



# EXTRAORDINARY COUNCIL MEETING PUBLIC AGENDA

## Thursday 1 August 2019

3:00 pm

Council Chamber, Level 2 Philip Laing House  
144 Rattray Street, Dunedin

Members of the public are welcome to attend.

Meeting documents and attachments are available online at: [www.orc.govt.nz](http://www.orc.govt.nz)

### **Membership**

Cr Stephen Woodhead	<i>(Chairperson)</i>
Cr Gretchen Robertson	<i>(Deputy Chairperson)</i>
Cr Graeme Bell	
Cr Doug Brown	
Cr Michael Deaker	
Cr Carmen Hope	
Cr Trevor Kempton	
Cr Michael Laws	
Cr Ella Lawton	
Cr Sam Neill	
Cr Andrew Noone	
Cr Bryan Scott	

### **Attending**

Sarah Gardner	<i>(Chief Executive)</i>
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### **Disclaimer**

Please note that there is an embargo on agenda items until 48 hours prior to the meeting. Reports and recommendations contained in this agenda are not to be considered as Council policy until adopted.

*For our future*

## TABLE OF CONTENTS

1. Apologies .....	3
2. Attendance .....	3
3. Confirmation of Agenda.....	3
4. Conflict of Interest .....	3
5. Public Forum .....	3
6. Matters for Council Decision .....	3
6.1. Pest Management Plan Delegations.....	3
7. Closure .....	8

## **1. APOLOGIES**

No apologies were noted.

## **2. ATTENDANCE**

## **3. CONFIRMATION OF AGENDA**

*Note: Any additions to the agenda must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting.*

## **4. CONFLICT OF INTEREST**

*Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have.*

## **5. PUBLIC FORUM**

## **6. MATTERS FOR COUNCIL DECISION**

## 6.1. Pest Management Plan Delegations

<b>Prepared for:</b>	Council
<b>Report No.</b>	GOV1849
<b>Activity:</b>	Governance Report
<b>Author:</b>	Lisa Miers, Consultant, Mitchell Daysh Ltd
<b>Endorsed by:</b>	Gavin Palmer, General Manager Operations
<b>Date:</b>	30 July 2019

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### PURPOSE

This report seeks a Council decision to;

- a. Determine how further consultation with property occupiers affected by a proposed extension to the Gorse and Broom Free Areas in the proposed regional pest management plan is to be undertaken; and
- b. Delegate to the Hearing Panel the necessary powers to consider any written views received as part of the further consultation as part of its recommendations to Council.

### EXECUTIVE SUMMARY

Otago Regional Council is reviewing the Otago Pest Management Strategy 2009 (“operative plan”), to fulfil the requirements of the Biosecurity Act 1993 (“The Act”) and comply with the National Policy Direction 2015 (“NPD”).

The pest management review has included the development of a proposal for a Regional Pest Management Plan (“proposed pest management plan”), and the development of a proposed Biosecurity Strategy (“proposed biosecurity strategy”).

Council resolved on 31 October 2018 to notify the proposed pest management plan for submissions and directed that feedback be sought on the proposed biosecurity strategy at the same time. The Hearing Panel was then appointed by the Commissioner Appointment Sub-Committee. Following the receipt of submissions and feedback, the Hearing Panel heard submissions in four days of public hearings in June 2019.

Having considered submissions seeking to extend some of the Gorse and Broom Free Areas, the Hearing Panel recommends to Council that specific consultation be undertaken with additional property occupiers within the Cardrona Valley. This requires a decision of Council in accordance with Section 72(5) of the Biosecurity Act 1993.

### RECOMMENDATION

#### That the Council:

- a. **Note** that the Hearings Panel has determined in accordance with section 72(4) of the Biosecurity Act 1993 that further consultation on the Proposed Regional Pest Management Plan be undertaken with property occupiers affected by the proposed extension to the Gorse and Broom Free Areas in the Cardrona Valley;
- b. **Resolves** in accordance with section 72(5) of the Biosecurity Act 1993 that consultation be undertaken by informing the property occupiers in writing of the proposed extension

*to the Gorse and Broom Free Areas and giving the property occupiers an opportunity to provide their views in writing;*

- c. *Acting under clause 32 of Schedule 7 of the Local Government Act 2002, delegates to the Hearing Panel the necessary powers, functions and duties under the Local Government Act 2002 and Biosecurity Act 1993 to consider any written views received from the Property Occupiers as part of its recommendations to Council as to the Council's decision on the proposed regional pest management plan.*

## **BACKGROUND**

On 31 October 2018, Council resolved to publicly notify the Proposed Pest Management Plan for submissions and at the same time seek community feedback on the Proposed Biosecurity Strategy.

The submission and feedback period ran from 1 November 2018 to 14 December 2018. Following this, 344 submissions were received on the Proposed Pest Management Plan and 16 submissions were received on the Proposed Biosecurity Strategy. Some submissions provide feedback on both documents. Public hearings took place over four days in June 2019 where some submitters took the opportunity to speak to their submission and provide evidence.

Some submissions sought to extend some of the Gorse and Broom Free Areas identified in the proposed pest management plan as notified. In particular, an extension in the Cardrona Valley to a new area further north to the Cardrona Ski Road to address an area of infestation. The Panel has considered these submissions and considers that it is appropriate to give property occupiers within this extended area an opportunity to provide their views to the Hearings Panel before it makes its recommendations to Council. It is understood that property occupiers within the extended area have not previously lodged a submission on the proposed pest management plan.

### **Consultation under the Biosecurity Act 1993**

As part of the third step in the making of a regional pest management plan, the Council must consider whether it is satisfied that sufficient consultation has occurred in accordance with section 72 of the Biosecurity Act 1993.

The Council has determined that the Proposal be publicly notified for submissions and appointed the Hearing Panel to hear and make recommendations on submissions received.

The Panel has been delegated the powers, functions and duties of the Council set out in sections 72 to 74 (excluding section 72(5)) and section 100D(6)(b) of the Biosecurity Act 1993 in respect of the Proposal, and the powers, functions and duties of the Council set out in sections 75(1) and (2) of the Biosecurity Act 1993 to prepare a written report on the plan.

Following the hearings on the Proposal the Hearing Panel is required to revisit consultation under section 72(1) of the Biosecurity Act 1993 and satisfy itself:

- a. That, if Minister's responsibilities may be affected by the plan, the Ministers have been consulted; and
- b. That, if local authorities' responsibilities may be affected by the plan, the authorities have been consulted; and

- c. That the tāngata whenua of the area who may be affected by the plan were consulted through iwi authorities and tribal rūnanga; and
- d. That, if consultation with other persons is appropriate, sufficient consultation has occurred.

If the Panel is satisfied that sufficient consultation has been undertaken, then it must apply section 73 of the Biosecurity Act 1993 which involves the approval of the preparation of the plan and a decision on the management agency for the plan.

If the Panel is not satisfied with consultation, then it may require consultation to be undertaken on the Proposal. However, if it requires consultation to be undertaken, section 71(5) of the Biosecurity Act 1993 provides that the Council must determine the way or ways in which the consultation must be undertaken including, but not limited to, ways such as:

1. Consultation with persons likely to be affected by the plan or with their representatives;
2. The appointment by the council of 1 or more persons to carry out an independent inquiry into the proposal on terms of reference set by the council;
3. Public notification of the proposal and receipt of submissions.

This power to determine the way in which consultation must be undertaken cannot be delegated by the Council and therefore has not been delegated to the Hearing Panel.<sup>[1]</sup>

Following the consideration of submissions received and evidence provided, the Hearing Panel has directed that staff undertake further consultation in relation to an extension to the New Gorse and Broom Free Areas in the Cardrona Valley to a new area further north to the Cardrona Ski Road. This would involve consultation with persons who are not already involved in the process as submitters. In order for staff to be able to undertake that consultation, the Council must determine the way in which the consultation is to be undertaken.

### **Consultation to be undertaken**

Staff have identified property occupiers within the proposed extended Gorse and Broom Free Areas and propose to send those persons a letter informing them of the proposed extension of the Gorse and Broom Free Areas, providing them access to the relevant information and giving them an opportunity to provide their written views to the Council so their views can be considered by the Panel before it provides its recommendations to Council.

The letter would include a map of the proposed areas and a summary of the provisions of the proposed pest management plan that apply within those areas, and advise persons where to view the relevant information.

Those property occupiers who provide their written views to the Council will, like submitters, have the ability to bring an application to the Environment Court on the Council's decision on the plan pursuant to section 76 of the Biosecurity Act 1993.

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<sup>[1]</sup> Section 100H(3) of the Biosecurity Act 1993 provides that a council must not delegate the power to determine the ways in which consultation must be undertaken. This is why the delegations to the Hearing Panel specifically exclude section 72(5).<sup>1</sup>

## **CONSIDERATIONS**

### **Legal compliance and risk assessment**

Legal oversight and advice has been provided throughout the development of the Proposal where required to ensure that the Proposal and processes followed comply with the Biosecurity Act 1993 and the Local Government Act 2002.

### **Consistency with council policy**

This report does not propose a departure from Council policy.

### **Communication**

A Communication plan was prepared and implemented to support the public notification and feedback. Further communication with those property occupiers within the proposed extended Gorse and Broom Free Areas will ensure the process undertaken is robust and provides the ability to bring an application to the Environment Court on the Council's decision on the plan pursuant to section 76 of the Biosecurity Act 1993.

## **ATTACHMENTS**

Nil

## **7. CLOSURE**