



**AGENDA FOR THE MEETING OF  
DISTRICT PLAN COMMITTEE  
TO BE HELD AT THE  
SELWYN DISTRICT COUNCIL OFFICES,  
COUNCIL CHAMBERS  
ON WEDNESDAY 28 JUNE 2017  
COMMENCING AT 10.00AM**

## **Committee Members**

### Independent Chair

Tim Harris (Environmental Services Manager)

### Selwyn District Council

Mayor Sam Broughton

Councillor Mark Alexander

Councillor Jeff Bland

Councillor Debra Hasson

Councillor Murray Lemon

Councillor Malcolm Lyall

Councillor Pat McEvedy

Councillor Grant Miller

Councillor John Morten

Councillor Bob Mugford

Councillor Nicole Reid

Councillor Craig Watson

David Ward (Chief Executive)

### Te Taumutu Rūnanga

Hirini Matunga

### Environment Canterbury

Councillor Peter Skelton

### Project Sponsor

Jesse Burgess

Phone 347-2773

### Project Lead

Justine Ashley

Phone 027 285 9458

## **Agenda Items**

Item	Type of Briefing	Presenter(s)
Standing Items		
1. Apologies	Oral	
2. Declaration of Interest	Oral	
3. Deputations by Appointment	Oral	
4. Confirmation of Minutes	Written	
5. Outstanding Issues Register	Written	
Specific Reports		
6. Strategic Communications and Engagement Strategy – workshop facilitated by Maurice Hoban of GHD	Powerpoint / workshop	Maurice Hoban (GHD)
7. Tree Shading Rules in the Rural Zone	Written / Powerpoint	Emma Larsen
8. New Plan Making Options under RMA	Powerpoint	Justine Ashley
9. Forward Meeting Agenda	Written	

## **Standing Items**

### **1. APOLOGIES**

### **2. DECLARATION OF INTEREST**

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

### **3. DEPUTATIONS BY APPOINTMENT**

### **4. CONFIRMATION OF MINUTES**

Minutes from the meeting of the District Plan Committee on 24 May 2017.



**District Plan Committee meeting  
held on Wednesday 24 May 2017 at 9.00am  
at Selwyn District Council Offices,  
2 Norman Kirk Drive, Rolleston**

**Present:** The Mayor, Councillors M Alexander, J Bland, D Hasson, M Lemon, M Lyall, J Morten, B Mugford, N Reid, G Miller, C Watson and Mr D Ward (CEO SDC)

**In attendance:** Chairperson (Environmental Services Manager - T Harris), M England (Asset Manager Water Services), J Burgess (Planning Manager), E Larsen (Strategy and Policy Planner), V Klimmer (Intern Strategy and Policy), C Nichol (Strategy and Policy Planner), J Lewes (Strategy and Policy Planner), E Hodgkin (Project Manager, District Plan), C Friedel (Strategy and Policy Planner), J Ashley (District Plan Project Lead), B Rhodes (Team Leader - Strategy and Policy), M Washington (Asset Manager), G Wolfer (Urban Designer/Planner), E Sim (Communications Advisor – Engagement) and Ms Hunt (note taker).

**Standing Items:**

**1. Apologies**

Apologies had been received from Messrs P Skelton, H Matunga and Councillor McEvedy for their absence and Councillor Hasson for lateness.

**2. Declaration of Interest**

Nil.

**3. Deputations by Appointment**

Nil.

#### 4. Confirmation of Minutes

**Moved – Councillor Watson / Seconded – Councillor Miller**

*‘That the Committee accepts the minutes of the 22 March 2017 as being true and correct’.*

**CARRIED**

#### 5. Outstanding Issues Register

Councillor Alexander questioned whether the NPS UDC should be noted on the Outstanding Issues Register? The Chair commented that he understood that outstanding issue risk register should be something that would require some action, whereas the NPS UDC this something to be aware of.

District Plan Project Lead responded that there is a risk register which is quite detailed, and which the NPS UDC is noted. The risk register is to be condensed and brought to the Committee.

#### 6 Rezoning options for new ‘greenfield’ residential areas in the Malvern and Ellesmere Wards

The Team Leader Strategy and Policy spoke to his report/presentation.

Requested direction from the Committee on whether Council should proactively rezone greenfield sites in the Ellesmere and Malvern Wards or leave consideration of rezoning to the DPR submission phase. Noted this is in relation to expansion of towns, not intensification of existing zones.

- Option 1 being incorporation of rezoning proposal as part of the notified District Plan.
- Option 2 being request for rezoning proposal through a submission on notified District Plan.

*Councillor Hasson in at 9.07am.*

The Team Leader Strategy and Policy noted that Area Plans had identified constraints to development and had capacity of existing zoned land for development reviewed. The Area Plans looked at zoned land and compared against growth projections to see if there was any shortfall, and every town was considered to have sufficient capacity out to 2031. The capacity analysis was revisited with regard to the updated projections for four towns have been identified as having short fall being Rakaia Huts, Lake Coleridge, Castle Hill and Dunsandel.

*Councillor Lyall in at 9.09am.*

Area Plans had identified preferred areas for growth. The key question is how any rezoning of these areas should occur through District Plan Review.

The Team Leader Policy and Strategy advised that a scope of works has gone out to economists to develop a new growth model, which will include more detailed analysis of growth projections incorporating changing demographics and an analysis of whether towns are providing appropriately for their communities.

The Team Leader Policy and Strategy spoke to Section 32 requirements of the RMA and the need to look at benefits and costs of effects, and assessing risk of acting or not acting. Costs of zoning has been approximated at \$100,000-\$120,000 per site but noted that efficiencies can be built in to that where technical assessments extend across a number of sites. Following a request for clarification from Councillor Miller, it was noted the cost of \$100,000 to \$120,000 is per land parcel.

Option 1 (active zoning through the Proposed District Plan PDP) would mean that Council would have to absorb those costs, but in Option 2 (not actively rezoning land but consider rezoning after hearing submissions to rezone land that are lodged in respect of the PDP) landowners/developers would have to absorb the costs.

Councillor Hasson questioned how we deal with land that gets rezoned, but rather than being developed is land banked? The Team Leader Strategy and Policy acknowledged the difficulties that land banking creates and suggested that the Council could potentially assist by working with landowners to address constraints and/or prepare ODPs.

Noted a key question for Darfield and Kirwee is whether new zoning should occur ahead of a conversation with these communities around whether those towns should be reticulated. With Option 1 the cost of infrastructure falls on Council, which means this would need to be planned and financed by Council, whereas with Option 2 landholders/submitters address servicing requirements through submission process with the costs falling on to submitter/developer.

Councillor Miller questioned what the risk factor is of a Private Plan Change (or a submission prepared under option 2) being turned down? The Team Leader Strategy and Policy responded that the landowner/developer would have to consider the costs up front which could be a significant barrier to rezoning, however in the past there have not been many that have applied for a Private Plan Change and have been declined. Any submission that comes in, then needs to be assessed against s32. The Chair commented that majority of decision makers through the submission process will be commissioners not councillors. The District Plan Review Project Lead responded that a S32 evaluation will show whether the proposed development stacks up.

Significant difference from Option 1 and Option 2 are the costs and who is paying for them. Risk is either taken by Council or landowner/developer.

The Team Leader Strategy and Policy requested direction from Council as to whether Option 1 or Option 2 was preferred. Noted the potential budget and timeframe impacts with Option 1.

The Chair commented on the report and attached legal opinion on the proposed options.

Councillor Alexander noted his support for Option 2, as the responsibility lies with developers rather than Council. However he felt Option 2 could be problematic with the community being locked out from being involved in the further submission process. If Option 2 was the preferred option, then he suggested having the likes of a 'friend of submitter service' aimed at township committees to help them understand the District Plan Review and to assist with writing submissions, so they can further submit on proposed plan changes. The Chair responded that this could certainly be looked at however he questioned whether this service could only be offered to one section of the community. The District Plan Review Project Lead agreed that this idea had merit. Noted that it is up to individuals to look through submissions as to what is relevant to them, it is not notified to effected parties like a Private Plan Change.

Councillor Hasson commented on need to explain location of legal descriptions referred to in any submission seeking rezoning as these mean nothing to the general public. Prefers Option 2, but questioned Council submission process having predetermined basis. The District Plan Review Project Lead responded that in terms of the location of any rezoning requests, the sites can be identified through the EPlan which will be online. In relation to question of predetermination, there is the need for evidence to be provided to the Hearings Panel to satisfy the requirements of s32. As such, the merits of all submissions and supporting evidence will be considered objectively.

The Mayor commented that the 'rezoning' issue is more about leadership, with the community expecting Council to make decisions. It is about community expectations that Council will take the leadership in managing township growth and it should not be left to developers/landowners as to what they think a town should be. The Mayor commented about zoned land not being available for development due to a lack of interest from landowners. As such there is a need for Council leadership in our Ellesmere and Malvern towns. In saying this, he acknowledged that costs of rezoning should be shared with the landowner. The Mayor's preference is for Option 1.

Councillor Lyall noted his preference is for Option 2 due to costs, but could understand the Mayor's comments. Councillor Lyall responded to comments by Councillor Alexander in relation to support for township committees however he noted that they do not necessarily speak with one voice.

Councillor Morten commented that he thought the Mayor had made good points, however felt it that combination of both Option 1 and Option 2 was his preferred option. The Area Plans Working Party has the opportunity to feed into this process. Councillor Morten questioned if those submitters in the Area



Plan are going to have to resubmit? The Team Leader Strategy and Policy responded that the working party would have discussion around zoned land not being up taken and the provision of new greenfield areas. If Council was not leading, such as with Option 1, then landowners seeking a rezoning would need to submit on the Proposed District Plan. The Area Plans do not necessarily lead to land being rezoned, and that was made clear to submitters. If Option 1 was the preferred option, then staff would need clear direction from Council as to what areas they wanted to investigate for rezoning.

The Chair commented that at this time the growth model has not been done for these areas, so this discussion may be premature. Suggested that there could be middle ground. The Growth Model work is due September, secondly we have appointed working parties for Area Plans they will also have a role in working alongside the community as to what they want. The Growth Model may give better direction for the way forward.

Councillor Reid stated she could see benefits to both options. With zoning and costs, she queried whether there is a looser zoning approach that we can put into District Plan that does not have to fit in to current zoning patterns. The Team Leader Strategy and Policy responded that this could be addressed through either deferred or floating zoning approaches. However these options would require further investigation.

Councillor Miller requested some comments from the Asset Manager around the issue of infrastructure. The Asset Manager responded this is significant political decision about risk and whether it is aspirational or real. There is the potential to cover both with the real need being progressed through Option 1 and leaving the rest for the community. Spoke to Council not wanting to be too far ahead of population growth and community expectations. Councillor Miller spoke to his concern around Option 2 as this tends to reward larger scale developers, not the 10-15 lot developer which tends to be infill. Commented on development in Darfield, as post CPW growth could be reasonable. .

Councillor Alexander commented that growth that Rolleston has experienced is not envisaged anywhere else, so comfortable with Option 2 as risk for unrestrained growth is much less. Liked Councillor Miller's comments, so suggested a hybrid model of the two options. Councillor Morten responded that in relation to his comments around the development of Rolleston, he was making a point and was not expecting that type of growth elsewhere. There will be small little pockets of growth but need some control over where that happens and would like to see infill.

Councillor Lyall commented that a hybrid model of both options makes sense. Commented that Rolleston was developer led. We need to enable growth and lead with infrastructure. Need to have better handle on the NPS discussion and growth model as to what options we go with.

Councillor Lemmon commented on land that is zoned within Leeston, but not being developed. How can we progress this? Does either of these two options gives us an ability to get zoned land developed? Might be that a hybrid option

is the best option. The Chair responded that there is no clear mechanism to forcing development, however working parties can assist facilitating development.

Discussion followed on zoned land that is not being developed, or no intention of developing currently and blocking other land to be developed which constrains growth. The Chair commented that there appeared to be favour for a Hybrid so staff will give some consideration to that.

In response to a comment by Councillor Watson the Team Leader Strategy and Policy advised that the Project Team would be looking at intensification and infill through the District Plan Review. In terms of a lack of development of zoned land, he noted that Council can only rezone but can look to facilitate in some other way. Spoke to Area Plans providing leadership and development.

Councillor Hasson spoke to zoning impact and rural residential and how these will be dealt within Area Plans, ODP's? The Team Leader Strategy and Policy responded that Malvern and Ellesmere is Living 2, which is similar to rural residential and this will, be considered through the s32 process and dealt with on a case by case basis through submissions.

Councillor Mugford commented that Council really needs a third option. Commented on Darfield having little pockets of land everywhere, which will be costly to develop so will not happen.

The Chair noted that the District Plan Review Project Team will investigate constraints of what is zoned, what is not zoned, so that a discussion can be held on a potential strategy of facilitation of undeveloped zoned land, and where rezoning land might assist towns to develop.

Councillor Lemon noted that the costs of infrastructure to service development also needs to be factored in to these investigations.

Overall, it was decided that the discussion be deferred until the results of new growth model were available, which is anticipated to be September 2017.

## **7. District Plan Review Work Programme Update**

Ms Ashley and Mrs Hodgkin spoke to the presentation.

Significant progress in relation to supplier panel. Released 27 scopes of work, with proposals for all but 3 scopes being received. Allocated about \$510,000 which will be spent in 4-6 months. Next scopes of work will be released around June/July. A lot of work will be coming back in over the next 4-6 months.

New file storage/project management software, BARI, specifically designed for DPR project. IT looking to give external access to consultants.

The District Plan Review Project Lead spoke to the Risk Register and looking at how to present to committee in a more condensed format. Noted that the NPS-UDC is high on radar.

Work programme will start increasing over the next 6 months. Have been looking at forward agenda but will be dependent on when work is available.

At the June meeting will have a new standing agenda 'matters arising from delivery of scope'. In July hoping to have a presentation to the Committee by GHD on strategic Communication and Engagement.

CEO spoke to remuneration authority and fee structure around the commitment from these meetings.

Councillor Lyall questioned when there is going to be a public release of information? The District Plan Review Project Lead responded that the Project Team has identified key stakeholders but need to have a clearer communications and engagement plan for each topic before going to the public.

Councillor Morten questioned whether it was likely that the committee would need to meet twice a month when we get busy? The District Plan Review Project Lead responded that due to the tight timeframe, the District Plan Committee workload will steadily increase, however it will probably be another 6 months before we can determine whether more than one meeting a month is required.

**Moved – Councillor Morten / Seconded – Councillor Lyall**

*'That the Committee receives the presentation.'*

**CARRIED**

*Meeting ended at 10.20am*

## 5. OUTSTANDING ISSUES REGISTER

Subject	Comments	Report Date / Action	Item Resolved or Outstanding

## **Specific Reports**

### **6. Strategic Communications and Engagement Strategy – workshop facilitated by Maurice Hoban of GHD**

Author:	Maurice Hoban of GHD
Contact:	C/- Emma Hodgkin, DPR Project Manager – 021 240 1242

#### **Purpose**

To facilitate an interactive Strategic Communications and Engagement Strategy workshop with the Committee to explore the principles to be used when engaging stakeholders and communities as part of the DPR.

#### **Recommendation**

- **That the Committee:**
  - (i) **Notes the presentation.**

#### **Attachments**

- PowerPoint presentation 'Strategic Communications & Engagement Strategy'

# The proposed Selwyn District Plan



## Strategic Communications & Engagement Strategy

# Engagement Framework Workshop





# Role of GHD NZ Ltd

- GHD NZ Ltd part of global organisation who specialise in providing planning, engineering, architecture, design and project management services
- Appointed to the DPR Supplier Panel to provide a range of services including Communications and Engagement
- Currently contracted to support the development of a Strategic Communication and Engagement Strategy for the DPR in conjunction with the SDC Communications Team and DPR Project Team
- Maurice Hoban leads GHD NZ Ltd's Planning and Engagement Team and will facilitate the workshop session of the DPC Meeting
- Initial findings, risks and options for engagement identified by GHD NZ Ltd will be discussed
- Outputs from the workshop will be used to shape the approach to be taken by Council moving forward
- Draft Strategy available for discussion at July DPC Meeting





# Engagement Framework

The DPC has an integral role in shaping of the Engagement Framework for the DPR. The Engagement Framework seeks to address:

- The outcomes you would expect from engagement – what does success look like?
- Engagement principles we will adopt
- Identification of stakeholders
- Methods of engagement
- Methods of recording feedback
- High level risks
- Roles and responsibilities



# Workshop Purpose & Outcomes

This session will be an interactive workshop exploring the principles to be used when engaging stakeholder and communities.

The purpose of the workshop is to seek your views on

- What good engagement looks like?
- The value of engagement – what would success look like?
- Engagement risks – what can go wrong?
- The issues that you see arising across the community when engaging stakeholders
- Where do you see opportunities to gain higher levels of participation and engagement from the community and other stakeholders?
- The engagement role that you as Councillors want to play in the District Plan Review



## 7. Tree Shading Rules in the Rural Zone

Author:	Emma Larsen, Strategy and Policy Planner
Contact:	03 347 2920

### Purpose

To brief the Committee on the rules in the Operative District Plan relating to tree shading and to seek direction as to the how the effects of tree shading are to be addressed as part of the District Plan Review.

### Recommendation

- **That the Committee:**
  - (i) **Notes this presentation;**
  - (ii) **Receives the Issues and Options report on ‘Tree Shading in the Rural Zone’;**
  - (iii) **Endorses Option 2:**  
*“That the effects of tree shading are managed through a combination of policies within the 2nd Generation District Plan and other methods outside of the District Plan.”*

### Attachments

- PowerPoint presentation ‘Tree Shading in the Rural Zone’
- Issues and Options report ‘Tree Shading in the Rural Zone’

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# REPORT TO DISTRICT PLAN COMMITTEE

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**DATE:** 28 June 2017

**ISSUES AND OPTIONS:** Tree Shading Rules in the Rural Zone

**PREPARED BY:** Emma Larsen – Strategy and Policy Planner

## EXECUTIVE SUMMARY

<i>Issue</i>	<p><i>Shading by trees has the potential to adversely affect road safety and amenity values in the rural zone.</i></p> <p><i>The rules in the Operative District Plan relating to tree shading have proved ineffective for avoiding or mitigating adverse tree shading effects in the past. In 2014, the Council promoted Plan Change 39 which sought to remove the existing tree shading rules from the current District Plan, but was withdrawn in 2015 following the further submissions period, because the Council considered that the District Plan Review would enable a more comprehensive and integrated approach to considering the issue.</i></p>
<i>Recommended Option</i>	<p><i>That the effects of tree shading are managed through a combination of policies within the 2<sup>nd</sup> Generation District Plan and other methods outside of the District Plan.</i></p>
<i>DPC Decision</i>	



## 1.0 Introduction

- 1.1 The Operative District Plan (Rural Volume) contains rules 2.1.1.5 and 2.2.1.6 which require that no tree shades either the carriageway of a road or any property under different ownership between 10am and 2pm on the shortest day of the year. These rules apply to any tree in the rural zone including shelterbelts, plantations and specimen trees. The intent of these rules is to avoid adverse traffic safety and amenity effects created by shading. The relevant provisions are set out in full in **Appendix 1**. There are no equivalent provisions in the Townships Volume of the Plan.
- 1.2 A review of these rules carried out in 2011 found the following:
- (a) That the current rules are limited in their effect because most complaints relating to tree shading have been found to most likely have existing use rights<sup>1</sup> and therefore the landowners do not need to comply with the rules
  - (b) It is expensive and time-consuming for the Council's Compliance Officer to investigate tree-shading complaints which were often not able to be acted on under the Resource Management Act 1991 ('RMA') due to existing use rights
  - (c) The rules are drafted such that compliance can only be assessed on the shortest day of the year
  - (d) No applications for resource consents have been applied for to breach these rules
  - (e) Other legislation is available to resolve tree-shading issues on both roads and between properties
- 1.3 Following this review the Council notified Proposed Plan Change 39 ('PC39') to the District Plan which proposed the removal of the rules but the retention of the policies relating to tree shading. In December 2015, following 7 submissions (6 opposing), Council decided to withdraw PC39 because the Council considered the District Plan Review would enable a more comprehensive and integrated approach to considering the issue.

### **Purpose of the Report**

- 1.4 The purpose of this report is to provide Council with background information, including a summary of PC39; address the relevant tree shading issues; and provide options and recommendations for addressing this matter in the 2<sup>nd</sup> Generation District Plan.

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<sup>1</sup> Resource Management Act 1991, Section 10— Certain existing uses in relation to land protected. Land may be used in a manner that contravenes a rule in a district plan or proposed district plan if the use was lawfully established before the rule became operative or the proposed plan was notified and the effects of the use are the same or similar in character, intensity and scale to those which existed before the rule became operative or the proposed plan was notified.

## 2.0 Issues with Current District Plan Provisions

### Enforcement of existing tree rules

- 2.1 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. This issue only arises on roads of a predominantly east – west alignment where the trees are planted on the north side of the road.
- 2.2 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 a 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 causing a shading issue, especially those subject to existing complaints are likely to predate this rule in the plan (2001) and therefore no resource consent has ever been sought to breach this rule.
- 2.3 In the case of trees which are planted within the life of the current plan that cause shading issues, there are still ongoing difficulties in identifying the age of trees and whether the rules apply. 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 therefore the effectiveness of such rules remains limited.

### Costs and time dealing with tree complaints

- 2.4 As with any monitoring and enforcement, there are costs and time implications involved in dealing with complaints.
- 2.5 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.

### Other methods to deal with tree shading complaints

- 2.6 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 District 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 such as leaf fall and 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 2**.
  - (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 3**.
  - (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 in the event that the problems cannot be resolved informally between parties. Relevant extracts from the Property Law Act 2007 Act are contained within **Appendix 4**.
- 2.7 In relation to paragraph 2.6(a) above the Council's Roading Manager advises that current practice is that where an issue of a tree affecting a road is identified, the Council will write a letter to the landowner outlining the problem and requesting that the trees are either trimmed or removed to resolve it. The landowner generally responds positively meaning that the Council has not had to use powers available under the Local Government Act 1974.
- 2.8 In respect to tree shading specifically, Council staff and road maintenance contractors have scheduled locations within the District where ice causes a hazard. These sites have permanent warning signs (Slippery When Frosty) on each approach and during the winter months they are inspected when climatic conditions are conducive to ice forming causing a road safety issue with the hazard mitigated through gritting. There are also additional fold down warning signs (Slippery Surface ICE/GRIT) in place during the winter to warn of the ice hazard and additional hazard that the loose grit creates.

## Impacts on Amenity Values

- 2.9 In some circumstances it is possible that the solution to tree shading issues such as the trimming or removal of trees may in turn create adverse effects on amenity values. One of the factors that distinguishes the rural character of the rural zone is the predominance of vegetation cover. This needs to be balanced with the effects created by tree shading in order to determine the most appropriate approach for addressing this issue.

## Resource Management Act 1991

- 2.10 The Resource Legislation Amendment Act 2017 introduced Section 360D to the RMA, which enables regulations to be made that prohibit or remove specified rules or types of rules that would duplicate, overlap with, or deal with the same subject matter that is included in other legislation. While it is unknown at this point how or in relation to which rules or types of rules the Minister for the Environment will make such regulations, the intent appears to be that planning documents under the RMA do not duplicate other legislative powers. As outlined above, issues arising from shading by trees are able to be resolved through other legislation.

## 3.0 Other Matters

### Availability of Information Relating to Tree Planting

- 3.1 Although the current District Plan rules are somewhat ineffective at managing tree shading issues, the rules do provide some guidance to landowners who are considering planting trees on their property.
- 3.2 The Council also has the *Trees and Vegetation in Selwyn District Management Policy Manual (2010)* which is published on the Council's website. This 84 page document relates primarily to the management of trees on Council land but does cover trees on private land that affect council infrastructure in terms of visual obstruction at intersections, physical obstruction of roads or footpaths and damage to underground infrastructure. The document sets out the procedures the Council will follow where trees or vegetation are causing damage or a safety issue for Council infrastructure. This document does not specifically manage trees that shade roads because it notes that the District Plan contains rules that do this.
- 3.3 I consider it would be more effective to update this document to include trees causing a shading issue. This could be supported by developing a package of information available for landowners that sets out rights and responsibilities and matters to consider when planting trees on their property. For example, a page on the Council website (or through other media) could include a range of information about planting trees such as:
- ensuring trees do not obstruct vision on roads
  - setbacks from boundaries to allow for maintenance
  - defensible areas around buildings to protect from wild fire hazards
  - what to do if you are concerned about a neighbour's tree shading your property
  - ensuring trees do not shade roads
- 3.4 The Hurunui District Council website has a page which contains some of this information in a "Frequently Asked Questions" format. The Christchurch City Council website has similar information. The Waimakariri District Council has a fact sheet about how to resolve disputes between neighbours regarding trees. Links to these documents are listed in **Appendix 5**.
- 3.5 A similar information package could be developed and promoted for Selwyn. I consider that a landowner looking for information about tree planting on their property would find information presented in this way to be easier to find and more helpful than rules in a District Plan or policy document. This information package could be added to any of the options outlined below.

## 4.0 Submissions received on Plan Change 39

- 4.1 Proposed Plan Change 39 received seven submissions, of which 6 were opposed. The summary of submissions received is included in **Appendix 6**. The opposition primarily related to the issue of trees shading roads, creating hazards in winter conditions. Submitters felt that the removal of the rules sent the wrong message to landowners whose trees cause shading issues and that it is unacceptable to remove an avenue for enforcement.



- 4.2 A submission from Federated Farmers supported PC39 but considered that a by-law should be introduced to provide an alternative avenue for enforcement.

## 5.0 Summary of Approaches in Surrounding Districts

- 5.1 A review of the following district plans has been undertaken to determine how the issue of tree shading is addressed:
- Christchurch Replacement District Plan (second generation plan)
  - Hurunui District Plan (second generation plan)
  - Waimakariri District Plan (first generation plan)
  - Ashburton District Plan (second generation plan)
- 5.2 The Waimakariri and Ashburton plans do not contain any provisions that relate specifically to tree shading. The Hurunui District Plan does contain a permitted setback from boundaries for plantation forestry in the rural zone. Plantations that do not meet the requirements of this rule are restricted discretionary activities with tree shading being one of the matters for discretion. The Christchurch Replacement District Plan contains rule 17.2.3.7 - Shading of State Highway which is very similar to the existing rule in the current Selwyn District Plan. This rule only applies in the Rural – Banks Peninsula Zone and was part of the notified version of the plan.

## 6.0 Options to address Issues

- 6.1 This section discusses three possible options for tree shading provisions in the 2<sup>nd</sup> Generation District Plan. These options are discussed below:

### Option 1

#### ***Maintain Status Quo***

- 6.2 This option is to roll over the existing provisions, including both policies and rules.

#### *Effectiveness in Addressing Issues:*

- 6.3 A rollover of the current tree shading provisions would maintain the inefficiencies that are described above.

### Option 2

#### ***Remove tree shading rules entirely, while retaining policies and inclusion of other methods***

- 6.4 This option is to remove the rules but retain the policies in relation to tree shading and recognise the alternative methods to address this issue, being the provision of information about tree planting and legislative solutions under the Local Government Act 1974, Transit Act 1989 and the Property Law Act 2007.

### *Effectiveness in Addressing Issues:*

- 6.5 Option 2 removes the community expectation that the Council will be able to undertake enforcement action under the RMA where an issue of tree-shading is identified. The Council will develop an information package to assist landowners to identify issues when considering planting trees. Where issues of trees shading roads do arise, enforcement can be undertaken under the Local Government Act 1974 or the Transit Act 1989. Where issues of tree shading between neighbours arise, the information package will direct landowners to the resolutions available under the Property Law Act 2007.
- 6.6 It is considered appropriate to retain the policies as they will still provide direction that the shading of roads or other properties by both trees and buildings, where it may generate adverse shading effects, is not anticipated. 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 the policies if necessary.
- 6.7 This option is considered to be the most effective and is the recommended option.

### **Option 3**

#### ***Amend rule to insert setback and/or recession plane requirements***

- 6.8 This option will retain the policies, however the current rules would be removed and new rules introduced for permitted setbacks and recession planes for planting along road boundaries in the Rural Zone.

### *Effectiveness in Addressing Issue:*

- 6.9 This option could reduce tree shading issues in the future, resulting in reduced conflicts and retrospective consent requirements. This would give monitoring and enforcement officers a greater ability to enforce the rule, due its tangibility. However there would be continued difficulty in determining whether the trees were planted within the life of the plan and whether they hold existing use rights. There would also be ongoing difficulty in determining the future height and effects of a tree and whether it may or may not breach a recession plane on maturity. Therefore the rule is likely to be reactionary rather than proactive or enabling. It could also result in the inefficient use of land if shelterbelts are required to be planted within paddocks or land is unable to be used around the margins of forestry blocks.

## **5.0 Conclusion**

- 5.1 Where trees create shade there is the potential to adversely affect road safety and amenity values. The Operative District Plan rules have proved ineffective at addressing these issues in most instances. It is considered that developing an information package relating to planting trees and utilising the legislative solutions available under the Local Government Act 1974, Transit Act 1989 and Property Law Act 2007 is a more effective method for addressing these

issues. The recommended option is also consistent with the direction set by section 360D of the RMA which seeks to reduce duplication or overlap between District Plans and other legislation.

## 6.0 Recommendation to DPC

6.1 The Project Team recommends that:

1. That the effects of tree shading rules are managed through a combination of policies within the 2nd Generation District Plan and other methods outside of the District Plan including an information package regarding planting of trees and on the use of legislative solutions available under the Local Government Act 1974, Transit Act 1989 and Property Law Act 2007.

# Appendix 1 – Operative District Plan Provisions

## Policies:

**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 (abbreviated)

*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.*

**Policy B3.4.17** Ensure that buildings and trees do not excessively shade adjoining properties.

### Explanation

*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 the shading of houses and outdoor living areas. This is most likely to occur with houses on small allotments in the rural area.*

## 2.3 Rules:

### Part C – Rural Rules

#### 2.1 Tree Planting and the Removal of Protected Trees.

**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:

...

**2.1.1.5** 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.

**2.1.6** Any tree planting which does not comply with Rule 2.1.1.5 shall be a restricted discretionary activity.

**2.1.7** Under Rule 2.1.6 the Council shall restrict its discretion to consideration of:

**2.1.7.2** The length of the shelter belt:

**2.1.7.3** The need to provide effective stock or crop shelter; and

**2.1.7.4** Any positive effects which may offset any adverse effects.

## 2.2 Plantations

**2.2.1** The planting or harvesting of any plantation shall be a permitted activity if all of the following conditions are met:

...

**2.2.1.6** 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.

**2.2.8** Any plantation which does not comply with Rule 2.2.1.5 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.

### Explanation

*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...*

## Appendix 2 – 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 – Extraction 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.

Compare: [1981 No 35 s 133](#)

## 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.

Compare: [1981 No 35 s 134](#)

## 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.

Compare: [1981 No 35](#) s [135](#)

## 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.
- (5) 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.
- (6) 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.
- (7) 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.

- (8) 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.

## Appendix 5 – Examples of Information Packages

<http://www.hurunui.govt.nz/services/roading-network/trees-on-road-reserve/>

<https://ccc.govt.nz/environment/trees-and-vegetation/property-owners/>

[https://www.waimakariri.govt.nz/\\_data/assets/pdf\\_file/0013/30172/Fact-Sheet-Neighbourhood-Disputes-over-Trees-and-Fences-July-2016-Supersedes-120803049632.PDF](https://www.waimakariri.govt.nz/_data/assets/pdf_file/0013/30172/Fact-Sheet-Neighbourhood-Disputes-over-Trees-and-Fences-July-2016-Supersedes-120803049632.PDF)

# **Hurunui District Council**

## **(<http://www.hurunui.govt.nz/>)**

Community partnership in growth and wellbeing

### **Trees on Road Reserve**

#### **What is road reserve?**

The road reserve consists of the area of land between the property boundaries (fences) on either side. This includes the road, footpaths, gutters, berms/verges etc. The main purpose of the road reserve is for public travel. The Hurunui District Council is the Road Controlling Authority, or owner, of local roads and paper roads. The Road Controlling Authority of State Highways is Transit New Zealand (currently managed by OPUS).

#### **[Trees on the road reserve \(/assets/Documents/Roading/Trees-Hedges-brochures-2005.pdf\)](/assets/Documents/Roading/Trees-Hedges-brochures-2005.pdf)**

Trees and hedges provide useful shelter and privacy on our properties. Unfortunately, in some cases, plantings can also cause problems on our roads that may lead to property damage, injury or loss of life. The Hurunui District Council encourages landowners to design and manage their plantings so that they can enjoy their benefits without creating hazards for road users.

Shelter belts are not permitted on the road reserve, but a licence may be obtained for aesthetic amenity plantings of native shrubs or trees under certain conditions. These plantings must not interfere with underground or overhead services, site visibility or the maintenance of the road reserve. The minimum space between the road and any tree will be three metres.

#### **What to do if you want to plant on the road reserve.**

A licence must be sought where a person wishes to plant trees on the road reserve fronting the owner's property. Applicants must demonstrate that plantings cannot be better provided either in part or totally within the bounds of their property. Council policy is that it will not authorise plantings across the frontage of another owner's property without the signed consent of that owner.

## **FAQS**

#### **Q. When are my roadside trees and hedges a hazard?**

**A.** If they shade the road in winter causing a damp patch that lasts through the day.



**Q. What can I do?**

**A.** Trim the top of hedges on an angle to allow sunlight through to the road, prune them back and lower your hedgerow. You might want to consider their replacement with more appropriate trees.

**Q. Can the Council force me to remove my trees?**

**A.** Yes. Under the Transit New Zealand Act the Council could require your trees to be pruned or removed and if this is not done the Council could do the work itself and charge you for the costs involved.

**Q I live on an unsealed road, is ice going to be a problem?**

**A.** No not in the immediate future but be aware that the Council does have an ongoing seal extension program

**Q. My trees are not shading the road but the branches stick out well past my boundary, should I do anything about them?**

**A.** Yes you should. A branch can be a major hazard if a vehicle has to move off the roadway and could cause death or severe injury if large enough. There should be an area at least 6m wide and 6 m high, from the edge of the roadway, clear of branches. Cyclists, pedestrians and horse-riders, also use roads and road reserves and their needs must also be considered.

**Q. Is ice or frost the only problem?**

**A.** No. Permanently wet or damp patches on the road can also be dangerous for vehicles especially when braking, and the deep shadow behind some hedges can make it hard to see other vehicles, especially in otherwise bright sunlight.

**Q What does the Health and Safety in Employment Act (The OSH Act) say about this?**

**A.** Under the Health and Safety In Employment Act it is possible you could be liable if an activity on your property (planting, growing and maintaining a shelterbelt or trees) causes a hazard on-site or off-site.



(<http://www.facebook.com/HurunuiDistrictCouncil>)



(<http://www.twitter.com/hurunuidc>)



([http://www.linkedin.com/company/2726291?trk=prof-0-ovw-curr\\_pos](http://www.linkedin.com/company/2726291?trk=prof-0-ovw-curr_pos)) ([skype:HDC Customer Services? chat](skype:HDC_Customer_Services?chat))

# Property owners

The location of the base of a tree or shrub defines who is responsible for maintaining it. Talk to your neighbour or report an obstruction or overhanging tree.

## Council property

The Council is responsible for trimming vegetation overhanging any public access e.g. footpath, berm, park, reserve, waterway or road median strip. Residents can prune to their boundary line, in accordance with the Property Law ACT 1965, where offending vegetation is not a heritage and protected tree.

The Council has no jurisdiction over trees on private land except where road, footpaths, carriageways or public services are affected, or where trees involved are protected by the Council. Council property is maintained by contractors who have agreed maintenance schedules.

Report an obstruction online or contact us.

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## Private property

Under the Local Government Act, property owners are required to trim trees or shrubs obstructing a footpath, road, street sign or waterway. The Council will contact property owners about obstructions. Property owners have a limited time to clear any obstruction before the Council will arrange for the work to be done and charged to the property owner.

Talk to your neighbour if their tree or shrub is causing issues. The Council will not act or give advice on behalf of one resident against another or mediate in disputes. For further information contact the Community Law Centre, a lawyer or the Citizens Advice Bureau.

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## Earthquake affected properties

LINZ are the crown entity who own and manage the land in the flat land residential red zone. Read about land management and maintenance in the residential red zone .

THINGS YOU SHOULD KNOW ABOUT...

# Neighbourhood disputes over trees and fences

## NOT EVERYONE GETS ON WITH EVERYONE ALL THE TIME

That's true, even for the closest of friends or family. It's when neighbours fall out that council are often asked to step in.

While we don't get involved in disputes between private individuals we can offer you some tips on how to deal with them if they arise.



## TREES

Most often the problem is trees blocking sunlight or view or branches and roots encroaching onto a neighbour's property.

We have found differences can usually be settled with a combination of tact and compromise.

So first and foremost, discuss your concerns with your neighbour.

Be calm. Give them time to think about the problem and possible solutions you can both live with.

It might help you to read Section 333 of The Property Act 2007 which clearly defines a property owner's responsibilities.

You can view or download a copy from [legislation.govt.nz](https://legislation.govt.nz)

If the two parties can't agree you will probably need to take the problem to your lawyer. You may need to seek a court order to force your neighbour to take the action you want.

The District Court will order any action be done within a set timeframe.

Don't do anything yourself that could damage or destroy the tree.

## FENCES

Issues over fencing are usually covered under The Fencing Act 1978. You can view or download a copy from [legislation.govt.nz](https://legislation.govt.nz)

Basically the Act states that where an adequate fence does not already exist, occupiers of adjoining land must contribute equally to the cost of the boundary fence.

To make things clear, and perhaps avoid disputes later, it helps if both parties can agree on key matters before any work begins.

**Note:** The Community Law Office provides free legal advice. Phone 03 366 6870 or ask at the local Citizens Advice Bureau.

## MORE INFORMATION

Visit [waimakariri.govt.nz](https://waimakariri.govt.nz) for more information about Neighbourhood disputes over trees and fences, or contact Customer Services on 03 311 8900.

### TALK ABOUT:

- the part of the boundary to be fenced
- design and type of materials
- how much each party will pay
- who is doing the work
- when the work will be done
- anything else that is relevant to your situation

A written agreement covering these key points will prove a valuable reference if there is any argument later.

Once agreement is reached you need to ensure the fence is built on the boundary. You will need to employ a surveyor to redefine the boundary if you cannot locate the boundary pegs.

### IF YOU CAN'T AGREE

Where both parties do not agree on an aspect of the project, you **should not** begin work on the fence. If you choose to carry on without your neighbours agreement, you may end up carrying all the costs of the work yourself.

The Fencing Act outlines just how you should now proceed. If in doubt, seek legal advice.

### P.S....

Remember also, that if the fence is more than 2.5 metres in height, you will need a building consent.

A resource consent may also be required where it is proposed to erect a front fence over 1.5 metres or any other fence over 2.5 metres.

Our Customer Services Staff can advise you further on consent matters.

### MORE INFORMATION

Visit [waimakariri.govt.nz](http://waimakariri.govt.nz) for more information about Neighbourhood disputes over trees and fences, or contact Customer Services on 03 311 8900.

## Appendix 6 – Summary of Submissions (PC39 – Tree Shading)

Selwyn District Council – Summary of Submissions on Plan Change 39 Tree Shading Provisions						
Sub No.	Submitters Name	Submitters Details	Summary of Submission	Relief Sought	Support/ Oppose	Wish to be Heard?
1.	Donald Wright	503 Wrights Road, Sheffield, 7580	<p>The submitter is disappointed to see the notification of plan change 39. The shading rules were put in place many years ago by forward thinking councillors who understood the increasing risk to all road users resulting from uncontrolled tree planting.</p> <p>Plan Change 39 sends the wrong signals to the community about a widespread and serious problem in our district.</p> <p>The submitter understands the importance of shelter for livestock, and that this is achievable with the use of modern tree topping equipment. It is possible to cut to a sensible height, and to bevel cut the tops for better sun angle onto the road.</p>	That the rules be retained as an enforcement option where serious danger exists, and where an educational approach to this aspect of road safety has failed.	Oppose	Yes
2.	Judith & Neil Walker	3117 Coaltrack Road, Coalgate 7673	<p>The submitters would like to see plan Change 39 rules on tree shading retained in the District Plan. The submitters feel this is a huge problem in the Selwyn District and one that needs to be looked at by the Council.</p> <p>There are so many shaded areas on roads around Selwyn by landowners planting shelter trees far to close to roads which then in winter causes the roads to be treacherous for driving on causing accidents that sadly sometimes are fatal.</p>	Retain the tree shading rules in the District Plan.	Oppose	No

			<p>There is no need for landowners to plant trees so close to the road they could be planted either so far back so no shading occurs or to be kept at a height that they don't shade the roads.</p> <p>Landowners need to be provided with rules to planting trees close to roads and if the rules are not adhered to the trees will have to be removed.</p> <p>The council could ask for public help with this by putting notices in Council Call asking if you know of any trees shading roads and then take action from there.</p>			
3.	Paul Keith Jarman	201 Essendon Road, RD 1 Darfield 7571	<p>The rules are needed to emphasise the risks to public road safety caused by tree shading.</p> <p>These risks cause accidents and deaths on our roads.</p> <p>The submitter does not accept that uncertainties about the age of trees is a valid reason not to be enforcing the rules.</p> <p>The cost of gritting roads is an increasing expense to the ratepayers.</p> <p>It is not possible to effectively mitigate the risk on large areas of roads by gritting.</p> <p>The rules are necessary as a backup for what should primarily be an educational approach to this problem.</p> <p>It is remiss of the Council not to have included this aspect of road safety in the work done by its road safety employees.</p>	Retain the rules on tree shading and encourage landowners to respect these.	Oppose	Yes



4.	Stuart Stokes	409 Dalethorpe Road, Sheffield 7580	The Selwyn district Council in the past identified the real risk to life and damage to roads by ice and shading caused by trees. This rule needs enforcing not removing from the plan.	To have more education and enforcement of this problem by the Council.	Oppose	Yes
5.	Bill Woods	5509 West Coast Road, Springfield RD1 7681	The submitter opposes the removal of the tree shading the road rules from the rural volume of the Selwyn District Plan.	Retain the provisions in the Plan as the submitter is not convinced the alternatives will be any more effective as they are not being used at the moment.	Oppose	Yes
6.	New Zealand Transport Agency (NZTA)	PO Box 1479, Russley, Christchurch 8140	<p>The submitter is in support of retaining the relevant overarching objectives and policies in Part B2 Physical Resources and Part B3 Peoples Health, Safety and Values in the Selwyn District Plan.</p> <p>The submitter opposes the plan change for the following reasons:</p> <ul style="list-style-type: none"> <li>• Council and the NZTA have powers to control tree shading under the Government Roding Powers Act 1989 (GRPA). However, the existing Plan provisions have the benefit of providing a clear indication to the public of what is acceptable shading making it efficient to enforce;</li> <li>• The Council has a responsibility under the RMA to control the use of land to avoid or mitigate natural hazards;</li> <li>• The Council still needs to manage tree shading issues regardless of whether it does so under the RMA or GRPA so the cost savings are likely to be negligible;</li> <li>• Removal of the rules relating to tree shading means there is no longer a method</li> </ul>	That the existing tree shading rules in Part C – Rural Rules in the Selwyn District Plan be retained.	Opposes in part	Yes

			to achieve the objectives and policies that are being retained			
7.	Federated Farmers of New Zealand	PO Box 20448, Bishopdale, Christchurch 8543	<p>The submitter supports Council's efforts to manage adverse effects of tree shading or other adverse effects resulting from encroachment of trees on the road network.</p> <p>In general, the submitter supports the proposed removal of tree shading rules from the District Plan and they agree the current management framework is unenforceable.</p> <p>It is often impossible to tell when trees began to create shading problems, and therefore whether or not existing use rights for lawfully established activities apply. In any case, the more severe problems are often caused by older, more established trees, with shading issues that predate the operative plan.</p> <p>Unenforceable rules, or rules that have no legal weight, lead to a mistaken impression that the issue can be effectively addressed within the District plan alone. This leads to confusion with other existing regulatory tools that are available to the Council.</p> <p>Despite the submitters support, it is considered inappropriate to rely entirely on reference to the alternative methods of enforcement available through the Local Government Act 1974, Transit New Zealand Act 1989, and Property law Act 2007 to remedy the issue. At a minimum this legislation should be supported by a by-law, which identifies what is considered an inappropriate adverse effect what is expected to remedy it and costs or</p>	<ul style="list-style-type: none"> <li>Note the support of the North Canterbury Province of Federated Farmers for the removal of the tree shading rules;</li> <li>That the District Plan rules controlling shading by trees are not removed until a bylaw has been prepared to address the adverse effects of trees encroaching on roads;</li> <li>Include a new method to require the use of education and proactive communication to ensure the community is fully informed of its responsibilities to prevent encroachment of trees on the road network and associated adverse effects, and is aware of the consequences.</li> </ul>	Support in part	Yes



			<p>consequences that may result if the Council has to act to remedy problems with trees.</p> <p>The overall approach should be supported by education and communication to the community of the consequences of failure to responsibly manage encroachment of trees on roads, and to make clear why the community and the Council needs to work together to prevent unacceptable danger to users of the road network.</p>			
8.	Trevor Taege	85 Taeges Road, Kowai Bush, Springfield 7681	The submitter opposes the removal of Plan Change 39 in its entirety	<ul style="list-style-type: none"> <li>Leave Plan Change 39 as it reads in the plan now. As for road safety, if it is enforced it will save lives. Common Sense should prevail.</li> </ul>	Oppose	Yes

# The proposed Selwyn District Plan



## Tree Shading in the Rural Zone

# Background

- Operative District Plan Rule
  - No tree can shade the road carriageway or any property in separate ownership between 10am and 2pm on the shortest day of the year
- Review (2011)
  - Most complaints relate to trees that have existing use rights
  - Complaints are expensive and time consuming to address
  - No applications for resource consents have been received to breach these rules
  - There are other legislative solutions available to resolve tree shading issues



# Plan Change 39 (2014-2015)

- Proposed to remove rules but retain policies relating tree shading
- Received 7 submissions (6 opposing)
- Submitters felt that tree shading caused a significant road safety hazard and removing the rules sends the wrong message and removes an option for enforcement
- Plan change withdrawn to allow issue to be considered through a more integrated and comprehensive approach as part of the DPR



# Other Methods

- Local Government Act 1974
  - Powers for SDC to instruct landowners to take action to remove hazards caused by trees, apply to the District Court for enforcement, issue fines and undertake work and landowner expense
- Transit Act 1989
  - Similar powers for NZTA to use in relation to State Highways
- Property Law Act 2007
  - Sets out rights, responsibilities and procedures for resolving issues between neighbours
- SDC Trees and Vegetation in Selwyn District Management Policy Manual (2010)
  - Sets out SDC's approach to managing trees on private land that affect Council infrastructure
  - Would require amendment to specifically apply to trees causing shading issues



# Current Council Practice

- Assets have scheduled locations within the District where ice causes a hazard
- Permanent warning signs (Slippery When Frosty)
- Inspected in winter and gritted as required
- Additional fold down ice/grit hazard sign in place during winter



# Resource Legislation Amendment Act 2017

- Introduced section 360D to the RMA, which enables regulations to be made that prohibit or remove specified rules or types of rules that would duplicate, overlap with or deal with the same subject matter that is included in other legislation



# Options

- Option 1 – Maintain status quo
  - Would retain the ineffectiveness issues outlined
- Option 2 – Remove tree shading rules entirely, retain policies, include other methods (recommended option)
  - Would resolve the ineffectiveness issues for enforcement under the RMA
  - Reflects current Council practice
- Option 3 – Amend rules to include setbacks and/or recession plane requirements
  - Continued difficulty establishing whether trees have existing use rights
  - Difficulty determining the future height and effects of a tree at the time of planting





# Information Package

- Guidelines for landowners covering rights and responsibilities relating to trees
- Could cover multiple topics
- Easier to find and more helpful than District Plan rules or Council policy documents
- Play a supporting role to the legislative powers available



# Questions?



Springston-Rolleston Road looking northwest towards Selwyn Road



## **Specific Reports**

### **8. New Plan Making Options Under RMA**

Author:	Justine Ashley, District Plan Review Project Lead
Contact:	03 347 2811

#### **Purpose**

To brief the Committee on the Plan Making Options available under the RMA, including updates to the 'Standard' Planning Process and introduction of two new planning tracks, being the 'Collaborative' and 'Streamlined' Planning Processes. No recommendation has been made with respect to which planning process is to be adopted for the DPR at this stage.

#### **Recommendation**

- **That the Committee:**
  - (i) **Notes the presentation**

#### **Attachments**

- PowerPoint presentation 'New Plan Making Options under the RMA'

# The proposed Selwyn District Plan



## New Plan Making Options under RMA

28 June 2017



# Overview

- Summary of changes to Plan Making Options under the RMA
- Standard Planning Process
- Collaborative Planning Process
- Streamlined Planning Process
- Next steps



# Summary of Plan Making Options

- The Resource Legislation Amendments Act 2017 has introduced two new planning tracks for developing, reviewing or changing policy statements and plans under the RMA, being:
  - ‘Collaborative’ Planning Process
  - ‘Streamlined’ Planning Process
- Changes have also been made to the ‘Standard’ Planning Process, including:
  - Limited notification of proposed plan changes
  - Removal of financial contributions
  - Extension of 2 year timeframe from notification to decisions



# 'Standard' Planning Process



- Follows Part 1 of Schedule 1 RMA and provides a rigorous analysis and transparent process for the development and change of RPS and regional and district plans.
- Extensive formal public involvement throughout the process and broad possibilities for appeal. RMA amendments introduce option of limited notification in certain circumstances.
- The standard process has been used since the enactment of the RMA in 1991.
- Well understood and there is a lot of 'best practice' guidance available.
- However, it can be a lengthy process due to a number of process steps and potential appeals.



# ‘Collaborative Planning Process’ (CPP)

- Under the CPP, a local authority establishes a collaborative community group to provide consensus recommendations, which must be ‘given effect to’ in the proposed plan.
- Submissions on the proposal are heard by a review panel, which provides recommendations to the local authority. These form the basis for the local authority’s final decision on the RPS/plan.
- Scope of appeals hinge on council’s acceptance or rejection of the recommendations of the review panel.





# ‘Collaborative Planning Process’ (CPP)

- Part 4 of Schedule 1 sets out detailed steps that must be followed. This option encourages greater front-end public participation and engagement to produce plans that better reflect community values and contain community-designed outcomes.
- The process is lengthy and requires considerable resources for all involved, and once initiated, a local authority cannot withdraw from the process except under specific circumstances outlined in the legislation.
- Suited to contentious planning matters requiring balancing of different values (eg management of natural resources such as freshwater, air sheds, coast).



# ‘Streamlined Planning Process’ (SPP)



- The SPP enables a tailored plan making process under particular circumstances by applying to the Minister for the Environment. The local authority identifies the process they want to use as part of their application.
- Needs to meet at least one of a set of entry criteria:
  - Implementation of national direction
  - A significant community need (or urgency) (eg, post-disaster planning)
  - Alignment or combination of plan provisions or development of a combined planning document
  - To address unintended consequences of an existing RPS/plan
  - Where an expeditious process is required for a comparable reason



# ‘Streamlined Planning Process’ (SPP)

- If the Minister agrees, a direction which sets out the process steps, time frames and expectations for the plan process is issued. The plan making process then follows the steps in the direction.
- Local authority decisions are subject to approval by the Minister, and cannot be appealed (with the exception of requiring authority decisions relating to designations/heritage orders).
- The SPP increases flexibility and speeds up decision making by providing a shortened public participation process and/or recognition of alternatives processes.



# Comparison

	Standard	Collaborative	Streamlined
Pre-notification	Consultation with key stakeholders	Consultation by collaborative group	Consultation with key stakeholders
Submissions / hearing	Full submission / hearing rights	Full submission / hearing rights	Determined by Minister
Decision	Local authority	Local authority	Ministerial approval
Appeals	Full appeal rights	Limited to rehearing or questions of law	No appeal rights
Timeframes	2yrs from notification	No timeframe for collaborative phase, 2yrs from notification	Determined by Minister

Source: Adderley Head



# Next Steps

- Councils must advise requiring authorities of their intended planning process before notification to seek advice about whether to include designations in the process.
- DPC will therefore need to make a decision on which planning process to use for the DPR.
- Likely that recommendation will be to use the ‘Standard’ planning process.
- However, it is recommended that this decision be deferred until further progress has been made in respect of the NPS Urban Development Capacity workstream.



# Any Questions?



## **9. Forward Meeting Agenda**

Author:	Justine Ashley, District Plan Review Project Lead
Contact:	03 347 2811

### **Purpose**

To provide the Committee with a forward schedule of topics for the July DPC meeting.

### **Provisional items for July DPC meeting**

- Endorsement of NPSUDC Market Indicators
- Heritage Items and Protected Trees update
- Update on Plan Framework
- Draft Strategic Communications & Engagement Strategy

### **Recommendation**

- **That the Committee:**
  - (i) **Notes the provisional items for July DPC meeting**