consents.

11. The risk of not acting

In the context of the issues set out above, not acting would not be an appropriate response. While there is the opportunity to rollover many of the existing provisions. This may also be improved by some minor amendments to the provisions in response to the resource management issues raised. Neither of these approaches reflect the current changing nature of the RMA with its drive to simplify and streamline. The District Plan is a forward planning mechanism and the opportunity to make bold changes in order to make a more noticeable difference. Not taking the more compact approach to this section and others, will not advance the usefulness of the District Plan in pursuit of its function in the sustainable management of natural and physical resources.

Attachments: (refer to the Council's web page).

1. Desktop Review of Potentially Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna in the Queenstown Lakes District, April 2009, Prepared by Davis Consulting Services limited for the Queenstown Lakes District Council.
2. Walker, S., Price, R., Rutledge, D. 2008: New Zealand's remaining indigenous cover: recent changes and biodiversity protection needs. Science for Conservation 284. Department of Conservation, Wellington. 82 p.
3. Environment Court Decision C76/2001.
4. Landcare Research Threatened Environment
Classification: http://www.landcareresearch.co.nz/data/assets/pdf_file/0007/21688/TECUserGuideV1_1.pdf