



BRF- 894 RM Reform 137 - Background on urban tree protection and managing urban trees in the new system

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Security Level	In-confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Note the content of this briefing Discuss this briefing with officials at Minister Twyford's weekly meeting	
To Hon Phil Twyford, Associate Minister for the Environment		

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments: 4	<p>Titles of attachments</p> <p>Appendix 1: MOG #13 Decisions - Paper 3: Protection mechanisms in the Natural and Built Environments Act</p> <p>Appendix 2: The Boffa Miskell Report entitled Urban Tree Protections: Options and analysis for the new system</p> <p>Appendix 3: Section 76 (4A) - (4D) of the Resource Management Act 1991 and an explanation of the rationale and intent for its inclusion</p>

Ministry for the Environment contacts

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Key messages

1. In October 2021, Minister Parker was delegated decisions on the legislative settings required for urban tree protection at Ministerial Oversight Group (MOG) meeting #13 via *Paper 3: Protection mechanisms in the Natural and Built Environments Act*.
2. This briefing responds to your request for background and evidence on urban tree protection issues. It also describes the aspects of the new system that connect with tree management and protection, as a basis for discussion on whether they will lead to a sufficient improvement in tree protection mechanisms from those used under the Resource Management Act 1991 (RMA).
3. Urban trees perform important functions in urban areas and form a substantial part of urban ecosystems. Some significant trees are valued by communities for their contribution to the character of neighbourhoods, while more generally they contribute to biodiversity, resilience to climate change, mitigation of natural hazard risk and well-functioning urban environments.
4. Under the RMA, urban tree protection provisions in district plans have been primarily through two mechanisms:
 - a. until 2009, some councils used 'blanket tree protection rules' that applied across large parts of urban areas, and;
 - b. tree schedules that identify the notable trees to be protected.
5. Following the inclusion of RMA section 76(4A) – 76(4D), district council plans were only able to protect trees on 'urban allotments' via notable tree schedules. There have been issues with the tree protection mechanisms used both before and after the addition of RMA section 76(4A) – 76(4D).
6. In the new system, trees and vegetation will be managed and protected to achieve the outcomes and not used to maintain the status quo for a few communities. Approaches will also need to respond to the dynamic nature of vegetation in our cities.
7. As cities become denser, councils will need to utilise public spaces more to protect and enhance trees and vegetation in urban areas. However, there will continue to be some circumstances where tree protection mechanisms could be required on private land to achieve the outcomes of the Natural and Built Environments Act (NBA).
8. Councils need to be able to use a variety of regulatory and non-regulatory approaches that sit across the range of local government functions, land uses, and vegetation types to ensure the benefits of trees and vegetation are maximised in urban areas.
9. Data and evidence will be essential for defining the approaches councils take for urban trees and vegetation. Internationally, urban tree canopy coverage data is used to measure the presence of trees in urban ecosystems. This data is collected in some parts of New Zealand and show decreasing canopy coverage in some parts of Auckland and in Christchurch. The reasons for, and nature of any decline in canopy cover are multifaceted.
10. The future resource management (RM) system will give councils options for how urban trees and vegetation will be managed and 'blanket tree protection' rules will not be applied across large parts of our cities. Urban trees and vegetation will be managed as part achieving well-functioning urban environments alongside the other outcomes in the NBA and will require:

- a. moving away from effects-based considerations towards approaches that achieve multiple outcomes, including indigenous biodiversity and well-functioning urban environments for the changing needs of future communities
 - b. the National Planning Framework (NPF) providing integrated direction on matters of national significance to achieve natural and built environmental outcomes and resolve conflicts between competing priorities. The development of the NPF provides an opportunity to integrate and coordinate across the areas of national significance that connect with urban trees and vegetation such as indigenous biodiversity and urban growth
 - c. plan making processes that are less reliant on consents, more responsive to evidence and better coordinated across regional and territorial authorities. These plans will be informed by the NPF, including targets, limits as well as decisions in regional spatial strategies developed under the Strategic Planning Act.
 - d. stronger local government accountability for the efficiency of resource management functions, and particularly the wider monitoring, reporting and evaluation framework for understanding system performance.
11. After decisions are made on the MOG #17 RM Reform Paper entitled *Strategic decisions about the National Planning Framework* and the scope of the NPF is developed further, officials will provide further advice outlining options for the national direction that connects with urban trees and vegetation. There will also continue to be links in other RM reform work that connect with urban tree and vegetation management approaches, particularly NBA plan content, plan development, monitoring and evaluation and council accountabilities.
 12. Officials will also continue to work with councils to explore options to improve tree and vegetation management techniques within the existing legislative settings and during the transitional period (including within the proposed National Policy Statement on Indigenous Biodiversity).

Recommendations

13. We recommend that you:

- a) Note that there have been issues with the tree protection mechanisms used both before and after the addition of RMA section 76(4A) – 76(4D)
- b) Note that the future system will give councils options for how urban trees and vegetation will be managed, as part of achieving well-functioning urban environments alongside the other outcomes in the NBA and 'blanket tree protection' rules will not be applied across large parts of our cities
- c) Note that after decisions made on the MOG #17 paper entitled *Strategic decisions about the National Planning Framework* and the scope of the NPF is developed further, officials will provide further advice on the national direction that connects with urban trees and vegetation

Signature



Linley Wilkinson
Manager Urban and Infrastructure Policy
Ministry for the Environment

29 March 2022

Hon David Parker
Minister for the Environment

Date

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Supporting material

Purpose

1. This briefing responds to your request for background and evidence on urban tree protection issues and describes the aspects of the new system that will ensure the issues which have occurred with tree protection mechanisms under the Resource Management Act 1991 (RMA), will not be repeated in the new system.

Background

2. In October 2021, you (Minister Parker) were delegated decisions on the legislative settings required for urban tree protection at Ministerial Oversight Group Meeting (MOG) #13 via *Paper 3: Protection mechanisms in the Natural and Built Environments Act*. These decisions are attached as Appendix 1.
3. In December 2021, at the MOG #15 meeting, it was agreed that urban tree protection decisions would be made in consultation with the Ministers for Housing, Conservation and all the Associate Ministers for the Environment.
4. As part of the work signalled at the MOG #13 meeting, Boffa Miskell were commissioned to prepare the report entitled *Urban Tree Protections: Options and analysis for the new system* (The Boffa Miskell report). The Boffa Miskell report is attached as Appendix 2.

Analysis and Advice

Trees are critical to our urban ecosystems

5. Trees are an important part of our urban areas and form a critical part of urban ecosystems. Those ecosystems consist of a broad range of flora and fauna, as well the soil, water and air that support them. As part of that wider ecosystem, trees provide a number of critical environmental services and social, cultural and economic benefits. Trees and vegetation benefit urban areas by enhancing biodiversity, improving water quality through minimising stormwater run-off, providing nature-based solutions to avoiding and mitigating the environmental effects of development, building resilience to climate change and natural hazards, and improving human health and well-being.¹
6. Mature trees provide significantly more benefits than smaller, younger trees because of the larger canopy areas, and root systems that better intercept pollutants and reduce stormwater run-off. Mature trees also have higher carbon sequestration rates. Many of these values are not recognised until a tree reaches maturity, at around 35 – 40 years of age.
7. The increasing pressure to develop urban areas also increases pressure to remove trees and vegetation. At the same time, the ability for the trees to regenerate on private land is decreasing. This is due to:

¹ Pg 13 – 15 in the Boffa Miskell report

- a. Increased building coverages as densities increase, reducing the space available for trees. The Auckland Unitary Plan (AUP) permits building coverages of 35 – 50% of net site area depending on the residential zone. This is a significant increase from the 35% building coverage in the plans that preceded the AUP.²
 - b. Soil depths becoming insufficient to support mature trees. Soil depths are being reduced because of changing site preparation practices which involve more multi-unit developments, greater vegetation clearance, stripping of topsoil (to remove contaminated soils), and land compaction.³
8. As affordable multi-unit development increases, public green spaces will become increasingly important to ensure equity in the benefits that trees provide.⁴
9. MOG #13 decisions confirmed that there is a need to protect (and potentially restore/enhance) urban trees on public and private land in a way that balances the competing outcomes of the Natural and Built Environments Act (NBA) and can be implemented efficiently.

Issues with urban tree protection under the Resource Management Act 1991 (the RMA)

10. Prior to RMA amendments in 2009 and 2013, some councils⁵ were using 'blanket tree protection rules' to protect trees identified by species, height and girth, irrespective of a specific location. Any trimming, pruning or removal of such trees triggered a resource consent, which in 2009, accounted to 4,500 resource consents, 10% of the national total of resource consents.
11. High transaction costs associated with blanket tree protection rules resulted in the introduction of section 76 (4A) – 76(4D) in 2009, which was further amended in 2013. Appendix 3 outlines section 76 (4A) – 76 (4D) in full and provides further detail on the rationale for the amendments.
12. Section 76 (4A) – (4D) of the RMA specifies that district plans cannot include rules that protect urban trees from being trimmed, damaged, or removed unless that tree or group of trees is specifically identified in a schedule to the plan.
13. Our analysis concludes that there are several issues with the scheduling approach include:
- a. the onerous and costly requirements of a plan change process required for updating a tree schedule means many councils do not keep the schedule up to date. For example, Auckland Council has estimated that the cost to update its schedule of over 6000 notable trees is between \$871k - \$3m, depending on the level of review that takes place⁶
 - b. the consenting process for trimming and removal of scheduled trees is onerous. There is a cost of processing the tree consent that sometimes falls on councils, as well costs to the applicant in preparation of the application. Depending on the scale of works proposed, it is estimated this could cost a minimum of \$1500, and often significantly more, once an application is prepared by an independent arborist

²Pg 18, The Boffa Miskell report

³Pg 18 The Boffa Miskell report

⁴The Parliamentary Commissioner for the Environment is currently preparing a report on how urban green space in New Zealand has changed over time and assess the barriers that hinder its provision.

⁵At the time of the 2009 RMA amendments, 11 councils were using blanket tree protections rules, being Waitakere City, Rodney District, North Shore City, Auckland City, Manukau City, Tauranga City, Whakatane District, Upper Hutt City, Porirua City, Rotorua District Southland District

⁶Pg 17 in The Boffa Miskell report

- c. scheduling is suited for the protection of individual trees which have high individual values. In the current system, values which are judged in this way tend to focus on heritage, special character or amenity. Scheduling in the current system does not provide well for outcomes where the benefit of trees and vegetation is more cumulative in nature
- d. with the scheduling approach being difficult, district councils have limited options for protecting trees on private land. This was not the policy intent of the RMA amendments, and the gap potentially impacts on the ability to achieve the range of outcomes that trees contribute to.

The new system needs to respond to the dynamic nature of vegetation and recognise a range of vegetation types on both private and public land.

14. In the new system, trees and vegetation will be managed and protected to achieve the outcomes and not used to maintain the status quo for a few communities. Council approaches will also need to respond to the dynamic nature of vegetation in our cities.
15. As densities in our cities increase, councils will need to utilise public spaces more to protect and enhance trees and vegetation in urban areas. However, there will be challenges and limitations on the extent to which public land can be used to increase canopy cover. Parks and open spaces provide a range of values and services which will limit the extent to which these spaces can be planted out. The ability to provide for street trees is also limited due to the need to provide for increasing numbers of driveways, alternative modes of transport such as bus and cycling lanes, on-street parking, under-ground services and streetlights.⁷
16. There will continue to be some circumstances where tree protection mechanisms could be required on private land to achieve the outcomes of the NBA. For example, where protecting trees is required to achieve a particular outcome, such as protection of indigenous biodiversity.
17. Councils will need to use a variety of regulatory and non-regulatory approaches that sit across the range of local government functions, land uses, and vegetation types to ensure the benefits of trees and vegetation are maximised in urban areas.
18. Data and evidence will be essential for defining the approaches councils take for urban trees and vegetation.

Urban tree canopy data

19. Tree canopy coverage is commonly used to assess the presence of trees in urban ecosystems and their contribution to outcomes such as biodiversity, resilience to climate change, resilience to natural hazards and well-functioning urban environments.
20. Some cities in New Zealand collect urban tree canopy data. While the amount of data collected and approaches used for collection vary, key data shows:
 - a. Auckland currently has an average of 18% urban canopy cover. 61% of the coverage is contained on private land. Since the 2009 RMA amendments to urban tree protection mechanisms (detailed in Appendix 3), there has been no net loss of tree canopy coverage, but urban tree canopy coverage on private land is decreasing, as are larger, more mature trees which add the most value.⁸
 - b. In Christchurch, the analysis is still being finalised, but initial results indicate there has been a reduction from the 15% canopy cover recorded in 2015.⁹

⁷ Pg 18 and 19, The Boffa Miskell report

⁸Pg 17, The Boffa Miskell report

⁹Pg 18, The Boffa Miskell report

- c. Tauranga City Council has no tree canopy coverage data, but officials observed a reduction in the presence of trees in subdivisions established in the early 2000s compared to those established in the 1950s.¹⁰
 - d. Wellington City Council has never applied tree protection rules based on general categories (such as height or girth) yet has an urban canopy cover of around 30% (over public and private land).¹¹
21. Many international cities are now including canopy cover targets and/or monitoring canopy coverage to assist in maximising benefits and services from urban trees and vegetation. For instance, Brisbane has a coverage of 44%, Melbourne is at 22% with a target of 40% by 2040, New York City is at 21%, and London is at 21% with a target of 31% by 2050.¹²
22. There are a range of reasons why some cities have higher urban canopy coverage than others. Including historic town-planning approaches dedicating green belt areas for planting and typography making large areas of land unsuitable for urban development.¹³ More analysis is required to better understand approaches used to collect urban tree canopy coverage data in New Zealand, as well as the gaps, trends, issues and opportunities. However, our initial conclusions from this data are:
- a. any decline in canopy cover will be multifaceted and cannot be attributed solely to the removal of the ability to use general tree protection rules
 - b. some trends in urban tree canopy coverage will be more significant and harder to reverse, than others, for example, the loss of mature trees
 - c. the trends begin to highlight some of the issues and there are opportunities in the future RM system to improve the way urban trees and vegetation are managed in our urban environments.

Tree protection in the future RM system

23. The future RM system will give councils options for how urban trees and vegetation will be managed and 'blanket tree protection' rules will not be applied across large parts of our cities. Urban trees and vegetation will be managed as part achieving well-functioning urban environments alongside the other outcomes in the NBA. It will require:
- a. The move away from effects-based considerations focussed on localised amenity, towards approaches that achieve multiple outcomes, including indigenous biodiversity and well-functioning urban environments for the changing needs of future communities.
 - b. The National Planning Framework (NPF) providing an integrated direction on matters of national significance to achieve natural and built environmental outcomes and resolve conflicts between competing priorities. The development of the NPF provides an opportunity to integrate and coordinate across the areas of national significance that connect with urban trees and vegetation such as indigenous biodiversity and urban growth.
 - c. Plan making processes that are less reliant on consents, more responsive to evidence and better coordinated across regional and territorial authorities. These plans will be informed by the NPF, including targets, limits and the decisions in regional spatial strategies developed under the Strategic Planning Act.

¹⁰Pg 18, The Boffa Miskell report

¹¹Pg 18, The Boffa Miskell report

¹²Pg 18, The Boffa Miskell report

¹³Pg 18, The Boffa Miskell report.

- d. Stronger local government accountability for resource management functions. There are other RM reform papers addressing aspects of accountability in the new system¹⁴ and the accountabilities framework will ensure councils and decisions makers are accountable for efficiency and effectiveness of the regulation that relates to trees and vegetation.

Engagement

24. Officials have held two workshops on issues and options for urban tree protections with interested councils. Informal conversations have also occurred between officials and Auckland Council's staff. Officials have engaged with the Department of Conservation, Ministry for Primary Industries, Ministry for Housing and Urban Development, and the Ministry of Health.

Next Steps

25. After decisions are made on the MOG 17 RM Reform Paper entitled 'Strategic decisions about the National Planning Framework') and the scope of the NPF is developed further, officials will provide further advice outlining options for national direction that connects with urban trees and vegetation in urban areas.
26. Officials will also continue to work with councils to explore options to improve tree and vegetation management techniques within the existing legislative settings and during the transitional period (including within the proposed National Policy Statement on Indigenous Biodiversity).
27. As well, officials will continue to engage with the Parliamentary Commissioner for the Environment as they complete their report on how urban green space in New Zealand has changed over time and the barriers that hinder its provision. Officials will consider the findings of this work within the broader urban work programme.

¹⁴ For example BRF-1221 RM Reform 115 – Resource management reform and how to improve local government accountability mechanisms and BRF-1241 RM Reform 126 - Resource Management Reform Evaluation.

Appendix 1: MOG #13, Paper 3: Protection mechanisms in the Natural and Built Environments Act

Urban tree protection

1. noted that councils are tasked with the protection of urban trees and vegetation, which contributes to a range of outcomes, for example, ecological integrity, protection of landscapes, indigenous vegetation and biodiversity, climate change, heritage, and equity of health and wellbeing
2. noted that accessibility to urban trees and nature is a key part of a well-functioning urban environment, and increases the liveability of more intensive housing
3. noted that councils are also tasked with enabling urban growth and development and to ensure housing supply meets the needs of their growing communities
4. noted that further work is being undertaken to better understand and to address the challenges associated with current and historic urban tree protection provisions that have proven onerous and inflexible for both councils and system users
5. agreed that there is a need to protect (and potentially restore/enhance) urban trees on public and private land in a way that balances these competing outcomes and can be implemented efficiently
6. agreed to authorise the Minister for the Environment to make further policy decisions on the legislative settings required for urban tree protection, working in consultation with other relevant Ministers as appropriate

Appendix 2: The Boffa Miskell Report: Urban Tree Protection

Appendix 3 Sections 76 (4A)- (4D) of the Resources Management Act 1991, with further explanation

Section 76 (4A)- (4D) of the Resources Management Act 1991

- (4A) A rule may prohibit or restrict the felling, trimming, damaging, or removal of a tree or trees on a single urban environment allotment only if, in a schedule to the plan,—
- a. the tree or trees are described; and
 - b. the allotment is specifically identified by street address or legal description of the land, or both.
- (4B) A rule may prohibit or restrict the felling, trimming, damaging, or removal of trees on 2 or more urban environment allotments only if—
- a. the allotments are adjacent to each other; and
 - b. the trees on the allotments together form a group of trees; and
 - c. in a schedule to the plan,—
 - i. the group of trees is described; and
 - ii. the allotments are specifically identified by street address or legal description of the land, or both.
- (4C) In subsections (4A) and (4B), **group of trees** means a cluster, grove, or line of trees
urban environment allotment or **allotment** means an allotment within the meaning of section 218—
- a. that is no greater than 4 000 m²; and
 - b. that is connected to a reticulated water supply system and a reticulated sewerage system; and
 - c. on which there is a building used for industrial or commercial purposes or as a dwellinghouse; and
 - d. that is not reserve (within the meaning of section 2(1) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.
- (4D) To avoid doubt, subsections (4A) and (4B) apply—
- a. regardless of whether the tree, trees, or group of trees is, or the allotment or allotments are, also identified on a map in the plan; and
 - b. regardless of whether the allotment or allotments are also clad with bush or other vegetation.

History of Section 76 (4A) - (4D) of the RMA

1. Section 76 (4A) – (4D) was included in the RMA following amendments in 2009, which were further clarified in 2013. The sections mean that district plans cannot include rules that protect urban trees from being trimmed or removed unless that tree or group of trees is specifically identified in a schedule to the plan.
2. Prior to 2009, approximately 4,500 consents were being issued annually to allow for the trimming, pruning, and removal of trees. The consents were triggered by small

number of council's district plan rules which protected trees of a certain girth and height ('blanket tree protection rules'). Consents triggered by the blanket tree protection rules represented about 10% of the national total of consent applications.

3. In most instances, the blanket tree protection rules explicitly stated that the trimming, pruning, and removal of trees to create a permitted or consented building platform was a reason to grant the consent. Therefore, the blanket tree protection rules did not directly prevent development, but did create unnecessarily high transaction costs¹⁵, uncertainty for landowners and for the community.
4. To address the issues, provisions were introduced into the RMA that were intended to prohibit blanket tree protection rules except in areas within a reserve or an area subject to a conservation management plan or conservation management strategy.
5. Shortly after the change, Auckland Council sought a declaration from the Environment Court to ascertain the lawfulness of their blanket tree protection rules. In 2011, the Environment Court declared that councils could retain rules the Government considered amounted to a general tree protection approach. Central to the Environment Court's decision was how the words "group of trees" should be interpreted. The Environment Court decision was at odds with the policy intent of the new provisions as they legitimised a range of common blanket tree protection approaches.
6. Subsequently, in 2013, there were further changes to the RMA to clarify the policy intent which completely removed the ability of a district plan to contain blanket tree protection rules. The changes came into effect in 2015.
7. The intent of sections 76(4A)–76(4D) was not to remove councils' ability to protect trees in urban areas, nor was it intended to place restrictions on the types of trees to be protected, or the methods a council may use to assess the quality of a tree or group of trees. Rather, the sections were intended to create certainty for landowners and district plan users about what, if any, tree protection rules affect their properties by requiring the protected trees to be described and the sites specifically identified by street address and/or legal description in a schedule to the plan.
8. Currently, council approaches for managing trees and vegetation in urban areas varies across the country. Some councils use schedules, and while others do not.

¹⁵Many councils waived the processing fee for tree consents, meaning that the cost of processing tree consents largely fell with Councils. The transaction cost refers to the total cost of processing tree consents, including the cost for the council as well the cost for the applicant that result from the time and uncertainty associated applying for a consent.