

Before the Hearing Panel

Whangarei District Plan – Plan Change 129 Trees

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 129 -
Notable and Public Trees to the
Whangarei District Plan

AND

IN THE MATTER of the submission of the Whangarei
District Council Roading Department

**STATEMENT OF EVIDENCE FROM HEATHER OSBORNE MADE ON BEHALF OF THE
WHANGAREI DISTRICT COUNCIL ROADING DEPARTMENT**

DATE: 23 November 2018

1.0 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

1.1 This evidence has been prepared by Heather Jane Osborne. I am an Infrastructure Planner within the Infrastructure Planning and Capital Works Team of Whangarei District Council (WDC) and provide planning advice and support to all WDC Infrastructure Departments. This includes representation on behalf of the WDC Roding Department (Roding) on planning matters.

1.2 My academic qualifications include a Bachelor of Arts from the University of Otago, with a major in Social Geography, and a Masters in Planning Practice with Honours (2nd Class) from the University of Auckland.

1.3 I am an intermediate member of the New Zealand Planning Institute and have over five years' experience working as an environmental planner. During this time, I have been employed in a range of resource management roles within local government, including:

- Policy formulation and public consultation;
- Statutory resource consent processing;
- District Plan compliance checks for Building Consent applications;
- Preparation of District Council and Regional Council Resource Consent applications;
- RMA/ planning advice and preparation of planning assessments for a wide range of infrastructure projects.

1.4 I confirm that the evidence on planning matters that I present is within my area of expertise and that I am not aware of any material facts which might alter or detract from the opinions I express. I have read and agree to comply with the Code of Conduct for expert witnesses as set out in the Environment Court Consolidated Practice Note 2014. The opinions expressed in this evidence are based on my qualifications and experience, and are within my area of expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that position.

2.0 OUTLINE OF EVIDENCE

2.1 The evidence provided in this statement is set out in the following way:

- Summary of WDC Infrastructure Department submission – This provides an overview of the main points that were submitted on in relation to the notified version of the PC129 provisions, and the relief sought.
- Support for recommended changes – This looks at the changes that have been recommended in the Section 42A Hearing Report, prepared by David Badham on Behalf of WDC District Plan Department, that Roding support;
- Relief still sought – This looks at the changes that have been recommended in the Section 42A Hearing Report, prepared by David Badham on Behalf of WDC District Plan Department, and highlights the key areas for which amendments are still sought by Roding.
- Conclusion – This provides a summary of the evidence in this statement.

3.0 ROADING SUBMISSION SUMMARY

3.1 The submission made by the WDC Infrastructure Department (Infrastructure) covered several parts of the notified version of PC129 and was prepared in a format that addressed issues in order of their presence in the layout of the proposed Plan Change, from start to finish. However, for the purpose of this summary, the submission can be broken down into five key areas, being:

- General structure and wording;
- Permitted activity criteria;
- Trimming and alteration;
- Works within the dripline;
- Removals.

3.2 *General Structure and Wording -*

3.2.1 There are significant and obvious implications that can result if a District Plan (Plan) provision does not use correct grammar, punctuation and a consistent structure throughout. Issues of interpretation arise when a lack of these basic Plan writing tools does not allow a Plan reader to readily, without confusion, make sense of requirements set out.

3.2.2 The notified version of PC129 included a number of rules that were split into separate components by the use of sub-rules. Infrastructure's submission, therefore, requested that the interrelationship between specific rules be clearly specified by use of semi-colons, followed by the use of the word 'and' or 'or'. This would allow a Plan reader to easily determine, without confusion, if compliance is required with all components of the rule, a combination of them, or only one of them.

3.3 *Permitted Activity Criteria –*

3.3.1 No permitted activity standards were included in the notified version of PC129, only discretionary activities. The way the provisions were written created multiple rules that had to be read as 'double negatives'. For example, some provisions were written in the following way:

'An activity is a discretionary activity, except where: "xxx" is not the case.'

Therefore, Infrastructures submission included a request to reframe the same provisions as 'permitted activities' to remove this 'double-negative' effect.

3.3.2 New permitted activity criteria were also requested in relation to 'works within the dripline', 'trimming and alteration' and 'removals' of public trees, in order to allow Roading and other Network Utility Operators to undertake work required, in their respective fields, as a matter of public safety and statutory requirement, which will be expanded on now.

3.4 Trimming and Alteration –

- 3.4.1 The notified version of PC129 included, in NPT.1.4, a discretionary activity status for the trimming or alteration of any public tree with some exceptions for network utility operators and WDC. However, the provisions do not clearly specify that trimming and alteration by Whangarei District Council, a Network Utility Operator or their authorised agent can be undertaken without complying with other sub-rules of this section. Therefore, clarity was sought on this issue by reframing the rule.

The version of the rule proposed in the submission also provided for trimming and alteration required for the safe and efficient operation and maintenance of road lighting.

3.5 Works within the Dripline –

- 3.5.1 The notified version of PC129 included, in NPT.1.5, a discretionary activity status for: *“the construction or alteration of any structure, excavation of land, compaction of soil and any new impervious surfaces within the dripline of any public tree identified in NPT.1.10.1 except where:*
- a. *The works are thrusting to a depth of greater than 650mm for the installation of network utilities supervised by a qualified arborist”*

- 3.5.2 Roding has a range of assets, including footpaths and roads, that are within the dripline of public trees that require general maintenance and repairs and would therefore likely require consent under this provision. The submission suggested that it is onerous to Roding, and to the ratepayer, to require consent for these types of works.

- 3.5.3 The Roding Department are specifically seeking a permitted activity status for work associated with existing infrastructure, such as footpaths.

- 3.5.4 The submission proposed that the use of arboricultural best practice, and monitoring of the tree by an arborist post-work, as a permitted activity criteria, could avoid the risk of adverse effects resulting from the works. The rule would then achieve a sensible outcome, without the added cost and time delay of a consenting process.

3.6 Removals –

- 3.6.1 The notified version of PC129 included, in NPT.1.6, a discretionary activity status for damage to, or removal of, any ‘public tree’ defined in NPT.1.10.1. The submission on this rule recognised the need for restrictions around removal of trees, especially ‘notable trees’ that have been subject to a STEM assessment.

- 3.6.2 However, where there is a conflict with the need to maintain a safe roading environment, including provision of network utilities, and undertaking emergency works, the submission proposed that there should be a specific set of criteria for permitted tree removals included for ‘public trees’ only.

3.7 Further technical evidence, relating to the need and importance for the proposed changes, will be provided in the evidence of Nick Marshall (Roadings Senior Roading Engineer), Brendon Tong (Roadings Traffic Projects Engineer) and Michael Batchelor (Roadings Road Maintenance Engineer).

4.0 SUPPORT FOR RECOMMENDED CHANGES

4.1 The Section 42A Hearing Report (s42A Report), prepared by David Badham, on behalf of the WDC District Plan Department, has recommended a number of variations to the proposed provisions, in response to relief sought in submissions.

4.2 Several of these recommended changes are supported by Roadings as they address issues raised in the Infrastructure submission. In particular, support is given to the following changes:

- Inclusion of wording in the Description and Expectations and Objective 3 to give consideration to the placement of trees in relation to planned infrastructure and network utilities;
- Use of Permitted Activity Criteria;
- Use of the words 'pruning and maintenance', as opposed to 'trimming and alteration';
- Use of the term 'root-zone', as opposed to 'dripline';
- Provision to remove a dead notable and public tree as a permitted activity;
- Provision for Network Utility Operators to undertake emergency works;
- Provision for removal of trees as a result of emergency works.

4.3 These changes are considered to present reasonable and logical planning solutions that seek to ultimately protect trees as a primary outcome, whilst recognising that there are certain instances in which works to trees are required as a matter of safety and to meet statutory requirements.

5.0 RELIEF STILL SOUGHT

5.1 Whilst the s42A Report recommendations address a number of key issues raised in the Infrastructure submission, there are outstanding matters that require attention to satisfy relief sought in Infrastructure's submission, as follows.

5.2 General Structure and Wording –

5.2.1 The recommended version of both permitted and discretionary activity rules do not include a method to understand the interrelationship between rule components/ the sub-rules. For example, the version of NPT.1.5.4 includes the five components/ sub-rules, as shown here:

4. ~~Trimming Pruning or maintenance or alteration~~ of any public tree defined in NPT.1.10.1 which does not comply with the following is:
- a. ~~The trimming or alteration is r~~Required for the removal of broken, dead, dying or diseased wood.
 - b. ~~Tree works are u~~Undertaken in accordance with arboricultural best practice where:
 - i. The maximum branch diameter does not exceed 100mm at severance;
 - ii. No more than one third of the foliage of the tree is removed in any 12 month period and;
 - iii. ~~Works must retain t~~The natural shape, form and branch habit of the tree is retained.
 - c. Emergency tree works undertaken by the Whangarei District Council, network utility operator or their authorised representative.
 - d. ~~Tree works u~~Undertaken by a qualified arborist on behalf of a network utility operator, where branches are compromising the safe and efficient operation, maintenance and upgrade of overhead wires or network utilities and the trimming pruning or maintenance is required ~~in order~~ to maintain the security of an existing supply or to restore power or telecommunication infrastructure.
 - e. ~~Tree works u~~Undertaken by Whangarei District Council, a road controlling authority or their designated agent required to maintain the visibility of road safety signage, maintain vehicle sight lines for traffic safety or to maintain legal clearance height and width above the road carriageway.

Figure 1: S42A Hearing Report Recommendation, Para 280.

- 5.2.2 The use of a semi colon and the word 'and' or 'or' at the end of each of these rule components/ sub-rules is considered critical to ensuring a consistent interpretation of the instances in which pruning and maintenance can be undertaken by Roding as a permitted activity.
- 5.2.3 In the current format, it is unclear whether sub-rule 'd.' also requires compliance with other sub-rules. i.e. is the pruning and maintenance undertaken by Whangarei District Council to maintain vehicle sight lines, also required to comply with sub-rule 'b.' in which the maximum branch diameter pruned cannot exceed 100mm at severance.
- 5.2.4 Roding believe the drafting does not intend that WDC are to comply with all the sub-rules simultaneously and that correct interpretation should be that compliance with those other sub-rules should not be required. The format of the Rule needs to make this clear.
- 5.2.5 Nick Marshall, Brendon Tong and Michael Batchelor have prepared evidence that demonstrates the significance of the issue if a different interpretation of this rule were taken that treated all sub-rules as requiring compliance simultaneously to qualify as a permitted activity.
- 5.2.6 Experience in working with those reading operative planning provisions has encountered numerous instances of uncertainty, which can lead to the need for direction from those administering the plan, or those having drafted the provisions.

Often this results in contradictory interpretations, and an inconsistent application of the same planning provisions over time, and between individuals.

5.2.7 Whilst these issues can often be dealt with after provisions have become operative, by use of practice or guidance notes, it would seem logical that the structure be amended prior to the provision becoming operative to remove the uncertainty and provide as much clarity as possible, not only for Roding, but all Plan users.

5.3 Pruning & Maintenance of Public Trees for the safe and efficient use of road lighting –

5.3.1 The Roding submission proposed alternative wording for NPT.1.5.4 to allow for pruning and maintenance of public trees where branches are compromising the safe and efficient operation, maintenance or upgrade of overhead or underground network utilities, specifically including road lighting.

5.3.2 The s42A Report does not appear to have directly addressed this part of the proposed wording and despite amendments to the relevant rules, the reference to lighting has not been included. On this matter, I support the evidence of Nick Marshall and Brendon Tong in demonstrating the significance of maintaining lighting infrastructure for the purpose of providing a safe roading environment.

5.4 Works within the Root-zone –

5.4.1 Infrastructures submission on, what was previously a rule in relation to works within the 'dripline' of public trees, raised issues for general maintenance and minor upgrading required for existing roading infrastructure. Provision for these kinds of works does not appear to have been explicitly provided for in the recommended version of the new 'root-zone' rule in the s42A Report.

5.4.2 As such, relief is still sought to ensure that routine works undertaken by Roding are not inadvertently captured by the rule, requiring a discretionary activity consent in every case. Nick Marshalls evidence is relied upon here to give some context to the kind of works that Roding undertake that might require consent and their frequency.

5.5 Removals for Emergency Works –

5.5.1 The s42A Report has recommended a partial adoption of Infrastructures submission to include a permitted activity criteria for the removal of trees as an emergency work. However, the recommended rule does not in my opinion provide an appropriate test for removal.

5.5.2 The recommended change relies on a risk assessment of a qualified arborist and only allows for removals that are the result of an emergency work, not removals required as an emergency work. It is appreciated that in many instances emergency works will be required to remove branches or limbs of trees, rather than whole tree removal.

- 5.5.3 However, it does not seem appropriate that the risk assessment solely relies on the opinion of an arborist, where a network utility line or other form of infrastructure is being compromised by the retention of the tree. In these cases, it appears sensible that the risk assessment should be undertaken by the network utility operator or road controlling operator who are responsible for ensuring that they are able to safeguard life or property by removing trees that are interfering with the road network or network utilities.
- 5.5.4 The lack of practicality in not having the ability to undertake emergency works to remove a tree when required without the need to seek a retrospective consent does not allow for Roding or a Network Utility Operator to use their own professional judgement in the case of an emergency to ensure the safety of the public, which on the road network is paramount.
- 5.5.5 The need for a discretionary activity consent for emergency removals appears to assume that an abuse of power by those undertaking such emergency works would result if it were not in place. As such, a common-sense approach is requested to allow those working to ensure safety standards required by legislation are met, are allowed to use professional judgement to determine whether pruning and maintenance is sufficient, or full removal is required as a direct result of the relevant 'emergency', noting that case-law has determined the ambits of works that can be considered 'emergency works' under the Resource Management Act 1991.

5.6 *General Removals –*

- 5.6.1 Infrastructures submission discussed the public tree removals that are required by Northpower in order to maintain the security of existing electricity supplies. Whilst Northpower monitors vegetation clearance requirements and undertakes the works, notices are sent to landowners (WDC Roding Department in the case of public roads), to ask if they hold an interest in the tree. If Roding claim an interest in the tree (i.e. they indicate that a consent is required for its removal), Northpower are able to pass these obligations onto Roding to fulfil, including all costs of consenting and removal.
- 5.6.2 Michael Batchelor provides more detailed evidence in this regard to give approximate calculations of the cost to Roding if consents were required for all removals in the Road Reserve that Northpower require to maintain their network. As such, relief is still sought to ensure that removals can be undertaken as a permitted activity only in cases where they are placing at risk, overhead and underground network utilities.
- 5.6.3 The suggested wording for these rules sets out different permitted activity criteria within road reserves with a road speed environment of 50kmph or less, and those over 50kmph. WDC Roding have an appreciation for the amenity value of trees within urban road reserves, which can be categorised by their road speed environment of 50kmph and less. Therefore, whilst the Electricity (Hazards from Trees) Regulations still apply in these areas, removals required by Roding may require further considerations.

5.6.4 In rural areas, the amenity, cultural and heritage value associated with trees is often lower. Trees grow in the road reserves in rural areas as a result of natural processes and are far more sporadic in their locations and growth rates. They also pose a far higher risk to the road user due to the high-speed nature of the road. Therefore it is proposed that Roding have the ability to undertake removals in these areas in order to maintain a safe road environment.

6.0 CONCLUSION

6.1 The Roding submission seeks to ensure protection of trees as a primary focus, whilst ensuring that the safety of the road environment can be maintained and other network utility infrastructure in the road network is provided for. There is general support for a number of recommended changes put forward in the Council Planners s42A Report, including the use of permitted activity criteria, changes to terminology and inclusion of direction to balance the need to protect trees with provision of a safe road network and maintained security for the provision of network utilities.

6.2 However, relief is still sought to address issues of interpretation and to allow for general works as permitted activities where the current requirements appear onerous for Roding and Network Utility Operators to meet their statutory obligations. The WDC Infrastructure submission included proposed wording to achieve a sensible result which is attached to this evidence (Appendix 1).

6.3 I would like to thank the commissioners for their time and consideration on these matters.



Heather Osborne

Infrastructure Planner

For and on behalf of

Whangarei District Council Infrastructure Group