

**Attachment 7 – Legal Opinion on Notable and Public Trees Provisions  
and Designations - G J Mathias**

WDC W.560

28 August 2018

Whangarei District Council  
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Email: [Melissa.McGrath@wdc.govt.nz](mailto:Melissa.McGrath@wdc.govt.nz)

Attention: Melissa McGrath

**re: Notable and Public Trees and Designations**

Thank you for your letter of 12 August.

In our opinion the designation for Whangarei Intermediate School in the district plan does not preclude the identification of tree 513 as a notable tree in plan change 129.

As provisions of the RMA should as far as is possible be read together so we see no difficulty with provisions in a plan on the one hand designating an area for a particular purpose and on the other identifying that within that designated site there is a tree which requires protection. It cannot be said that one part of the RMA trumps another part so that if a site is designated then no other special characteristic of the property can be similarly recognised. That would run counter to the general principles of the act.

S.171 of the RMA provides that when a requirement and submissions received are being considered, a territorial authority must “subject to Part 2, consider the effects on the environment of allowing the requirement having particular regard to - ...<sup>1</sup>

There are a variety of matters under Ss 6 and 7 of the RMA, which are within Part 2, which call for the protection of natural and physical resources, amenity values and enhancement of the quality and environment such that protection of significant trees may be warranted even where they are within an area which is the subject of a designation.

Leaving to one side the factual issues raised in the submission, what is the nature of the tree and whether it actually warrants protection, such being matters which all call for an evidential analysis, it is our view that there is nothing within the RMA which precludes the identification of tree 513 as a notable tree notwithstanding the designation of the site.

Consideration has been given to the Environment Court decision in Rotorua Regional Airport Limited v Fischer.<sup>2</sup> This was an issue about trees which were growing into airspace which was within a flight path for Rotorua Airport and for which some protection had been sought by a Notice of Requirement. The trees in that case were not protected but were an existing use of land.

The submission in this case does not come from the requiring authority. What if any requirement did the requiring authority have with respect to the tree at the time that the notice of requirement was filed

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<sup>1</sup> S.171(1) RMA 1991

<sup>2</sup> NZRMA 105

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with Council? If the notice of requirement was silent as to the tree then might one assume that the tree being in situ did not impact upon the designation.

Yours faithfully  
**THOMSON WILSON**

Per: 

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