



**WAIRAU/AWATERE  
RESOURCE MANAGEMENT PLAN**

**Proposed Plan Change No. 56: Heritage Tree Update**

**And**

**MARLBOROUGH SOUNDS  
RESOURCE MANAGEMENT PLAN**

**Proposed Plan Change No. 08: Heritage Tree Update**

REPORT PREPARED TO FULFIL THE REQUIREMENTS OF  
SECTION 32 OF THE  
RESOURCE MANAGEMENT ACT 1991

## Table of Contents

Introduction.....	1
Background.....	1
Proposed Plan Change.....	2
Consultation .....	2
Current Legislative Framework.....	2
Resource Management Act 1991 .....	2
Purpose.....	2
Resource Management Amendment Bill 2009 .....	3
Marlborough District Council Responsibilities.....	3
Marlborough Regional Policy Statement .....	3
Resource Management Plans .....	4
Marlborough Sounds Resource Management Plan.....	4
Wairau/Awatere Resource Management Plan .....	5
Royal New Zealand Institute of Horticulture (RNZIH) .....	5
Options considered for dealing with the issue .....	5
i) Option 1 Do Nothing Option:.....	5
ii) Option 2: Use of Voluntary controls and Educational Material .....	6
iii) Option 3: Use of Incentives.....	6
iv) Option 4: Update the Heritage Tree Schedule of the relevant Plan .....	7
Evaluation under Section 32.....	8
Effectiveness.....	8
Plan Change Provisions .....	8
Benefits and Costs.....	9
Efficiency.....	9
Risk of Acting or Not Acting .....	9
Conclusion .....	9

## Introduction

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This report sets out an evaluation behind the Marlborough District Council's (MDC) decision to change the Marlborough Sounds Resource Management Plan (MSRMP) and the Wairau/Awatere Resource Management Plan (WARMP) (collectively referred to as 'the Plans'). The purpose of the plan change is to update the Heritage Tree Register contained in Volume Two of each Plan, to include a complete list of notable and historic trees within the region, and to provide for the protection of these trees through the Plan rules.

In notifying any change to the Plans, the Council has a duty under Section 32 of the Resource Management Act 1991 (RMA) to evaluate a number of matters. In preparing a change to a Plan and any change to them, Councils are required to consider the alternative ways to achieve the environmental outcomes being sought and have to consider a broad range of policies, objectives and methods. An analysis of the benefits and costs in deciding which provisions are the most efficient has to be carried out.

The specific elements of Section 32 that are covered in this report are as follows:

- (3) *An evaluation must examine—*
  - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
  - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*
- (4) *For the purposes of this examination, an evaluation must take into account—*
  - (a) *the benefits and costs of policies, rules, or other methods; and*
  - (b) *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.*

Councils are also required to:

- Evaluate the extent to which any new objective is the most appropriate way to achieve the purpose of the RMA;
- Evaluate whether the policies, rules, or other methods are the most appropriate for achieving the objective;
- Explore different methods/ways of dealing with the issue;
- Evaluate the benefits and costs of the proposed policies, rules, or other methods;
- Examine the risk of acting or not acting if there is uncertain or insufficient information on the policies, rules, or other methods; and
- Decide which method or methods is the most appropriate to achieve the purpose of the RMA.

The RMA further provides that a report shall be prepared that summarises the evaluation and gives reasons for that evaluation. This report fulfils that requirement (Section 32(5)).

## Background

Heritage resources contribute to environmental quality, and consequently the community's wellbeing, in many ways.

Significant trees are one form of heritage resource that can help create sense of place within a community. Trees may be considered to hold heritage value, if they are representative of a rare

or important species, if they commemorate an important local event either in Maori or European history, settlement or development, are an important landmark that have been acknowledged as such for a significant period of time, have an historic association with a well-known public figure, or hold a strong public association. The evolution and identification of heritage trees is therefore ongoing, with heritage tree protection similarly being an on-going process.

The Plans provide for heritage tree protection through their identification and their protection by way of Plan rules. The protection of historic heritage from inappropriate subdivision, use and development is identified as a matter of national importance within the Resource Management Act 1991 (the Act), and is consistent with the purpose of the Act.

When the MSRMP and the WARMP were notified in 1995 and 1997 respectively, the heritage schedules within these Plans did not contain a complete list of notable and historic trees as identified by the Royal New Zealand Institute of Horticulture (RNZIH). Since this time, a more detailed list of heritage trees has been compiled, with a number of new trees meeting the criteria for protection being included. Other dead or no longer remnant trees have been removed from the heritage tree inventory. As a consequence of the updated heritage trees inventory, the Register of Significant Heritage Resources as contained in each Plan also requires updating.

### **Proposed Plan Change**

In summary, the existing list of heritage trees contained within Appendix A of each Plan needs to be reassessed from time to time so that as time passes new trees can be protected and trees that no longer exist can be removed from the Plans. There are 201 trees proposed to be added to the Wairau/Awatere Resource Management Plan and 29 trees proposed to be added to the Marlborough Sounds Resource Management Plan. One tree is proposed to be removed from the MSRMP and six from the WARMP. Where multiple trees are to be protected on one property, the tree type is identified in the relevant Heritage Tree Register of each Plan with the number of trees on the subject property being identified in brackets. The specifics of the changes, as outlined above, are listed in Appendix A and B of this report.

### **Consultation**

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Following an assessment of the heritage trees currently listed in Appendix A of each Plan undertaken by the MDC Environment Committee on 5 September 2002, it was determined that MDC undertake further research to assess the additional heritage trees nominated for protection, and where appropriate, include those trees in the respective Plan by way of Plan Change. Subsequently, a local arborist was engaged by MDC to undertake a review of heritage trees within Marlborough to identify additional trees worthy of inclusion in the Plans. That review was completed in mid 2007.

A summary of the heritage tree consultation undertaken in November 2008, can be found in Appendix C.

### **Current Legislative Framework**

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#### **Resource Management Act 1991**

##### **Purpose**

The purpose of the RMA is to promote the sustainable management of natural and physical resources. Sustainable management means:

*“...managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*

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

In achieving the purpose of sustainable management, the Council must have regard to a number of principles set out in the RMA. These include recognition and provision for a number of “matters of national importance” described in Section 6 of the RMA including the “protection of historic heritage from inappropriate subdivision, use and development” (Section 6(f)).

The RMA enables the use and development of resources as long as such use does not adversely affect the environment in a way that impacts on the foreseeable needs of future generations, the life supporting capacity of ecosystems, or other users of the environment. This is the concept of “sustainability” which the RMA promotes as its overriding purpose.

MDC’s Regional Policy Statement and Resource Management Plans have all been generated to reflect these RMA provisions. This plan change is consistent with both the RMA and the MDC Plans.

## **Resource Management Amendment Bill 2009**

The National Government is in the process of leading a reform of the RMA. Phase one of this reform, known as the ‘Resource Management (Simplify and Streamline) Amendment Bill 2009’, seeks (amongst other methods) to prohibit ‘a rule in a district plan from providing the protection of any tree, or group of trees, in an urban environment unless the tree or group of trees is specifically identified in a schedule to the district plan, or located within a reserve or an area subject to a conservation management plan or conservation management strategy’ (Clause 52 amends section 76 by inserting new subsection 4A). The proposed plan change involves the updating of the heritage schedule provisions contained within Marlborough’s Resource Management Plans, and therefore does not conflict with the Bill.

## **Marlborough District Council Responsibilities**

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The MDC is a unitary authority, that is, it has the functions, powers and duties under the RMA of both a district council and a regional council.

Section 9 of the RMA sets out ‘Restrictions on the use of land’ and states that no person may use any land in a manner that contravenes a rule in a plan unless the activity is expressly permitted by a resource consent or is an existing use (s9(1) and (3)).

Both the Wairau/Awatere Resource Management Plan and the Marlborough Sounds Resource Management Plan, each contain objectives, policies and rules that, amongst other things, protect heritage resources. The provisions of each plan promote the purpose of the Resource Management Act 1991.

## **Marlborough Regional Policy Statement**

The Marlborough Regional Policy Statement (RPS) was made operative on 28 August 1995. It provides a community based vision and direction for the management of the natural and physical resources of Marlborough. The RPS identifies five regionally significant issues for Marlborough. These are:

- Protection of water ecosystems (which includes coastal water);

- Protection of land ecosystems;
- Enabling community wellbeing;
- Protection of visual features; and
- Control of waste.

A number of the subsequent objectives, policies and methods that were developed to deal with these issues, are relevant in the MDC's consideration of the heritage provisions contained within the Plans.

Of particular relevance to this plan change are the objectives and policies found in Part 7 'Community'. Objective 7.1.9 aims "to enable present and future generations to provide for their wellbeing by allowing use, development and protection of resources provided any adverse effects of activities are avoided, remedied or mitigated". The ability to protect resources such as notable or heritage trees is important in achieving the community's social and cultural wellbeing.

Objective 7.3.2 seeks that "buildings, sites, trees and locations identified as having significant cultural or heritage value are retained for the continued benefit of the community". The method identified to achieve this objective is that the Plans will identify, and where appropriate, provide protection for significant features. These features include notable and historic trees (Method 7.3.4). This plan change specifically supports this objective in that it seeks to provide a full list of notable and historic trees within the region which enables the protection of them through Plan rules.

## **Resource Management Plans**

In addition to preparing a regional policy statement, the MDC's unitary authority status imposes an obligation to prepare a coastal plan, a district plan and such other regional plans as are necessary to promote the sustainable management of natural and physical resources. Due to its unitary authority status, the MDC has taken the opportunity to integrate the management of the resources of the region by preparing two combined regional, district and coastal plan, covering distinct geographical areas. These are known as the Marlborough Sounds Resource Management Plan and the Wairau/Awatere Resource Management Plan. Both these Plans contain objectives, policies, rules and methods that direct the MDC in its obligation to regulate the use of land and resources.

## **Marlborough Sounds Resource Management Plan**

The Marlborough Sounds Resource Management Plan recognises that the area has a number of historic and notable trees. The Plan contains objectives, policies and methods that direct MDC in its obligation to control the use of land and resources. The Chapter on Tangata Whenua and Heritage contains directives to identify and preserve heritage trees within the Marlborough Sounds Area that meet the Plan criteria for heritage tree protection.

The Plan acknowledges that heritage trees are an important contribution to both the heritage and the visual character of the Sounds and should be preserved (Objective 6.2.2.1). This objective is achieved (in part) by listing heritage trees in the Plans and then protecting them through Plan rules.

The Plan also identifies that research be undertaken to assess additional items of heritage value (Policy 6.2.2.1.2). The plan change to update the Plan's Register of Heritage Tree contained in Appendix A will ensure that the additional notable or historic trees identified since the Plan was originally notified, are included and protected within the Plan.

## Wairau/Awatere Resource Management Plan

The Wairau/Awatere Resource Management Plan recognises that heritage resources contribute to environmental quality and consequently the community's wellbeing. The Plan also acknowledges that both MDC and the community have the responsibility to ensure that heritage resources are protected and retained for future generations.

Where appropriate, objective 3.3.1 seeks the protection or preservation of heritage resources, including heritage trees. Heritage trees contribute to the character of an area and ensuring they are retained is therefore important to provide a useful feature to the community.

Policy 3.3.1.1 seeks that heritage resources identified and protected to avoid, remedy or mitigate any adverse effects of activities on these resources. Similar to the Marlborough Sounds Resource Management Plan, this policy is achieved (in part) by listing heritage trees in the Plan and then protecting them through Plan rules.

## Royal New Zealand Institute of Horticulture (RNZIH)

The RNZIH register is a catalogue of significant trees, which attempts to locate and identify New Zealand's heritage of venerable trees. While the registration of significant trees by the RNZIH does not provide them any degree of statutory protection, it does formally acknowledge their degree of importance within New Zealand.

## Options considered for dealing with the issue

Under Section 32 of the RMA, a local authority is to consider alternatives to a proposed plan change, including cost, and benefits to ensure that the plan change is the most appropriate way to achieving both the purpose of the RMA and is the most effective way of achieving the objectives of the District Plan. For this purpose several options have been explored including:

- i) *Do nothing option*
- ii) *Use of Voluntary Controls and Educational Materials*
- iii) *Expanding Incentives for Tree Protection*
- iv) *Update the Heritage Tree Schedule of the relevant Plan*

### i) **Option 1 Do Nothing Option:**

**Summary:** This option explores the scenario of what would happen if there was not a complete list of notable and historic trees listed in the Plans. In terms of this plan change, this scenario explores the status quo, with the costs of this approach far outweighing the benefits. This option is not considered to achieve the purpose of the RMA nor would it see the protection of newly identified notable or historic trees from damage or destruction through Plan rules.

Benefits/Advantages	Costs/Disadvantages
<ul style="list-style-type: none"> <li>• Easily understood by the wider public and is similar to the present state of affairs.</li> <li>• Allows management of trees not listed in the Plans to be undertaken by the owner of the property without Council control.</li> <li>• Private landowners determine themselves what trees should remain.</li> </ul>	<ul style="list-style-type: none"> <li>• Potential for decreases in visual amenity and loss of community character.</li> <li>• Potential costs to neighbouring properties should issues or arguments over trees occur.</li> <li>• Damage to the reputation of the Council by not fulfilling objectives of the RPS in relation to heritage protection.</li> <li>• Private tree owner management may not take account of the wider issues</li> </ul>

	surrounding heritage tree management.
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**Recommendation: Not recommended**

**ii) Option 2: Use of Voluntary controls and Educational Material**

**Summary:** This option explores the scenario if the Council resolves to maintain the status quo, but increases the amount of educational material available to landowners. The use of voluntary controls and educational material is a method which does have some long term benefits. Given that notable or historic trees not listed in the Plans would still be able to be cut down despite their status, voluntary controls and educational material alone will not have very much impact in the immediate term due to mixed results anticipated in changing behaviour of the public`.

Benefits/Advantages	Costs/Disadvantages
<ul style="list-style-type: none"> <li>• Whilst initial costs during the development phase may be high, overall cost for production and distribution are low in the longer term.</li> <li>• Flexible in that it relies on education which may be more acceptable to all concerned.</li> <li>• Very little likelihood of high costs associated with a plan change, nor any likelihood of needing to defend the Council position in court, at least in regards to the production of the material.</li> <li>• Capacity to negotiate an agreement that meets the concerns and desires of the local community.</li> <li>• A proactive approach able to facilitate a win-win outcome for Council and private landowners.</li> </ul>	<ul style="list-style-type: none"> <li>• Sole reliance on this method as a voluntary measure is hampered by a lack of legal measures available to Council in dealing with landowners removing historic or notable trees.</li> <li>• Other stakeholders may feel disadvantaged by a negotiated agreement if their concerns have not been met nor any level of consultation been made.</li> <li>• Provision for resourcing additional Council staff needs to occur if this method was to be utilised.</li> <li>• Education takes time before being able to discern an impact.</li> </ul>

**Recommendation: Recommended in part** any plan change should be accompanied by the provision of educational material.

**iii) Option 3: Use of Incentives**

**Summary:** This option explores the scenario if Council was to offer a range of incentives for property owners to protect notable or historic trees on private property. At the present time the implication of this scenario is difficult to assess as the exact consequences will be dependant on the incentives used. For the purpose of this scenario the assumption is that incentives will mitigate some costs associated with tree management.

Benefits/Advantages	Costs/Disadvantages
<ul style="list-style-type: none"> <li>• Property owners can access funds for undertaking tree works.</li> <li>• Easy to distribute information given the fiscal incentives given.</li> <li>• Members of the public have a tangible incentive to investigate tree appropriate management options.</li> </ul>	<ul style="list-style-type: none"> <li>• As the cost of tree management ranges widely there may be difficulty in allocating/distributing incentives.</li> <li>• Incentives considered inadequate by private land owners may result in illegal tree management works.</li> <li>• There may be difficulties in ensuring that</li> </ul>



	<p>an incentive is applied to the tree in question and not to other trees.</p> <ul style="list-style-type: none"> <li>• Questions over whether the incentive should be fully or partially paid according to the satisfaction of the Council.</li> <li>• Costs of administering the incentive may prove onerous.</li> </ul>
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**Recommendation: Not recommended**

**iv) Option 4: Update the Heritage Tree Schedule of the relevant Plan**

**Summary:** The identification and protection of heritage trees within Marlborough’s Resource Management Plans is the existing process, which is used to protect Marlborough heritage tree resources. This form of protection mechanism has been largely successful in protecting Marlborough’s heritage trees. It is therefore important that the heritage schedules are kept up to date to accurately capture trees meeting the Plan criteria for protection. The statutory nature of the heritage schedule, together with the enforcement provisions applicable under the RMA 1991, make the protection of these trees readily enforceable. Therefore, with limited costs and numerous advantages, the update of the heritage schedule and associated planning maps, is the preferred policy option.

Benefits/Advantages	Costs/Disadvantages
<ul style="list-style-type: none"> <li>• Provides a high level of protection and allows for the on-going update and evolution of the heritage schedule through the plan change process.</li> <li>• The public notification of any plan change enables any interested party to participate in the plan change through the submission process. This increases the quality of decision making and enhances the transparency and legitimacy of any decisions.</li> <li>• That a Plan Change is be aligned the RMA, and therefore is consistent with Section 6(f) of the Act.</li> <li>• Criteria contained in each Plan provide a fair and objective basis for the identification of any heritage tree.</li> <li>• The registration of an historic tree involves the documentation and recording of information specific to that tree, or group of trees, therefore also persevering the knowledge and history associated with the heritage item.</li> </ul>	<ul style="list-style-type: none"> <li>• Potential costs for enforcement and abatement for breaches of Plan rules.</li> <li>• Economic and costs associated with preparing a plan change.</li> <li>• Possibility of a plan change being widely challenged through the appeal process provided for in the RMA 1991.</li> <li>• Protection of the heritage trees through Plan may not be the preferred option for all land owners.</li> <li>• The cost of researching, developing, reporting, advising, and consulting on a probable plan change.</li> </ul>

**Recommendation: Recommended**

## Evaluation under Section 32

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The evaluation process pursuant to section 32 of the RMA 1991 supports transparent and evidence based decision making, with all assumptions and decisions being justified and well documented. This helps to ensure that:

- Good environmental outcomes are achieved, at the lowest practicable cost to individuals and the community.
- Plan provisions are targeted at achieving the purpose of the RMA by the most appropriate methods.
- Councillors (as decision makers) have sound policy analysis on which to base their decisions about resource management issues.
- A sound basis is provided for re-assessing whether the chosen provisions are necessary and appropriate once they are in use.

### Effectiveness

Identification of heritage trees on Planning Maps and listing them in Appendix A of each Plan has past proven to be an effective tool for identifying and protecting trees requiring protection due to their heritage values. Adding the newly identified notable or historic trees will help to achieve one of the objectives of the RPS, being to protect the regions heritage resources.

The effectiveness of the Plans is jeopardised by an incomplete list of heritage resources. Notable heritage resources, including trees, are provided protection through the rules in the Plans which seek to preserve these resources for future generations. Consequently, it is important to the effectiveness of the Plans that the list of heritage trees is as up to date as possible, with the changes to Appendix A proposed for each Plan to achieve the desired environmental outcome.

The application of appropriate rules will provide the necessary protection to avoid, remedy or mitigate any adverse effects of activities on heritage trees. The plan change will not result in any effects that can be foreseen to have a cost to the environment.

The proposed Plan Change does not change the intent of the provisions of the Plans. For this reason, amending the existing Heritage Tree Register under Appendix A of each Plan by way of a Plan Change is seen as the most appropriate way of ensuring that the existing objectives are achieved. The Plans will therefore operate in a more effective and efficient manner once the plan change has been incorporated.

### Plan Change Provisions

As already noted, when the Plans were notified they did not contain a complete list of notable and historic trees. Since notification of the Plans, new trees have been assessed by Council for suitability and inclusion in the respective Plan. The plan change recognises this and contains a list of the districts notable and historic trees. The benefit of this is that the Plans will contain an up to date list of notable or historic trees.

The inclusion of new trees within the Heritage Tree Register provision under Appendix A of the Plans will provide a level of certainty that they will be protected and provided for in terms of management and maintenance under the provisions of heritage tree rules in the Plans.

## Benefits and Costs

The updated list of notable or historic trees in the Heritage Register of the Plans will result in the protection of such trees through existing Plan rules.

Socially and economically the Plan Change's will result in considerable benefits to the Council, community and landowners as the addition of new notable or historic trees will allow for better protection for those heritage features as per Section 6(f) of the Act, and better achieve community outcomes for heritage.

The plan change will not result in any effects that can be foreseen to have a cost to the environment. Where compliance with the permitted standards of the Plans in relation to a listed heritage tree can not be attained, resource consent will be required. This will result in compliance costs for landowners, with further costs of administration and enforcement a possibility.

There is the potential that a conflict between land owner development aspirations and heritage tree protection, may occur. Where this conflict exists, the Resource Consent process is an avenue available to property owners, to pursue development aspirations while avoiding, remedying or mitigating any adverse effects on the heritage tree. It also provides for tree with maintenance and minor alteration in certain circumstances, while:

- Ensuring listed trees are removed only under exceptional circumstances, and where alternative options for the retention of the tree have been exhausted.
- Ensuring that the health, vigour and function of listed trees are not compromised by any development or activity.
- Providing for the ongoing care and maintenance of listed trees.

## Efficiency

Efficiency - means the measuring by comparison of the benefits to costs (environmental benefits minus environmental costs compared to social and economic costs minus their benefits)<sup>1</sup>.

Based on the above assessment of costs and benefits, it is considered that the Plans will operate in an efficient manner, once amended as proposed.

## Risk of Acting or Not Acting

Should Council decide not to take action to protect the trees, there is the risk that a significant number of notable and historic trees could be lost as a result. This would have adverse effects on the wider sense of community and place.

Should the Heritage Tree Register within the Plans be updated as suggested, there will be greater certainty that the recently identified notable or historic trees, will be protected for the benefit of current and future generations.

## Conclusion

This assessment required by Section 32 of the RMA has shown that an update to the Heritage Register contained in Volume Two of the Plans, to include a complete list of notable and historic trees within the region and enable the protection of them through Plan rules, is warranted. The proposed Plan Change's are considered the most appropriate means in achieving the objectives

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<sup>1</sup> <http://www.qualityplanning.org.nz/>

and policies contained in both the WARMP and MSRMP with respect to heritage trees, and is consistent with the purpose of the Act.