

The Resource Management Act 1991
Selwyn District Council

Selwyn District Plan
(Volume 2: Rural)

Proposed Plan Change 39

Tree Shading in Rural Areas

A proposed Plan Change to the Selwyn District Plan (Rural Volume) to remove and make consequential amendments to provisions related to the planting of trees, shelterbelts and plantations where they may grow to shade the road or private property.

Date of Notification: June 2014

TABLE OF CONTENTS

1	INTRODUCTION	1
2	BACKGROUND AND EXPLANATION	1
2.1	OVERVIEW	1
2.2	ISSUES WITH CURRENT PLAN PROVISIONS	2
2.2.1	<i>Enforcement of existing tree rules</i>	2
2.2.2	<i>Costs and time dealing with tree complaints</i>	2
2.2.3	<i>Other minor inconsistencies within the Rural Volume tree chapter</i>	2
2.2.4	<i>Other methods to deal with tree complaints</i>	3
3	PROPOSED AMENDMENTS TO DISTRICT PLAN	3
4	STATUTORY REQUIREMENTS	5
4.1	SECTION 32	5
4.2	DISTRICT PLAN OBJECTIVES AND POLICIES	5
4.3	COSTS AND BENEFITS - OPTIONS	6
4.4	COST AND BENEFITS – ASSESSMENT	6
4.5	RISKS OF ACTING VS NOT ACTING	8
4.6	SCALE AND SIGNIFICANCE	8
5	CONSULTATION	8
6	SECTION 74-75 OF THE RMA	8
6.1	OPERATIVE REGIONAL POLICY STATEMENT	8
6.2	CROSS BOUNDARY ISSUES	8
6.3	IWI AUTHORITY MATTERS	9
6.4	OTHER PLANNING DOCUMENTS	9
6.5	SUMMARY	9
7	CONCLUSION	9

APPENDICES:

- Appendix 1: Proposed Text Changes to the Selwyn District Plan (Rural Volume)
- Appendix 2: Extract from Local Government Act 1974
- Appendix 3: Extract from Transit New Zealand Act 1989
- Appendix 4: Extract from Property Law Act 2007

TABLES:

- Table 1: Cost and Benefits Assessment

Proposed Plan Change 39

Resource Management Act 1991

1 Introduction

This Plan Change seeks to make changes to the Rural Volume of the Selwyn District Plan (the Plan). These changes concern the provisions of the Plan related to the planting of trees where they may grow to shade either adjoining properties or roads.

It is proposed to remove the tree shading rules from the Plan entirely but retain the relevant overarching objectives and policies. It is also proposed to correct a small number of minor errors within Part C Chapter 2 of the Rural Volume of the Plan where rule numbering has created inconsistencies between provisions and cross referencing with other sections of the Plan requires consequential updating.

A full text change version of the proposed Plan amendments is contained within **Appendix A**.

2 Background and Explanation

2.1 Overview

The partially Operative District Plan (Rural Volume) deals with shading both along roads and property boundaries. There are no such provisions in the Townships Volume of the Plan.

Selwyn District Council (SDC) has, in the past several years, received a number of complaints regarding tree shading in rural areas. Historically, these have been dealt with by Council's Monitoring Officer with the most common method being to serve an abatement notice under the Resource Management Act (RMA) requesting that the infringing tree(s) be trimmed to a complying level or removed.

The use of abatement notices has proven to be relatively ineffectual where issued as often the trees in question have been deemed to most likely hold existing use rights (under s10 of the RMA) given that by the time they grow sufficiently to create a shading issue, they are usually much older than the life of the current Plan and its requirements. There are also uncertainties with determining the age of such trees in order to determine when they were first planted and what Plan was applicable when this occurred.

In addition to this, no resource consents have ever been applied for to plant trees or shelterbelts which may ultimately grow to shade a road or another property. However, it may be that since this rule has been in effect, few trees that have been planted within the life of the plan (noting that there were no such rules within the previous Transitional Plans) that have also since reached a height where they cause shading issues. Similarly, it may be that where trees have been planted which shade roads or other property, no complaints have been received and therefore they have not been brought to Council's attention to date. Regardless, the ongoing efficiency and effectiveness of this rule is has been brought in to question.

2.2 Issues with current Plan provisions

2.2.1 Enforcement of existing tree rules

The existing Plan rules require any tree, shelterbelt or plantation planted within the life of the current District Plan, to not shade any part of an adjoining property or the carriageway of any road between the hours of 1000 and 1400 on the shortest day of the year. This represents a worst case mid winter scenario where access to sunlight during the day could be restricted increasing shading potential. Shading of roads is a traffic safety issue related to ice formation whereas planting along property boundaries is an issue of amenity.

Retaining a tree that shades the road or private property where it does not comply with the Plan tree shading rule requires resource consent as restricted discretionary activity provided the tree does not already have existing use rights. However, as mentioned earlier, most of the trees and shelterbelts in the District, especially those subject to existing complaints are likely to predate this rule in the plan and therefore no resource consent has ever been sought to breach this rule.

In the event that trees which are planted within the life of the current plan and may eventually become shading issues, there are still ongoing difficulties in identifying the age of trees. In addition, the likelihood of resource consent applications to shade properties or roads being regularly received by Council in the future is still considered minimal as is the likelihood of a high number of approvals for such application and therefore the effectiveness of such rules remains limited.

2.2.2 Costs and time dealing with tree complaints

As with any monitoring and enforcement, there are costs and time implications involved in dealing with complaints.

The Council's Monitoring Officer deals with several complaints every year all of which require varying levels of time to follow up with each issue. There is no mechanism to charge for time spent on such complaints and given the inability to enforce trees to be trimmed and/or removed via the RMA, the process is ineffective in terms of time and cost recovery.

2.2.3 Other minor inconsistencies within the Rural Volume tree chapter

When reviewing the above issues related to tree shading, it has also become apparent that there are a small number of minor inconsistencies throughout this section of the Plan. These are all matters where through inconsistencies with rule numbering, some provisions now reference the wrong section of the plan. For example, Rule 2.1.4, where an activity fails to meet current Rule 2.1.1.4 which concerns the planting of trees near a waterbody, it incorrectly defaults to a restricted discretionary activity where the matters of discretion are limited to shading. Similarly, where an activity fails to meet current Rule 2.1.1.5 regarding the planting of trees which may shade a road or property in a different ownership, it incorrectly defaults to a restricted discretionary activity where the matters of discretion do not relate to shading. The numbering of these provisions is therefore proposed to be altered to correct these inconsistencies.

In addition to the above amendments, Section 2.1 (Shelterbelts and Amenity Plantings) of the Plan is not currently provided with a list of 'Cross References' to other relevant sections of the Plan. Cross referencing is provided for all other sections in this chapter of the Plan and therefore new reference provisions, which do not alter the actual function of the Plan rules in any way, have been introduced to improve links to other relevant Plan sections.

2.2.4 Other methods to deal with tree complaints

In addition to the current Plan provisions, there are other methods available to address tree shading complaints and it is through these other methods that such action is now typically channelled by Council given the historical ineffectiveness of the Plan provisions. These methods do not relate to existing use rights or require resource consent and therefore are considered to provide a more effective and efficient method for dealing with tree shading, along with other tree related matters not presently addressed by the Plan e.g. leaf fall, root damage. Each of the methods is discussed below:

- (a) Where trees impact upon Council controlled roads, Council's Assets Department are able to deal with these issues via the Local Government Act 1974 (Section 355) to enable any tree to be trimmed or removed where it may contribute toward a road safety hazard. The relevant extracts from the Local Government Act 1974 are contained within **Appendix B**.
- (b) Where trees impact upon State Highways, there are provisions within the Transit New Zealand Act (Sections 55-57) to enable any tree to be trimmed or removed where it may contribute toward a road safety hazard. Relevant extracts from the Transit New Zealand Act 1989 are contained within **Appendix C**.
- (c) With regard to trees shading, or other matters such as root damage and leaf fall (both of which are not covered by the District Plan rules), where the effects fall upon neighbouring property, the Property Law Act 2007 (Sections 333-338) provides an avenue to resolve these issue provided the problems cannot be resolved informally between parties. Relevant extracts from the Property Law Act 2007 Act are contained within **Appendix D**.

Improved reference to these methods is proposed to be inserted into the 'Methods' section below the relevant Plan policies.

3 Proposed Amendments to District Plan

The following changes to the Selwyn District Plan are proposed as a result of this Plan Change. The full text change version of the proposed amendments is contained within **Appendix A**.

AMENDMENT 1

Amend RURAL VOLUME – POLICY B2.1.13 Methods as follows:

Methods

Local Government Act, S.355

Transit New Zealand Act 1989, S.55-57

Property Law Act 2007, S.333-338

~~District Plan Rules~~

~~– Tree Planting~~

Advocacy

– Negotiation with landowners

AMENDMENT 2

Amend RURAL VOLUME – POLICY B3.4.16 Methods as follows:

Methods

Property Law Act 2007, S.333-338

District Plan Rules

– Recession planes

~~Tree planting~~

AMENDMENT 3

Delete RURAL VOLUME – PERMITTED ACTIVITIES — SHELTERBELTS & AMENITY PLANTING - RULE 2.1.1.5 as follows:

~~2.1.1.5 — No tree shades:~~

- ~~(a) — Any part of the carriage way of any road between 1000 and 1400 hours (inclusive) on the shortest day of any calendar year; and~~
- ~~(b) — Any property under different ownership between 100 and 1400 hours (inclusive) on the shortest day of any calendar year.~~

Delete RURAL VOLUME – RESTRICTED DISCRETIONARY ACTIVITIES — SHELTERBELTS & AMENITY PLANTING - RULE 2.1.4 and 2.1.5 as follows:

~~2.1.4 — Planting any tree in a position which does not comply with Rule 2.1.1.4 shall be a restricted discretionary activity.~~

~~2.1.5 — Under Rule 2.1.4 the Council shall restrict its discretion to consideration of the effects of the proposed planting as to shading.~~

AMENDMENT 4

Delete RURAL VOLUME – PERMITTED ACTIVITIES — PLANTATIONS - RULE 2.2.1.6 as follows:

~~2.2.1.6 — No tree shades:~~

- ~~(a) — Any part of the carriage way of any road between 1000 and 1400 hours (inclusive) on the shortest day of any calendar year; and~~
- ~~(b) — Any property under different ownership between 100 and 1400 hours (inclusive) on the shortest day of any calendar year.~~

Delete RURAL VOLUME – RESTRICTED DISCRETIONARY ACTIVITIES — PLANTATIONS - RULE 2.2.1.6 as follows:

~~2.2.8 — Any plantation which does not comply with Rule 2.2.1.6 shall be a restricted discretionary activity.~~

~~2.2.9 — Under Rule 2.2.8 the Council shall restrict its discretion to consideration of the effects of the proposed planning as to shading.~~

AMENDMENT 5

Minor corrections and consequential numbering amendments

Make consequential amendments and corrections to rule numbering under “Part C – 2 Rural Rules – Tree Planting and Removal of Protected Trees” as detailed within **Appendix A**.

AMENDMENT 6

Insert ‘Cross References’ for Section 2.1 Shelterbelts and Amenity Plantings

Insert Cross References under “Part C – 2 Rural Rules – Tree Planting and Removal of Protected Trees” as detailed within **Appendix A**.

4 Statutory Requirements

4.1 Section 32

Before a plan change is publicly notified, Section 32 of the Resource Management Act requires an evaluation that must examine:

- S32(1)(a) The extent to which each objectives of the proposal is the most appropriate way to achieve the purpose of the Act;
- S32(1)(b) whether the provisions in the proposal are the most appropriate way to achieve the objectives; and
- S32(1)(c) whether an appropriate level of details is provided to correspond to the scale and significance of the effects anticipated from the implementation of the proposal.

The evaluation and assessment must take into account:

- S32(2)(a) The benefits and costs of policies, rules, or other methods; and S32(2)(b) quantify these benefits and costs if practicable; and
- S32(2)(c) The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.
- S32(3)(a) the provisions and objectives of the amending proposal; and
- S32(3)(b) the objectives of the existing proposal.

4.2 District Plan Objectives and Policies

The proposed Plan Change does not seek to alter any objectives of the Plan and seeks to alter only the methods of two policies from the Rural Volume related to tree shading. No changes are proposed to the Township Volume as it does not contain any provisions related to tree shading.

The first Policy (Policy **B2.1.13**) seeks to avoid the planting of trees or hedges in positions or allow them to grow to heights where they will shade roads for prolonged periods during winter. This remains an important directional provision to help achieve the broader objective (Objective **B2.1.1**) of an integrated approach to land use and transport planning to ensure the safe and efficient operation of the District's roads, pathways, railway lines and airfields is not compromised by adverse effects from activities on surrounding land or by residential growth.

While the rule relating to trees shading the road will ultimately be removed, this policy is considered appropriate to retain within the Plan as it will still provide guidance that the shading of roads, where it may cause a safety issue, is not anticipated within the rural zones of the District. To this end, additional methods have been included to recognise the various avenues that are still available to address the issue of tree shading on roads.

The second Policy of relevance (Policy **B3.4.16**) seeks to ensure that buildings and trees do not excessively shade adjoining properties. This Policy provides direction to how the Plan will achieve the key Rural "Quality of the Environment" Objectives which aim to achieve a rural area that is a pleasant place to live and work in (Objective **B3.4.1**) and to provide for a variety of activities in the rural area, while maintaining rural character and avoiding reverse sensitivity effects (Objective **B3.4.2**).

Again, while the rule relating to trees shading other properties is proposed to be removed, this policy is considered appropriate to retain within the Plan as it will still provide direction that the shading of other properties by both trees and buildings, where it may generate adverse shading effects, is not anticipated.

Similar to the shading of roads, additional methods have been included to recognise the avenues that are still available to address the issue of tree shading on other properties.

The retention of these policies will also continue to provide assistance in circumstances where a proposal may require a plan change or a resource consent as a fully discretionary or non-complying activity as tree shading and other related matters can still be addressed under the guidance of both policies if necessary.

Overall, the relevant objectives and supporting policies have not been altered and still provide appropriate direction around the issue of shading generated by trees. The proposed Plan Change is considered to better achieve the policy framework of the Plan through the introduction of more effective and efficient methods to replace the current rule package which has proven ineffective in dealing with this issue.

Given the above, the proposed amendments are considered the most appropriate method to achieve the objectives of the Plan and purpose of the Act.

4.3 Costs and Benefits - Options

In accordance with section 32(1)(a)(i), there are four reasonable practical options for achieving the objectives that can be considered being:

1. Maintain the Status Quo

This option essentially relies on the existing Plans 'effects based' provisions to deal with the shading of trees on other properties (i.e. in different ownership) and roads.

2. Remove the rules related to trees (the proposed Plan Change)

This option would see the removal of rules related to tree shading while policies surrounding trees and shading will be retained but with additional methods added to recognise the options available to deal with these matters.

3. Insert a catch all rule to require resource consent for any new tree that can grow to a height in excess of 2 metres (or similar) or shelterbelt plantings

This option would see the introduction of a catch all activity based rule which would require the planting of all trees and shelterbelts to be subject to a resource consent process.

4. Amend rule to insert planting setback and recession plane requirements

Amend current rules to introduce a recession plane and setback requirement for new tree or shelterbelt plantings.

4.4 Cost and Benefits – Assessment

Table 1 below identifies the anticipated costs and benefits and efficiency and effectiveness of the above listed options.

Table 1 - Cost and Benefits Assessment			
Option	Description	Economic	Environmental, Social and Cultural
1	Maintain Status Quo	<p>+ve No amendments to the Plan required and consequently no substantial process cost to undertake a Plan Change.</p> <p>-ve There will be continued cost and time implications for monitoring and enforcement staff dealing with complaints on tree shading, the majority of which are not enforceable under the RMA.</p>	<p>-ve Does not to address the ineffectiveness of the current provisions.</p> <p>-ve Does not address the lack of enforceability of the rules.</p>
2	Proposed Plan Change – Remove shading rules and add new Methods to the existing Policies (preferred option)	<p>+ve Reduce monitoring and enforcement costs via the RMA which have proven to be ineffective to date.</p> <p>-ve Increased costs to undertake Plan Change process.</p>	<p>+ve Removal of ineffective rule package</p> <p>+ve Introduction of Policy Methods to provide greater certainty of the applicable legislation to address tree shading as well as any other civil issues related to trees.</p> <p>+ve Improved certainty and efficiency in the Plan.</p>
3	Amend Rule Requirements to make all new trees that can grow over a certain height e.g. 2 metres and shelterbelt plantings require resource consent.	<p>-ve A substantial and unreasonable increase in the number of resource consent applications would be required with significant increases in costs for both applicant's (application related fees) and Council's (processing time).</p> <p>-ve Costs involved in amending the Plan rules as well as the Objective and Policy framework to provide greater emphasis on shading effects given the present framework is quite liberal in anticipating the planting of trees and shelterbelts.</p> <p>-ve continued monitoring and enforcement required in the future to follow up on complaints for tree and shelterbelt plantings.</p>	<p>+ve Increased scrutiny to assist with preventing future shading from larger trees</p> <p>-ve Continued difficulty in determining when trees were originally planted and whether they hold existing use rights or not.</p> <p>-ve The costs of regulation may deter many people from planting trees and shelterbelts, both of which are presenting anticipated and generally encouraged for amenity reasons.</p> <p>-ve The rule would effectively insert a blanket approach to the District's rural areas and through the increased regulation may deter the planting of large trees and/or result in all trees being pruned at low levels adversely effecting amenity that can be generated by larger trees.</p>
4	Amend Rules to introduce recession plane and setback requirements for trees.	<p>+ve potential reduction in tree shading issues in the future resulting in reduced conflict and retrospective consent requirements.</p> <p>-ve monitoring and enforcement required in the future to follow up on complaints for new tree and shelterbelt plantings.</p> <p>-ve potential increase in costs due to a greater number of resource consents being required.</p>	<p>+ve Greater ability to undertake monitoring and enforcement of new trees planted close to road or other properties where the trees are juvenile and can be determined as being planted within the life of the current Plan.</p> <p>-ve Continued difficulty in determining when trees were originally planted and whether they hold existing use rights or not.</p> <p>-ve Ongoing uncertainties in determining the future height and effects of a tree and whether it may or may not breach recession plane or setback requirements upon maturity e.g. climatic and soil conditions can greatly affect the growth performance of a tree. Therefore, the rule is likely to be reactionary rather than proactive or enabling.</p> <p>-ve Inefficient use of land if shelterbelts have to be planted well within paddocks, or land is unable to be used around the margins of forestry blocks.</p>

With regard to economic growth and the impact on employment (s32(2)(a)(i)-(ii)) as a result of the proposed changes, it is considered that there will be minimal change. The proposed amendments are to remove a rule within the Plan that have proven to have little effect and for which there are a range of other legislative controls available to address the same issue that can be used by either Councils, landowners or Road Controlling Authorities as and when required.

4.5 Risks of acting vs not acting

When considering the risks of acting against the risk of not acting on this matter (s32(2)(c)), it is considered that there is sufficient information about the subject matter of the proposed change through both consent records, enforcement history and other legislative provisions that deal with the same issue. Therefore, it is considered that there is minimal risk from acting on this issue based on the information available.

Overall, the proposed Plan Change is considered to be a more efficient and effective approach than retaining the status quo or adopting any alternative options and will better achieve the objectives of the District Plan and Part II of the Act.

4.6 Scale and significance

The proposed changes are minimal and concern provisions of the Plan that have had little effect to date in controlling the issue of trees shading the road. Given the minimal nature of the proposed change, the Plan change is considered to contain a sufficient level of detail that corresponds to the environmental, economic, social and cultural effects associated with it.

5 Consultation

Consultation in accordance with the 1st Schedule of the RMA has been undertaken prior to public notification of the Plan Change. There was no feedback received as a result of this consultation.

It is also noted that any other interested parties are able to put forward their views through the statutory public notification process.

6 Section 74-75 of the RMA

6.1 Operative Regional Policy Statement

In accordance with sections 74 and 75 of the RMA, it is considered that the proposed Plan Change is necessary to ensure that it will give effect to the Regional Policy Statement.

The Regional Policy Statement (RPS) provides broad level direction for the Canterbury region. There is little within the RPS that relates specifically to issues regarding shading from trees and ultimately the proposed changes are not considered to result in a situation where the Plan does not continue to give effect to the RPS. Importantly, issues related to shading from trees will continue to be recognised within the District Plan and with greater reference to the most effective methods of dealing with issues in this regard.

6.2 Cross Boundary Issues

The Plan Change is not considered to create any cross boundary issues with adjoining territorial authorities.

6.3 Iwi Authority Matters

The Plan Change does not create any issues in respect of planning documents recognised and lodged by an iwi authority.

6.4 Other Planning Documents

The proposed changes will not result in inconsistencies with any National Policy Statements, Coastal Policy Statements, Water Conservations Orders or Regional Plans.

6.5 Summary

Overall, it is concluded that the proposed Plan Change is in accordance with sections 74-75 of the RMA.

7 Conclusion

Based on the above assessment, it is considered that the proposed Plan Change represents a more effective and efficient method of achieving the Plan's objectives and policies than the current Plan provisions and thereby better achieves Part II of the Act.

APPENDIX 1:

Proposed Text Changes to the Selwyn District Plan (Rural Volume)

Selwyn District Plan – Rural Volume - Part B2 – Physical Resources

Policy B2.1.13

Avoid planting trees or hedges in positions or allow them to grow to heights where they will shade roads for prolonged periods during winter.

Explanation and Reasons

Trees and hedges are often planted along the road boundaries of properties for shelter. Sometimes trees are planted up to property boundaries in plantation to maximise the size of plantations or to avoid having narrow strips of unkempt land along property boundaries. Trees or hedges planted close to the road boundary on the north side of the road can shade the carriageway for the whole day in the winter months when the sun is at low angles. There are many examples throughout the District of stretches of road which remain icy throughout the whole day because of trees and hedges shading the road. This adverse effect can be mitigated by planting trees or hedges a sufficient distance back from the road boundary or by keeping hedges and shelter belts trimmed to a height, so that they do not cast shadows over the road during the middle of the day.

Please note: Existing trees and hedges may be an “existing use” under section 10 of the Act (see Part A, Section 2.3)

Methods

Local Government Act, S.355

Transit New Zealand Act 1989, S.55-57

Property Law Act 2007, S.333-338

District Plan Rules

—Tree Planting

Advocacy

– Negotiation with landowners

Selwyn District Plan – Rural Volume - Part B3 – People’s Health, Safety and Values

Policy B3.4.16

Ensure buildings and trees do not excessively shade adjoining properties.

Explanation and Reasons

Access to sunlight is important to create pleasant living environments. Access to sunlight can be reduced if trees or buildings on adjoining sites shade a property. The most significant effect occurs with shading of houses and outdoor living areas. This is most likely to occur with houses on small allotments in the rural area.

Policy B3.4.16 is implemented by rules, which establish a recession plane for all buildings from property boundaries, and a maximum shading rule for trees as permitted activities. Trees shading roads is addressed in Section B2.1, Transport.

Methods

Property Law Act 2007, S.333-338

District Plan Rules

– Recession planes

– ~~Tree planting~~

2 RURAL RULES — TREE PLANTING AND REMOVAL OF PROTECTED TREES

Notes

1. Any earthworks associated with tree planting or harvesting must comply with Rule 1 – Earthworks.
2. Plantations on the Plains must comply with Rule 9.13 – Vehicle Movements.
3. Removal of indigenous vegetation must comply with Rule 9.21 – Clearance of Indigenous Vegetation and Indigenous Plant Species.
4. The burning of vegetation is managed through regional rules. Therefore, Environment Canterbury should be contacted.
5. All tree planting within the Porters Ski and Recreation Area is exempt from these rules.
6. PERMITTED ACTIVITIES do not require a resource consent. OTHER ACTIVITIES do require a resource consent.

2.1 SHELTERBELTS AND AMENITY PLANTING

Permitted Activities — Shelterbelts & Amenity Planting

- 2.1.1 The planting of any trees for amenity planting, shelterbelts shall be a permitted activity if all of the following conditions are met:
- 2.1.1.1 In the areas shown on the Planning Maps as the High Country, the following tree species are not planted:
- Lodgepole pine (*Pinus contorta*)
 - Scots pine (*Pinus sylvestris*)
 - Corsican pine (*Pinus nigra*)
 - Douglas fir (*Pseudotsuga menziessi*)
 - Mountain pine (*Pinus mugo/unaciata*)
- 2.1.1.2 In the area shown on the Planning Maps as the High Country, the tree(s) are not located within any area also shown on the Planning Maps as an Area of Outstanding Landscape or a Forestry Exclusion Area.
- 2.1.1.3 In the area shown on the Planning Maps as the High Country, any shelterbelt planted on land adjoining SH 73 or the Midland Railway is either:
- (a) A maximum of two rows in width and planted perpendicular to the road boundary; or
 - (b) Set back a minimum distance of 300m from the road boundary;
- 2.1.1.4 The tree(s) are planted at least:
- (a) 20m from the edge of any waterbody listed in Appendix 17; and

- (b) 10m from the edge of any other waterbody (excluding aquifers).

Note: For the purposes of Rule 2.1.1.4, the edge of any lake or wetland is measured from:

The edge of the space of water which the lake or wetland covers at its annual highest level without exceeding its margin; or

If the lake level is controlled by artificial means, the space of land which the waters of the lake or wetland cover at its maximum permitted operating level.

The edge of any other waterbody is measured from the edge of the bed of the river. The bed is defined in section 2 of the Act as- "the space of land which the waters of the river cover at its fullest flow, without overtopping its banks."

2.1.1.5 — No tree shades:

- ~~(a) Any part of the carriageway of any road between 1000 and 1400 hours (inclusive) on the shortest day of any calendar year; and~~
~~(b) Any property under different ownership between 1000 and 1400 hours (inclusive) on the shortest day of any calendar year;~~

2.1.1.65 No tree is planted so that on maturity it encroaches within the line of sight for any railway crossing or road intersection, as shown in Appendix 11;

2.1.1.76 Any tree is planted and maintained so that it does not encroach within the height restrictions for West Melton Airfield or Hororata Domain, as shown in Appendix 19;

2.1.1.87 In any area listed in Appendix 5 and shown on the Planning Map as a Silent File Area, any disturbance of soil or earth by the tree planting(s) is limited to disturbance of soil over areas and to depths where that soil has been previously disturbed by cultivation, planting (trees, pasture or crops), building or earthworks;

2.1.1.98 In the area listed in Appendix 5 and shown on the Planning Maps as Wāhi Taonga Management Area C39(a), any disturbance of soil or earth by the tree planting(s) is limited to the disturbance of soil over areas where that soil has been previously disturbed by tree plantings. Any disturbance within those areas shall be limited to a maximum depth of 20cm;

2.1.1.109 In any area listed in Appendix 5 and shown on the Planning Maps as a Wāhi Taonga Site or any Wāhi Taonga Management Area not listed in **2.1.1.98**, the tree planting(s) do not involve the disturbance, damage to, removal or destruction of any object, artefact or other symbol of pre-European settlement, occupation or use of that site;

2.1.1.110 In the area shown on the Planning Maps as the Port Hills Zone, the tree(s) are not located within the Summit Road Protection Area as defined in Appendix 24.

Restricted Discretionary Activities – Shelterbelts & Amenity Planting

2.1.2 Planting any tree species which does not comply with Rule 2.1.1.1 shall be a restricted discretionary activity.

2.1.3 Under Rule 2.1.2, the Council shall restrict its discretion to consideration of:

2.1.3.1 The potential for wilding spread from the species planted on that site;

2.1.3.2 The effectiveness of any proposed wilding management plan;

2.1.3.3 The design and siting of any amenity plantings, shelterbelts or visual screening in the High Country (outside the area of Outstanding Landscape) to:

(a) Reflect and complement the landform patterns and shapes of the landscape; and

(b) Maintain a landscape where plantations are carefully negotiated with existing land uses, so as to avoid a continuously forested landscape; and

(c) Maintain panoramic views of the Upper Waimakariri Basin from SH 73, where these views exist by ensuring plantations are setback from the road, Midland Railway Line and plantation blocks are spaced to maintain views between them.

2.1.3.4 Whether the area contains any “Significant Ecological sites” worthy of protection under the criteria listed in Appendix 12, and if so,

(a) Whether the plantation may affect the site; and

(b) How the site may be protected.

2.1.3.5 Any potential adverse effects of planting the area on any rainfed wetland or tarn and how those effects may be mitigated.

2.1.3.6 Approval of a fire management plan.

2.1.3.7 Any positive effects which may offset any adverse effects.

2.1.3.8 Any monitoring or review conditions.

Note: *In using its discretion under Rule 2.1.3., the Council will consider the recommendations in N.J. Ledgard & E.R. Langer (1999) “Wilding Prevention – Guidelines for Minimising the Risk of Unwanted Wilding Spread from New Plantings of Introduced Conifers”, where appropriate.*

~~2.1.4 Planting any tree in a position which does not comply with Rule 2.1.1.4 shall be a restricted discretionary activity.~~

~~2.1.5 Under Rule 2.1.4 the Council shall restrict its discretion to consideration of the effects of the proposed planting as to shading.~~

2.1.64 Any tree planting which does not comply with Rule 2.1.1.53 shall be a restricted discretionary activity.

2.1.75 Under Rule 2.1.64 the Council shall restrict its discretion to consideration of:

- 2.1.~~75~~.1 The effects of the proposed shelterbelt on restricting views of the Upper Waimakariri Basin from SH 73 or the Midland Railway including (but not limited to);
- (a) Whether expansive views either side of the shelterbelt would remain;
 - (b) Whether the shelterbelt will screen the view of any lake, Silent File area, Wāhi Taonga Site, Wāhi Taonga Management Area, Mahinga Kai Site, or any area of Outstanding Landscape.
- 2.1.~~75~~.2 The length of the shelterbelt;
- 2.1.~~75~~.3 The need to provide effective stock or crop shelter; and
- 2.1.~~75~~.4 Any positive effects which may offset any adverse effects.
- 2.1.~~86~~ Any activity which does not comply with Rule 2.1.1.~~87~~, 2.1.1.~~98~~ or 2.1.1.~~109~~ shall be a restricted discretionary activity.
- 2.1.~~97~~ Under Rule 2.1.~~86~~ the Council shall restrict its discretion to all of the following matters:
- 2.1.~~97~~.1 Any inappropriate disturbance or other potential adverse effects on any site of significance within a Silent File area, as advised by local rūnanga;
 - 2.1.~~97~~.2 In the area listed in Appendix 5 and shown on the Planning Maps as Wāhi Taonga Management Area C39(a)), any inappropriate disturbance or other potential adverse effects on any site of significance, object, remnant or artefact, as advised by local rūnanga and the New Zealand Historic Places Trust Pouhere Taonga;
 - 2.1.~~97~~.3 In any area listed in Appendix 5 and shown on the Planning Maps as a Wāhi Taonga Site or any Wāhi Taonga Management Area not listed in 2.1.~~97~~.2, any damage to, destruction or removal of, any object, remnant or artefact, as advised by local rūnanga;
 - 2.1.~~97~~.4 Other than in Wāhi Taonga Management Area C39(a), any potential costs to the landholder of not being able to undertake the proposed activity on that site;
 - 2.1.~~97~~.5 Any alternative options available to undertake the activity in another form or on another site and the costs and practicality of these options;
 - 2.1.~~97~~.6 Any positive effects which may offset any adverse effects; and
 - 2.1.~~97~~.7 Any monitoring or review conditions.

Discretionary Activities – Shelterbelts & Amenity Planting

- 2.1.~~108~~ Any shelterbelt or amenity planting that does not comply with Rule 2.1.1.2 shall be a discretionary activity if any one of the following standards and terms is met:
- 2.1.~~108~~.1 The shelterbelt or amenity planting is planted for landscape enhancement or beautification, using indigenous species which are found in that area;

- 2.1.108.2 The shelterbelt or amenity planting is planted for soil conservation purposes;
- 2.1.108.3 The shelterbelt or amenity planting is planted to manage the spread of wilding trees or exotic plant pests and the applicant has demonstrated that there is no practical alternative management option for that site;
- 2.1.108.4 The planting is a shelterbelt and is located within a Forestry Exclusion Area; or
- 2.1.108.5 The planting is amenity planting and is located within an area of Outstanding Landscape in the High Country.

2.1.11 Any activity which does not comply with Rule 2.1.1.34 shall be a discretionary activity.

Non-Complying Activities – Shelterbelts & Amenity Planting

2.1.12 Any activity which does not comply with Rule 2.1.1.65, 2.1.1.76, 2.1.1.1110 or 2.1.108 shall be a non-complying activity.

2.2 PLANTATIONS

Permitted Activities – Plantations

- 2.2.1 The planting or harvesting of any plantation shall be a permitted activity if all of the following conditions are met:
 - 2.2.1.1 The plantation is not located in the areas shown on the Planning Maps as the Port Hills, Malvern Hills, High Country or the Visual Amenity Landscape on the Port Hills, excluding vineyards and orchards located within the Visual Amenity Landscape;
 - 2.2.1.2 In any area listed in Appendix 5 and shown on the Planning Maps as a Silent File Area, any disturbance of soil or earth by the plantation is limited to the disturbance of soil over areas and to depths where that soil has been previously disturbed by cultivation, planting (trees, pasture or crops), building or earthworks;
 - 2.2.1.3 In the area listed in Appendix 5 and shown on the Planning Maps as Wāhi Taonga Management Area C39(a), any disturbance of soil or earth by the plantation is limited to the disturbance of soil over areas where that soil has been previously disturbed by tree planting. Any disturbance within those areas shall be limited to a maximum depth of 20cm;
 - 2.2.1.4 In any area listed in Appendix 5 and shown on the Planning Maps as a Wāhi Taonga Site or any Wāhi Taonga Management Area not listed in 2.2.1.3, the plantation does not involve the disturbance, damage to, removal or destruction of any object, artefact or other symbol of pre-European settlement, occupation or use of that site;
 - 2.2.1.5 Any tree is planted at least:
 - (a) 20m from the edge of any waterbody listed in Appendix 17; and
 - (b) 10m from the edge of any other waterbody (excluding aquifers)]

Provided that Rules 2.2.1.5 (a) and 2.2.1.5 (b) do not apply to any trees planted for the purpose of bank stabilisation or prevention of soil erosion.

~~2.2.1.6 — No tree shades:~~

- ~~(a) — Any part of the carriageway of any road between 1000 and 1400 hours (inclusive) on the shortest day of any calendar year; and~~
- ~~(b) — Any property under different ownership between 1000 and 1400 hours (inclusive) on the shortest day of any calendar year.~~

2.2.1.76 No tree of the plantation is planted so that on maturity it encroaches within the line of sight for any railway crossing or road intersection, as shown in Appendix 11; and

2.2.1.87 Any plantation is planted and maintained so that it does not encroach within the height restrictions for West Melton Airfield or Hororata Domain, as shown in Appendix 19.

Restricted Discretionary Activities — Plantations

2.2.2 The planting or harvesting of plantations in areas shown on the Planning Maps as the Port Hills (excluding the Summit Road Protection Areas), Malvern Hills, High Country or the Visual Amenity Landscape on the Port Hills shall be a restricted discretionary activity if all of the following standards and terms are met:

2.2.2.1 The plantation is not located within any area shown on the Planning Maps as an Area of Outstanding Landscape, excluding the Port Hills, or a Forestry Exclusion Area in the High Country; and

2.2.2.2 In the area shown on the Planning Maps as the High Country, trees planted do not include any of the following species:

- Lodgepole pine (*Pinus contorta*)
- Scots pine (*Pinus sylvestris*)
- Corsican pine (*Pinus nigra*)
- Douglas fir (*Pseudotsuga menziessi*)
- Mountain pine (*Pinus mugo/unaciata*)

2.2.3 Under Rule 2.2.2 the Council shall restrict its discretion to consideration of:

2.2.3.1 The design and siting of any plantation on the Port Hills to:

- (a) Maintain the uninterrupted skyline of the summit of the Port Hills as viewed from the Summit Road or any road on the Plains;
- (b) Avoid screening views of existing landforms and natural features, including Gibraltar Rock and Cooper's Knob from the Summit Road or any road on the Plains;
- (c) Avoid screening views from the Summit Road;
- (d) Reflect and complement the landform patterns and shapes of the landscape and the avoidance of artificial or unnatural lines;
- (e) Maintain diversity in the vegetation cover on the Port Hills, by encouraging plantations to be interspersed with other land uses, where practical;

- (f) Avoid, remedy or mitigate the potential for scarring of the landscape from earthworks and harvesting activities;
- (g) Avoid or mitigate any potential effects on indigenous vegetation and waterways;
- (h) Provide for the re-vegetation of any earthworks;
- (i) Avoid, remedy or mitigate the scale and extent of the proposed plantation where there are effects on amenity values, including any cumulative effects taking into consideration existing or consented plantations on an adjoining site;
- (j) To avoid, remedy or mitigate the visibility of any tracks or roads required for the management or harvesting of the plantation, having regard to existing contours.

2.2.3.2 The design and siting of any plantation on the Malvern Hills to:

- (a) Maintain the distinctiveness of the skyline and ridges of the Malvern Hills;
- (b) Avoid screening the rocky outcrops at Glenroy or the volcanic ridge from Mt Misery to Windwhistle, as viewed from any road; and
- (c) Reflect and complement the landform patterns and shapes of the landscape;

2.2.3.3 The design and siting of any plantation in the High Country (outside the area of Outstanding Landscape) to:

- (a) Reflect and complement the landform patterns and shapes of the landscape;
- (b) Maintain a landscape where plantations are carefully integrated with existing land uses, so as to avoid any semblance of continuous afforestation; and
- (c) Maintain panoramic views of the Upper Waimakariri Basin from SH 73, where these views exist, by ensuring plantations are setback from the road and plantation blocks are spaced to maintain views between them.

2.2.3.4 Whether the area contains any “Significant Ecological sites” worthy of protection under the criteria listed in Appendix 12; and if so,

- (a) Whether the plantation may affect the site; and
- (b) How the site may be protected;

2.2.3.5 Any potential adverse effects of planting the area on any rain fed wetland or tarn on the site and how those effects may be mitigated;

2.2.3.6 Any measures to mitigate potential soil erosion from earthworks associated with access tracks or harvesting;

2.2.3.7 Any effects of the proposed mode and route of transport, and any improvements required to the road network to allow access into and out of the site for planting or harvesting trees.

2.2.3.8 The timing and conditions for replanting or rehabilitating the site and surrounding area once the plantation is harvested, and any staging of the site rehabilitation for harvesting a large plantation;

- 2.2.3.9 Approval of a fire management plan;
- 2.2.3.10 Any positive effects which may offset any adverse effects; and
- 2.2.3.11 Any monitoring or review conditions.
- 2.2.4 Any plantation which does not comply with Rule 2.2.2.2 shall be a restricted discretionary activity.
- 2.2.5 Under Rule 2.2.4, the Council shall restrict its discretion to consideration of:
 - 2.2.5.1 All of the matters listed in 2.2.3.1 to 2.2.3.11;
 - 2.2.5.2 The potential for wilding spread from the particular species planted; and
 - 2.2.5.3 The effectiveness of any proposed wilding management plan.
- Note:** *Under Rule 2.2.4 the Council retains its discretion to identify affected parties or require notification of the resource consent application, pursuant to the Act. In using its discretion the Council shall consider the recommendations in N.J. Ledgard and E.R. Langer (1999) "Wilding Prevention – Guidelines for Minimising the Risk of Unwanted Wilding Spread from New Plantings of Introduced conifers", where appropriate.*
- 2.2.6 Any activity which does not comply with Rules 2.2.1.2, 2.2.1.3, or 2.2.1.4 shall be a restricted discretionary activity.
- 2.2.7 Under Rule 2.2.6, the Council shall restrict its discretion to the consideration of:
 - 2.2.7.1 Any inappropriate disturbance or other potential adverse effects on any site of significance within a Silent File area, as advised by local rūnanga;
 - 2.2.7.2 In the area listed in Appendix 5 and shown on the Planning Maps as Wāhi Taonga Management Area C39(a), any inappropriate disturbance or other potential adverse effects on any site of significance, object, remnant or artefact, as advised by local rūnanga and the New Zealand Historic Places Trust Pouhere Taonga;
 - 2.2.7.3 Any damage to, destruction or removal of, any object, remnant or artefact contained within a Wāhi Taonga Site or any Wāhi Taonga Management Area not listed in 2.2.7.2, as advised by local rūnanga;
 - 2.2.7.4 Other than in Wāhi Taonga Management Area C39(a), any potential costs to the landholder of not being able to undertake the proposed activity on that site;
 - 2.2.7.5 Any alternative options available to undertake the activity in another form or on another site and the costs and practicality of these options;
 - 2.2.7.6 Any positive effects which may offset any adverse effects; and
 - 2.2.7.7 Any monitoring or review conditions.
- ~~2.2.8 Any plantation which does not comply with Rule 2.2.1.6 shall be a restricted discretionary activity.~~

~~2.2.9 Under Rule 2.2.8 the Council shall restricts its discretion to consideration of effects of the proposed planting as to shading.~~

Discretionary Activities – Plantations

~~2.2.108~~ Any plantation which does not comply with Rule 2.2.2.1 shall be a discretionary activity if any one of the following standards and terms is met:

~~2.2.108.1~~ The plantation is planted for landscape enhancement or beautification, using indigenous species which are found in that area, and will not be harvested;

~~2.2.108.2~~ The plantation is planted for soil conservation purposes and will not be harvested; or

~~2.2.108.3~~ The plantation is planted to manage the spread of wilding trees or exotic plant pests and the applicant has demonstrated that there is no practical alternative management option for that site.

~~2.2.119~~ Any plantation which does not comply with Rule 2.2.1.5 shall be a discretionary activity.

Non-Complying Activities – Plantations

~~2.2.1210~~ Any plantation which does not comply with Rule 2.2.1.~~76~~ shall be a non-complying activity.

~~2.2.1311~~ Any plantation which does not comply with Rule 2.2.1.~~87~~ shall be a non-complying activity.

~~2.2.1412~~ Any plantation located within an area of Outstanding Landscape, excluding the Port Hills, or a Forestry Exclusion Area in the High Country which does not comply with Rule 2.2.~~108~~ shall be a non-complying activity.

~~2.2.1513~~ Any plantation located within the Summit Road Protection Areas defined in Appendix 24 shall be a Non-Complying Activity.

2.3 PROTECTED TREES

Permitted Activities —Protected Trees

2.3.1 In relation to trees listed in Appendix 4, the following activities shall be permitted activities:

2.3.1.1 Any examination, tissue sampling, and diagnostic work recommended by an approved Council arborist to determine the safety, health and general condition of the tree, and carried out by or under the supervision of that arborist.

2.3.1.2 Normal cultivation of the soil for recreational, horticultural or agricultural purposes or the growing of crops or ornamental vegetation within 10 metres of the base of the tree or within the crown periphery (drip-line), whichever is the greater.

2.3.1.3 Maintenance pruning of any listed tree is permitted where it meets the following:

- a) involves pruning branches in the bottom third of the tree only; and
- b) only branches 50mm in diameter or less may be pruned; and
- c) pruning is by the use of secateurs, loppers or handsaws (no chainsaws).

2.3.1.4 The use of the land immediately surrounding the listed tree is permitted, provided that the health of the tree is not adversely affected and that:

Above ground level

- a) there is no installation of any new overhead utility service within 10 metres of the base of the tree or within the crown periphery (drip-line), whichever is the greater.
- b) there is no construction, addition or replacement of any building within 10 metres from the base of the tree or within the crown periphery (drip-line), whichever is the greater.
- c) there is no new impervious surfacing, sealing, paving, soil compaction, or alteration of more than 75mm to the ground level (existing prior to works commencing) within 10m from the base of the tree or within the crown periphery (drip-line), whichever is the greater.
- d) there is no storage, application or deposition of any chemical or substance that could cause harm to the tree.

Below ground level

- e) there is no laying/installation of any underground utility service within a distance of 10 metres of the base of the tree or within the crown periphery (drip-line), whichever is the greater distance; except that underground drilling or thrusting operations are

permitted within this distance where the installation depth is not less than 1.2m and the holes to accommodate the drilling/thrusting machines are outside of this distance.

- 2.3.1.5 Normal maintenance works to clear silt deposits and maintain the effective operating function of swale drains or water detention or retention basins, within 10 metres of a listed protected tree or within the crown periphery (drip-line) whichever is the greater, provided the ongoing clearing work does not result in excavating below 75mm of the depth to which the excavations were originally formed or is not extended horizontally more than 75mm from their original circumference/location.
- 2.3.1.6 In emergency situations, where a protected listed tree or any part thereof, presents an **immediate** hazard to persons or property, the Council is to be advised immediately. Where an approved Council arborist is not available without delay, immediate action can be taken to eliminate or abate the hazard. Within 5 working days of any action being taken, the Council shall be notified in writing of the action taken and provided with proof of the urgency. This proof is to include photographs and, where applicable, a report from the arborist that undertook the action.

Controlled Activities – Protected Trees

- 2.3.2 In relation to trees listed in Appendix 4, the following activities shall be controlled activities:
 - 2.3.2.1 Removal, remedial work or pruning of a hazardous or dangerous tree provided that a hazard assessment of the tree has been done by an approved council arborist and the tree is deemed potential hazardous or dangerous.
 - 2.3.2.2 Pruning of any tree listed as a Category B tree in Appendix 4, by a Network utility operator where the tree or parts of the tree encroach within the regulatory line clearance distances defined in the Electricity (hazards from Trees) Regulations 2003 or are subject to the Telecommunications Act 2001; provided that the work is carried out by qualified/competent arborists to approved arboricultural industry standards.
- 2.3.3 Under Rule 2.3.2 the Council shall restrict its discretion to consideration of:
 - 2.3.3.1 The condition and future useful life expectancy of the tree including any potential hazard to persons or property.
 - 2.3.3.2 The effect of any pruning, damage or disturbance to the crown or root system of the tree on its appearance and health.
 - 2.3.3.3 Whether the tree is currently causing, or likely to cause, significant damage to buildings, services, property or heritage item/s, whether public or privately owned.

Restricted Discretionary Activities — Protected Trees

- 2.3.4 In relation to trees listed in Appendix 4, the following activities shall be restricted discretionary activities:
- 2.3.4.1 Any activity which does not comply with Rule 2.3.1.1., 2.3.1.2 or 2.3.1.3.
 - 2.3.4.2 Any activity which does not comply with Rule 2.3.1.4 in relation to any tree listed as a Category B tree in Appendix 4.
 - 2.3.4.3 Fixing of any structure or object to any part of a listed tree or any operation which could wound the bark or wood tissue of any part of the tree.
 - 2.3.4.4 Pruning of any tree listed as a Category A tree in Appendix 4, by a Network utility operator where the tree or parts of the tree encroach within the regulatory line clearance distances defined in the Electricity (Hazards from Trees) Regulations 2003 or are subject to the Telecommunications Act 2001; provided that the work is carried out by qualified/competent arborists to approved arboricultural industry standards.
 - 2.3.4.5 Destruction or removal of any tree listed as a Category B tree in Appendix 4.
- 2.3.5 Under Rule 2.3.4 the Council shall restrict its discretion to consideration of:
- 2.3.5.1 Any adverse effects of the proposed activity on the values of the listed tree.
 - 2.3.5.2 For removal of a tree: the condition of the tree, including whether it poses a danger to people or property, or whether its condition is such that it is unable to be retained.
 - 2.3.5.3 The costs to the applicant of not allowing the proposed activity.
 - 2.3.5.4 Whether the applicant has the ability to undertake a complying development without the work detrimentally affecting the tree.
 - 2.3.5.5 The effect of any pruning, damage or disturbance to the crown or root system of the tree on its appearance and health.
 - 2.3.5.6 The effect of any building or structure on the visibility of the tree from a road or public place.
 - 2.3.5.7 Whether the tree is currently causing, or likely to cause, significant damage to buildings, services, property or heritage item/s, whether public or privately owned.
 - 2.3.5.8 Whether the tree or trees seriously restrict the development of the site for its zoned purposes.
 - 2.3.5.9 Whether the tree or trees inhibits the growth of more desirable specimens nearby.

- 2.3.5.10 Whether the tree still retains the essential characteristics for which it was originally protected.
- 2.3.5.11 Whether a tree to be removed is capable of being successfully transplanted.
- 2.3.5.12 Any substitute or compensating tree planting proposed.
- 2.3.5.13 Whether the particular species of tree has been legally declared a noxious plant.

Non-Complying Activities – Protected Trees

- 2.3.6 In relation to trees listed in Appendix 4, the following activities shall be non-complying activities:
 - 2.3.6.1 The use of the land immediately surrounding any tree listed as a Category A tree in Appendix 4, that does not meet the provisions of rule 3.2.1.4 above.
 - 2.3.6.2 Destruction or removal of any tree listed as a Category A tree in Appendix 4.

Notes

1. Refer to the listing of protected trees in Appendix 4 to obtain the category of each tree.
2. Where a listed protected tree has been removed (with the approval of the Council) or is in a dangerous or diseased condition such that its continued protection cannot be justified, it shall be deleted from the list without further formality.
3. The description of the location of each protected tree in Appendix 4 is as at date of this part of the Plan becoming operative. Any subsequent change to a street address or legal description shall not affect the application of the specific rules to that protected tree. Street addresses and legal descriptions will, from time to time, be updated without further formality.

2.4 MAHINGA KAI

Permitted Activities – Mahinga Kai

- 2.4.1 In any area listed in Appendix 5 and shown on the Planning Maps as a Mahinga Kai Site, any damage to, or removal of, indigenous vegetation shall be a permitted activity, provided that it is limited to that undertaken by tāngata whenua for mahinga kai purposes.

Restricted Discretionary Activities – Mahinga Kai

- 2.4.2 Any activity which does not comply with Rule 2.4.1 shall be a restricted discretionary activity.
- 2.4.3 Under Rule 2.4.2, the Council shall restrict its discretion to consideration of:

- 2.4.3.1 Any adverse effects of the proposed activity on any Mahinga Kai Site, as advised by local runanga.

Cross-References

The table below cross-references the rules in this section with objectives and policies in the Plan. The cross-referencing is to assist plan users by indicating the objectives and policies which are likely to relate to each rule. There may be other objectives or policies in the Plan (which are not listed in the cross-reference table) which will apply in some cases. The cross-reference table does not limit the application of any objective and policy in the Plan to the rules with which it is cross-referenced; and it does not preclude the consent authority from considering any other relevant objective or policy in the Plan, when making a decision on a resource consent application. Any person making a resource consent application is advised to read all the objectives and policies in Part B of the Plan.

Rule Numbers	Topic	Part B, Section	Objectives	Policies
<u>2.1</u>	<u>Shelterbelts and Amenity Planting</u>	<u>1.1, 1.2, 2.1, 3.3, 3.4</u>	<u>1.1.1, 1.1.2, 1.1.3, 1.2.2, 1.2.3, 1.2.4, 1.3.2, 1.3.3, 1.4.1, 2.1.1, 2.1.5, 3.3.1, 3.4.1,</u>	<u>1.1.4, 1.2.2, 1.2.3, 1.2.5, 1.3.5, 1.3.6, 1.3.8, 1.4.1 to 1.4.4, 1.4.6, 1.4.13, 1.4.22, 1.4.26, 1.4.32, 2.1.13, 2.1.20, 2.1.23, 3.3.3, 3.3.4, and 3.4.16</u>
2.2	Plantations	1.1, 1.2, 1.4, 1.5, 2.1, 4.2	1.1.2, 1.2.1 and 1.2.2, 1.4.1, 4.2.1,	1.1.4, 1.2.2 and 1.2.3 1.4.1 to 1.4.3, 1.4.6, 1.4.10, 1.4.13, 1.4.15, 1.4.18, 1.4.19, 1.4.21, 1.4.22, 1.4.25 to 1.4.28, 1.4.30 to 1.4.32, 4.2.1
2.3	Protected Trees	3.3	3.3.3	3.3.11 to 3.3.14
2.4	Mahinga Kai	3.3	3.3.1	3.3.2, 3.3.3(b) and 3.3.5

Reasons for Rules

Rule 2 manages potential effects from amenity tree planting, shelterbelts, plantations and removal of protected trees. The District Plan has rules to manage these effects because they have effects which occur on other property or on other parts of the environment. They are not usually direct costs to the person planting the trees.

The rules allow amenity tree planting, shelterbelts and visual screening as permitted activities (no resource consent needed) in most parts of the Rural Zone, subject to conditions. The conditions relate to: ~~shading on roads and adjoining properties~~; ensuring that planting positions protect the natural character of the edge of waterbodies protecting Wāhi Tapu and Mahinga Kai Sites, and Wāhi Tapu Management and Silent File Areas; avoiding wilding tree spread, and protecting landscape values in the High Country. Council will waive the resource consent processing fees for applications for amenity planting or shelterbelts under rules 2.1.~~108~~ or 2.1.~~114~~. The waiver includes the deposit and all additional costs up until the release of the Council's decision.

The rules allow plantations as a permitted activity (no resource consent needed) on the Plains, subject to similar conditions as those for shelterbelts, amenity planting and visual screening. On hill and high country (including the Port Hills) plantations require a resource consent. The consent is non-notified and does not need the written approval of affected parties, provided the plantation complies with standards and terms, designed to avoid effects on other people's property such as ~~shading and~~ wilding spread. In those cases, there is no need for the resource consent to be notified because there are no effects on other people. The effects which are permissible on other parts of the environment (such as landscape values and waterbodies) are already specified in the Plan policies, which have been through a public process. The Council and the resource consent applicant work together to address the effects which are listed as matters of discretion in Rule 2.2.3. These matters are specific to the individual sites, so are managed through a resource consent process, rather than as conditions by which activities are permitted.

With respect to the Summit Road Protection Area of the Port Hills, the rules do not encourage any tree planting, for amenity, shelter-belt or plantation purposes. This Protection Area is recognised for its high scenic values and views which may be lost through the planting of trees.

Resource consent is also required for new plantations on Wāhi Tapu and Mahinga Kai sites, and in Wāhi Taonga Management Areas and Silent File areas. The local rūnanga will be considered an affected party to allow for their input on how the rūnanga may be affected. For the Wāhi Taonga Management Areas which make up the Rakaia River Moa Hunter Site (C39a and C39(b)) the New Zealand Historic Places Trust Pouhere Taonga will also be considered an affected party as the site is an archaeological site.

Where a plantation does not comply with the standards and terms for a restricted discretionary activity, it is either a discretionary activity or a non-complying activity. In these cases, the Council may notify the resource consent application or seek written approval from affected parties, because the plantation may affect other people's property or be contrary to the policies in the Plan.

The one area in the District where plantations are not encouraged is in the area of Outstanding Landscape in the High Country. This area is valued as a tussock landscape with limited pasture improvement. The Plan policies are to manage this area as a pastoral landscape. The rules do provide for plantations in this area as a discretionary activity if they comprise indigenous species planted for landscape enhancement; or are plantations planted for soil conservation or to manage the spread of wilding trees or other exotic plant pests.

Rule 2.3 manages activities that could affect trees which are listed in Appendix 4 as having significant values. The rule allows these trees to have limited pruning as a permitted activity (no resource consent needed) and some limited works to occur close to listed trees. Removing the tree or activities that could adversely impact the tree for any other reason requires a resource consent. In this instance, the Plan policies recognise that trees may need to be removed in some cases, for example where they pose a danger to people or property.

An explanation of the tāngata whenua sites and areas is given in the reasons for the Earthworks Rules.

APPENDIX 2:

Extract from Local Government Act 1974

Section 355 Council may require removal of overhanging trees, etc

- (1) The council may, by notice in writing under the hand of the chairman or the principal administrative officer, require the owner of any land abutting upon any road within the district to do any of the following acts:
 - (a) to remove, lower, or trim to the satisfaction of the council any tree or hedge overhanging or overshadowing the road in cases where, in the opinion of the council, the removal, lowering, or trimming is necessary in order to prevent injury to the road or obstruction to the traffic thereon or to any channel, ditch, or drain appertaining thereto.
 - (b) to cut down or grub up, as the council directs, and remove all obstructions to traffic or drainage arising from the growth of plants or the spreading of roots upon or under the road up to the middle line thereof along the whole frontage of the land occupied or owned by him.
 - (c) to remove, lower, or trim to the satisfaction of the council any tree or hedge, or to lower any fence or wall, if in the opinion of the council the tree, hedge, fence, or wall is likely, by reason of its obstructing the view, to cause danger to the traffic on that or any other road.
- (2) Within 10 days after service of the notice, the owner may apply to a District Court for an order setting aside the notice.
- (3) On the hearing of the application, the court, whose decision shall be final, shall determine whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be void.
- (4) In the case of a notice which is not set aside as aforesaid, if the owner fails to do any such act in compliance therewith within 1 month from the service thereof, or, where application as aforesaid has been heard, then within 1 month after the giving of the decision of the court, he commits an offence and is liable to a fine not exceeding \$5 for every day during which the failure has continued, and the council, by its officers or agents, may enter on the land and do that act and recover the cost from him.
- (5) The said cost shall be a charge upon the land.
- (6) In any case where the council might give any such notice as aforesaid in respect of any land, any resident of the district may, by notice in writing, request the council to do so.
- (7) If for the space of 28 days after the receipt of the last-mentioned notice the council fails to comply therewith, the resident making the request may apply to a District Court for an order requiring the council to comply with that notice.
- (8) On the hearing of the application, the court shall determine whether and to what extent the notice shall be complied with by the council, and the decision of the court shall be final.
- (9) The council may remove, lower, cut down, grub up, or trim, as the case may be, any fence, wall, tree, hedge, or plant to which subsection (1) applies, after giving oral notice to the occupier, or, where there is no occupier, to the owner, of the land, if life, property, or any road is in imminent danger. The cost of the work shall be a charge against the land as if notice had been given under subsection (1) and had not been set aside by a District Court.
- (10) For the purposes of this section the term cut down means cutting down and keeping cut down or removing or controlling by chemical means the stem and roots of any plants so as to prevent their throwing out any leaf, offshoot, or flower.

APPENDIX 3:

Extract from Transit New Zealand Act 1989

55 Removal of trees, hedges, etc, that obscure visibility or interfere with public work

(1) In this section and in sections 56 and 57 of this Act, unless the context otherwise requires,—

Cut down, in relation to any tree, hedge, or shrub, includes the total removal of the tree, hedge, or shrub

Responsible authority, in relation to a public work, means—

(a) Any Minister of the Crown who is responsible for the work, where the work is a Government work:

(b) The local authority which has financial responsibility for the work, where the work is a local work,—
and, in relation to a road, means the authority having control of the road

Road includes a motorway, access way, and service lane.

(2) The responsible authority may require the owner or occupier of any land adjoining a road or public work to do any of the following things:

(a) To cut down, lower, or trim any tree, hedge, or shrub that is overhanging or overshadowing a road to such an extent as to damage the road, or to endanger or obstruct the lawful use of the road, or to be detrimental to the maintenance of the road and any associated drainage system:

(b) To cut down, lower, or trim any tree, hedge, or shrub, or remove any debris, if parts of it may be blown on to any road or public work or if it may otherwise interfere with the lawful use of the road or any public work:

(c) To cut down, lower, or trim any tree, hedge, or shrub on any land that is in such a position that it interferes with or is damaging, or is likely to interfere with or damage, any road or public work or the construction, operation, or maintenance of any road or public work:

(d) To cut down or grub up, and remove any tree, hedge, or shrub that is obstructing a road or its drainage system owing to the growth of any vegetation or the spreading of roots upon or under the road up to its middle line:

(e) To cut down, lower, or trim any tree, hedge, or shrub or to lower or remove any wall, fence, or other structure, that in the opinion of the responsible authority wholly or partially obscures visibility at any bend of a road, or at any road or railway crossing, or at any road intersection, or that causes any danger to the traffic on any road:

(f) To remove any structure that encroaches either wholly or partially on to a road or on to any land used for a public work, unless the encroachment has been authorised under section 51 of this Act and notice of termination has not been issued.

(3) Within 10 working days after service of a notice under subsection (2) of this section, the owner or occupier may apply to the District Court nearest to the land for an order setting aside the notice.

(4) A copy of any such application shall be served on the responsible authority either before or immediately after it is lodged with the Court.

- (5) The Registrar of the Court shall give notice of the time and place fixed for the hearing of the application to the applicant and the responsible authority, and they shall be entitled to be present and to be heard, either personally or by their counsel or by an officer of the responsible authority.
- (6) On hearing the application, the Court, whose decision shall be final, shall determine whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be void.
- (7) Every person on whom a notice has been served under this section commits an offence against this Act if the person fails to comply with the requirement contained in the notice within 1 month after—
 - (a) The expiry of the time in which application may be made to a Court, if the person has not exercised that right; or
 - (b) The date of the Court's order, if an application to set aside the notice has been made and it has not been set aside; or
 - (c) The date on which any application to the Court has been withdrawn by the applicant— whichever is the later, and shall be liable on summary conviction to a fine not exceeding \$500; and the responsible authority, by its employees or agents, may enter on the land in respect of which the requirement was made, carry out the required work, and recover the cost from the owner.
- (8) All costs and expenses incurred by a responsible authority in carrying out any work under subsection (7) of this section may be recovered from the person who failed to comply with the requirement as a debt due to the responsible authority.
- (9) The power of entry conferred by subsection (7) of this section may be exercised in addition to or instead of the laying of an information for an offence under that subsection.

56 Service of notice

- (1) If, under the provisions of section 55 of this Act, a requirement is made by a responsible authority, the requirement shall be by notice in writing signed by any person appointed either generally or specially by the responsible authority for the purpose of giving such notices and shall be served in accordance with section 4 of the Public Works Act 1981.
- (2) If the notice is served by being published in a newspaper, the responsible authority shall also affix a copy of the notice upon a conspicuous part of the property in respect of which the notice is issued, or on some public road adjacent to it.

57 Emergency work on trees, etc

- (1) Notwithstanding anything in section 55 of this Act, if there is imminent danger to life or property, or a likelihood of serious interference with any road or public work, arising from any tree, hedge, plant, or debris, the responsible authority may, on giving such oral notice to the occupier or (if there is no occupier) the owner of the land on which the tree, hedge, plant, or debris is situated as is practicable in the circumstances, enter on the land and do such work as is necessary and sufficient to remove the danger or serious interference for such period as will be sufficient to enable the responsible authority to take action under section 55 of this Act in respect of any further work that may be necessary.
- (2) If any responsible authority exceeds the powers conferred by this section or causes any unnecessary damage to be done, the work shall be deemed not to have been authorised by this section.
- (3) If, under subsection (1) of this section, entry is made on any land without notice, advice that entry has been so made shall be given to the owner or occupier of the land as soon thereafter as is practicable, and if the owner or occupier cannot be found, the notice shall be displayed in a prominent place on the land.
- (4) All costs and expenses incurred by a responsible authority in lawfully carrying out any work under this section may be recovered as a debt due to the responsible authority from the person who would have been liable to pay if the work had been done under section 55 of this Act.

APPENDIX 4:

Extract from Property Law Act 2007

Subpart 4—Trees and unauthorised improvements on neighbouring land

332 Application of this subpart

This subpart applies to—

- (a) any structure that was erected on any land except a structure that—
 - (i) was erected with a building permit or building consent issued by the relevant territorial authority; or
 - (ii) was erected by the Crown, for which a building permit or building consent was not necessary, but would have been necessary had it been erected by a person other than the Crown; and
- (b) any tree, shrub, or plant (**tree**) growing or standing on any land

333 Court may order removal or trimming of trees or removal or alteration of structures

- (1) A court may, on an application under section 334, order an owner or occupier of land on which a structure is erected or a tree is growing or standing—
 - (a) to remove, repair, or alter the structure; or
 - (b) to remove or trim the tree.
- (2) An order may be made under subsection (1) whether or not the risk, obstruction, or interference that the structure or tree is causing—
 - (a) constitutes a legal nuisance; and
 - (b) could be the subject of a proceeding otherwise than under this section.
- (3) Subsection (4) applies if—
 - (a) the applicant's land may be used for residential purposes under rules in the relevant proposed or operative district plan; and
 - (b) the application is made in relation to the use or enjoyment of the land for those purposes; but
 - (c) no building intended for residential purposes has been erected on the land.
- (4) The court may not make an order under subsection (1) unless satisfied that the building will be erected on the land within a reasonable time and, if the court makes the order,—
 - (a) the order does not take effect unless and until the building is erected; and
 - (b) if the building is not erected within a reasonable time, the order may be vacated on the application of any interested person.

334 Owner or occupier of land may apply for order under section 333

- (1) An owner or occupier of any land may apply for an order under section 333.
- (2) If an order is sought against the occupier of any land, the owner of the land must be joined as defendant.

335 Matters court may consider in determining application for order under section 333

- (1) In determining an application under section 334, the court may make any order under section 333 that it thinks fit if it is satisfied that—
- (a) the order is fair and reasonable; and
 - (b) the order is necessary to remove, prevent, or prevent the recurrence of—
 - (i) an actual or potential risk to the applicant's life or health or property, or the life or health or property of any other person lawfully on the applicant's land; or
 - (ii) an undue obstruction of a view that would otherwise be enjoyed from the applicant's land, if that land may be used for residential purposes under rules in a relevant proposed or operative district plan, or from any building erected on that land and used for residential purposes; or
 - (iii) an undue interference with the use of the applicant's land for the purpose of growing any trees or crops; or
 - (iv) an undue interference with the use or enjoyment of the applicant's land by reason of the fall of leaves, flowers, fruit, or branches, or shade or interference with access to light; or
 - (v) an undue interference with any drain or gutter on the applicant's land, by reason of its obstruction by fallen leaves, flowers, fruit, or branches, or by the root system of a tree; or
 - (vi) any other undue interference with the reasonable use or enjoyment of the applicant's land for any purpose for which it may be used under rules in the relevant proposed or operative district plan; and
 - (c) a refusal to make the order would cause hardship to the applicant or to any other person lawfully on the applicant's land that is greater than the hardship that would be caused to the defendant or any other person by the making of the order.
- (2) In determining whether to make an order under section 333, the court must—
- (a) have regard to all the relevant circumstances (including Māori cultural values and, if required, the matters specified in section 336); and
 - (b) if applicable, take into account the fact that the risk, obstruction, or interference complained of was already in existence when the applicant became the owner or occupier of the land.
- (3) Despite subsection (2)(b), an order may be made under section 333 if, in all the circumstances, the court thinks fit.

336 Further considerations relating to trees

- (1) A court determining an application under section 334 for an order for the removal or trimming of a tree under section 333 must have regard to the following matters:
- (a) the interests of the public in the maintenance of an aesthetically pleasing environment;
 - (b) the desirability of protecting public reserves containing trees;
 - (c) the value of the tree as a public amenity;
 - (d) any historical, cultural, or scientific significance of the tree;
 - (e) any likely effect of the removal or trimming of the tree on ground stability, the water table, or run-off.
- (2) Except for a purpose referred to in section 335(1)(b)(i), the court may not make an order under section 333 relating to any tree that is the subject of a requirement lawfully made by a heritage protection authority under the provisions of Part 8 of the Resource Management Act 1991.

337 Court may impose conditions in making order under section 333

- (1) In making an order under section 333, the court may impose any conditions it thinks fit, including conditions for either or both of the following:
- (a) requiring the defendant to make good, or pay compensation to the applicant for, any damage caused to the land of the applicant or any property on that land, in the course of removing or trimming any tree ordered to be removed or trimmed, or the doing of any other work required to be done to eliminate or reduce the risk, obstruction, or interference complained of;

- (b) requiring the applicant or the defendant, or both of them, to give security for any expenses or damage.
- (2) The reasonable cost of any work necessary to give effect to an order made under section 333 must be met by the applicant, unless the court—
- (a) is satisfied, having regard to the conduct of the defendant, that it is just and equitable to require the defendant to pay the whole or any specified share of the cost of the work; and
 - (b) gives a direction as a condition of the order accordingly.

338 Completion of work required by order under section 333

- (1) The work necessary to carry out an order made under section 333 must be completed within—
- (a) 20 working days after the date of the making of the order; or
 - (b) a later time specified in the order or subsequently allowed by the court for the completion of the work.
- (2) However, the order may specify that a tree must be kept trimmed, or that a structure to which this subpart applies must be kept in good repair, or that any other work required to be done to eliminate or reduce the risk, obstruction, or interference complained of must be done—
- (a) as often as is necessary; or
 - (b) at intervals specified in the order.
- (3) Despite subsection (2), a person who is subject to an order of the kind referred to in that subsection may apply to the court for the order to be varied if there has been a change in the circumstances that, had the change occurred before the making of that order, could reasonably be expected to have resulted in the order being different from the one that was made.
- (4) The court may, on an application made under subsection (3), vary the order to reflect the change in circumstances that has occurred since the order was made.
- (5) If the order is not duly complied with within the time specified in this section or in the order, or subsequently allowed by the court, the applicant, with the agreement of the defendant or with the leave of the court, may, in person, or through the applicant's employees, agents, or contractors, enter onto the defendant's land and carry out any work necessary to give effect to the order.
- (6) If work is done by or through the applicant under subsection (5), then, unless the parties otherwise agree or the court otherwise orders, the applicant is entitled to recover from the defendant the whole of the reasonable cost of the work necessary to give effect to the order.
- (7) In granting leave to an applicant under subsection (5), the court may impose any conditions it thinks fit in relation to—
- (a) the time by which, and the manner in which, any work necessary to give effect to the order must be carried out;
 - (b) security or indemnity against any expenses or damage;
 - (c) the avoidance or making good of any injury or damage;
 - (d) the disposal of all or part of any tree or structure;
 - (e) any other relevant matters.