

5. COST OF TREE PROTECTION

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Corporate Plan Output: City Plan Preparation	

The purpose of this report is to provide details on the total expenditure of the various Council units on tree protection in the City, as requested by the Committee at its 5 August meeting last year. It was further resolved by the Council on 26 August that the report include comment on the legal rights of private landowners regarding tree protection and whether the presence of notable trees can be included in the valuation of a property.

BACKGROUND

The Council currently has three mechanisms available for protecting trees in the City. Firstly there is the City Plan, which contains two categories of protected trees – heritage trees and notable trees. Secondly, conditions can be placed on subdivision approvals requiring the retention of certain trees. Thirdly, trees can also be protected by resource consent conditions.

Protected trees can be added to the City Plan by way of Variations. A points system developed by the Parks Unit determines their worthiness in this regard. This report was requested last year when the Committee considered a report on a tree survey that had been undertaken in the Merivale, Fendalton and Riccarton areas. The survey was commissioned by the Parks Unit with financial assistance from the Fendalton/Waimairi Community Board and proposed the addition of 431 notable trees to the City Plan.

SUMMARY OF COSTS

Three Council units are involved in tree protection; Parks, Environmental Policy and Planning, and Environmental Services. Within Environmental Services, several different teams are involved.

The costs for the year from 1 July 1998 to 30 June 1999 are as follows:

Parks Unit	
Staff time	73,709
Environmental Policy & Planning	
Research	15,000
Grants to owners	5,000
Notable Tree Survey	34,741
Staff time	5,364
Environmental Services	
Staff time (City Plan, Subdivisions, Planning Administration & Enforcement)	16,801
GIS (capturing the position of protected trees using GPS and recording this electronically – this was a one-off cost. Newly protected trees are now regularly added to the database).	44,770
Total	\$195,385

The above summary does not include any Variations to add more protected trees to the City Plan because no Variations were carried out during this period. It is estimated that a Variation to add 431 trees as proposed would cost about \$ 45,000.

PRIVATE LAND OWNERS

As noted above, the Council further resolved that this report include comment on the legal rights of private landowners regarding tree protection and whether the presence of notable trees can be included in the valuation of a property.

The Council's Arboriculturist, Walter Fielding-Cotterell, comments as follows:

“Protected Notable Trees - Rights of Landowners

Landowners and other persons have the right to make submissions/objections to trees being protected (or not) under the City Plan or subsequent variations when they are publicly notified. Owners and other persons also have the right to apply to Council for resource consent to carry out works such as pruning on protected trees or construction or groundwork within the specified 10 metres of the trunk. However, if the works are approved, the extent and manner the works are carried out may be subject to certain controls specified in the conditions of approval.

Protected Trees - Rights Under Other Laws.

Common Law of Nuisance :

Where trees actually encroach over a neighbouring property boundary and cause a nuisance by damaging the property, the affected occupier would normally have the right to pursue an action for cessation of the nuisance or a claim for damages in a District Court. Alternatively, the occupier would have the right to abate the nuisance by cutting the offending parts back to the boundary (without the neighbour's consent). These remedies are not available when a tree is legally protected under the ordinances of the City Plan which carries the legal authority of the Resource Management Act. Being a statutory law enacted by Parliament, the RMA and the City Plan regulations it authorises, overrides common law.

Property Law Act (section 129c)

The Property Law Act provides the right for anyone whose (residential) property is being injuriously affected by trees, to apply to a District Court for an order for trees to be trimmed or removed.

Where a tree is subject to a lawfully made heritage protection "requirement" the District Court cannot make an order under that Act except where the matter relates specifically to "any actual or potential danger to the applicant/s life or health or property "However, although listed in the City Plan as heritage trees, none of them are currently subject to a heritage "requirement " as such.

Trees listed in the Plan as notable trees could be the subject of an application to a District Court under the Property Law Act, but the Court would have to have regard to the tree protection rules of the City Plan. The most likely procedure would be to first deal with the matter using the provisions of the City Plan. If the outcome were still not satisfactory to the applicant, there would still be a right to pursue the matter through a District Court.

Trees Property Evaluation

In law, trees are deemed to be part of the land (as distinct from chattels) and could have an impact on property values in the same way that buildings or other structures may have. However, the means of assessing tree values, particularly residential, is not an exact science and frequently there is a lack of supportive sales evidence. Therefore assessments of value can in most cases be very subjective. Additionally the costs and benefits of notable trees to land value can often be intangible and therefore subject to considerable variations as a result of disparate personal perspectives.

Examples where trees can fairly be said to add value to property:

- Have timber or cropping value.
- Provide useful shelter and desirable shade.
- Stabilize erosion prone soils.
- Screen undesirable views.
- Reduce noise levels.
- Beautify and enhance the landscape and amenity values of the property.
- Provide a habitat for desirable birds and wildlife.

An example where trees were included in the valuation of the land is in the instance of the land acquired for road widening in Fendalton Road. In some instances the Council was forced to pay extra for certain land that contained significant trees, some of which were protected.

Negative Tree Values:

- Excessive site coverage/shading.
- Debilitated condition/poor form.
- Excessive tree litter/messy deposits.
- Tree restricts development potential of site.
- Tree is damaging buildings, structures or underground services.
- Tree obstructs desirable views.
- Resource consents required for tree work/application costs involved.
- Costs of maintaining protected trees.

Most of the negative factors that apply to trees are of a more tangible nature and are easier to assess in terms of monetary values.

Reductions/Credit Against Reserves Contribution:

The Council has a formal policy on reserves contributions which are collected where land is subdivided or developed.

The Council has also recognised in its policy register that, in some instances, it may decide it is not appropriate to collect the maximum permissible contribution in any particular case. The Council now provides for protected trees, or other vegetation on development sites, to be deducted from the amount of reserves contribution which would otherwise be payable to the Council. In these situations the monetary value of the tree is determined using the Council's tree evaluation system. The base monetary unit is derived from the costs of purchasing, planting and maintaining the tree up to its age at the time of assessment, This is multiplied by the points the tree has scored using the evaluation system. The figure arrived at is the monetary value of the tree. Where this is appropriate, and particularly where the developer has been required to alter plans or carry out works to preserve the tree, the whole or part of the tree's value may be deducted from the reserves contribution. The value of retaining the tree can then be offset against development costs, thereby theoretically giving rise to a higher value for the land containing the tree."

Chairman's

Recommendation: That the information be received.