

23 November 2018

Whangarei District Council
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via email: allie.miller@wdc.govt.nz

Attention: Chair of the Hearing Panel for Plan Change 129

Plan Change 129: Notable and Public Trees: Hearing Session (3 and 4 December 2018)

I write on behalf of Northpower Limited and Northpower Fibre Limited ('Northpower'), in relation to submissions on Plan Change 129: Notable and Public Trees. Although I will not be attending the hearing on 3 and 4 December 2018, I would like to request that this letter be tabled at the hearing in lieu of personal attendance.

Having reviewed the Section 42A Report, and further to Northpower's original and further submissions, the key points I would like to address are as follows.

Response to the section 42A report recommendations

The Section 42A report recommends that a number of Northpower's key submission points be accepted (or accepted in part). The recommended changes in response to Northpower's submissions, are summarised as follows:

- Insertion of Bamboo (Bambuseae) to the list of species that are not subject to protection in the road reserve, and exempted from the definition of "Public Tree"¹
- Insertion of a new definition of 'root zone' to provide certainty to plan users on a definitive area that rules relating to works "within the root zone" apply to.²
- Amendment to Objective NPT.1.3.1 to add "maintained"³
- Amendments to Objective NPT.1.3.3 and Policy NPT.1.4.3 to recognise the need to avoid future conflicts with roading and network utility infrastructure when providing for existing and new trees when designing future subdivision and development⁴
- Amendment to Policy NPT.1.4.1(f) and NPT.1.4.2(e) to recognise that the removal of notable trees, notable groups of trees or public trees may be appropriate in exceptional circumstances, including where:
*... there is a significant risk to human health and / or property, the safe and efficient operation of the roading network or network utility infrastructure, based on a risk assessment undertaken by a qualified arborist, or it is demonstrated that there is no practical alternative to the removal...*⁵
- Insertion of a new rule specifically allowing the removal of a 'Public Tree' as a permitted activity under Rule NPT.1.5.6 (b) that is:

¹ Ref PC129-037a

² Ref PC129-037n

³ Ref PC129-037c

⁴ Ref PC129X059a

⁵ Ref PC129-037e and f

*based on a risk assessment by a qualified arborist, is required as a result of emergency works undertaken by Whangarei District Council, network utility operator or their authorised representative in order to safeguard life or property, or to restore power or telecommunication infrastructure*⁶

- Amendment to rules NPT.1.5.1 and NPT.1.5.4 to exempt network utility operators or their authorised representatives from the requirement to notify Whangarei District Council in writing at least five days prior to undertaking tree works to Notable Trees or Public Trees such as:
 - Emergency tree works under clause (c), or
 - Pruning or maintenance of branches that are interfering with overhead wires or network utilities under clause (d), or
 - Pruning or maintenance to maintain the security of supply or restore power or telecommunication infrastructure under clause (d)⁷.
- Amendment to rule NPT.1.5.2 to allow thrusting to a depth of greater than 650mm for the installation of network utilities within the root zone of Notable Trees as a permitted activity, when supervised by a qualified arborist⁸

Northpower supports the recommended amendments to the provisions in response to its submission points mentioned above (and contained within Attachment 4 to the Section 42A Report), for reasons that are set out in its submissions. In this respect, the above recommended provisions would enable security of telecommunications and electricity supply and the efficient and safe operation, maintenance, upgrade or development of Northpower's telecommunications and electricity supply networks. The recommended provisions will efficiently and effectively achieve the proposed objectives of the District Plan and the Resource Management Act 1991.

The Section 42A Report recommends that some of Northpower's submission points be rejected. Most of those recommendations and the associated reasoning set out in the Section 42A Report is accepted by Northpower. Northpower acknowledges that thrusting to a depth of greater than 650mm for the installation of network utilities in the root zone of Public Trees and Notable Trees would be a permitted activity under rules NPT1.5.2 and NPT.1.5.5, but any excavation within the root zone would require resource consent. With the recommended rules and associated definition of 'root zone' (which applies to the 'area of ground around a tree trunk'), Northpower considers that the following activities could still occur as a permitted activity provided that they did not involve excavation or ground disturbance in the 'root zone':

- mounting of new telecommunication or electricity cables or pipes to existing structures (including lines between existing poles)
- mounting of telecommunication cables to the ground, or
- the replacement of existing overhead lines (between existing poles).

There are however, two submission points that Northpower would like the hearing panel to consider in greater detail. Northpower has suggested some alternative relief to address these submission points. Where relief is requested in relation to the recommended provisions, the provisions are shown as clean text, and Northpower's requested amendments shown in **bold text**, with deletions ~~struck out~~ and additions underlined.

⁶ Ref PC129-037I

⁷ PC129-037g

⁸ PC129-037h

Definition of 'Root Zone'

As explained above, Northpower supports the insertion of a new definition of 'root zone' to provide certainty to plan users on a definitive area that the rules apply to. In its submission (PC129-037n), Northpower noted that it was unclear whether rule NPT.1.5, which applies to works in the root zone of any public tree, would apply to works in private property where the 'root zone' extends into private property. Customer connections may require works within the root zone of 'Public Trees' where the root zone extends into private property.

It is still uncertain in the recommended provisions (including the new definition of 'root zone') whether rules for 'public trees' are only intended to apply to land that is in the road reserve, park or reserve land, and would not apply to private property where a Public Tree overhangs private property. As stated in Northpower's submission, blanket tree protection rules relating to 'urban environment allotments' in urban areas are no longer a valid district plan mechanism under sections 76(4A)-(4D) of the RMA and the District Plan should make it clear that the rules only apply to land in the road reserve, park or reserve land. Northpower suggests that a note be added to the definition of 'root zone' or alternatively, to Section NPT.1.1 Description and Expectations, to clarify this point as set out below. The requested change is expected to provide clarification and certainty to plan users and avoid inconsistent interpretation of the provisions.

Relief Sought

Root zone:

'The area of ground around a tree trunk created by taking a radius equal to the greatest radial spread of the canopy/foilage of the tree, measured from the trunk and rotating that radius in a full circle around the trunk.'

Note: the root zone for public trees only applies to land within road reserve, park or reserve land administered by Whangarei District Council.

Policy NPT1.4.2(e) Removal of Public Trees

Northpower supports the inclusion of policies to provide guidance as to when the removal of Notable Trees or Public Trees may be appropriate (as per its submissions PC129-037e and f), and accepts that suitable mitigation or offset may be required for the removal of Notable Trees under Policy NPT.1.4.1(f)(iii), particularly as scheduled trees are specifically listed and identified for their significant values that are worthy of protection. However, in relation to Policy NPT1.4.2(e), which applies to Public Trees, the recommended policy wording implies that the removal of every Public Tree would require the provision of suitable mitigation or offsetting under clause (iv). Mitigation or offsetting for the removal of Public Trees may not always be appropriate, particularly in situations where:

- The tree or trees being removed has / have low values (including where the tree or trees would not meet the threshold for protection pursuant to the STEM criteria in NPT1.8), or
- The tree or trees are dead trees requiring removal, or
- The tree or trees in the location presents a significant risk to human health, network utilities and / or property resulting in emergency works.

Northpower considers that the policy should provide additional guidance and direction how to determine "suitable mitigation or offset" for the removal of Public Trees, as mitigation or

offsetting may not always be appropriate. Where it is relevant, any mitigation or offset should be commensurate with the values that the Public Tree or Public Trees provide. The requested amendments set out below are consistent with the assessment criteria in NPT.1.7.1(c).

Relief Sought

2. To require the protection of public trees in road reserves, parks and reserves while providing for the safe and efficient development, operation, use, maintenance and upgrading of infrastructure, network utilities and the road network by:

...

- e. Recognising that the removal of any protected public trees may be appropriate if:
- i. It is demonstrated that the tree or trees would not meet the threshold for protection pursuant to the STEM criteria in NPT.1.8.
 - ii. It is demonstrated that there is a significant risk to human health and / or property, or the safe and efficient operation of the roading network or network utility infrastructure, based on a risk assessment undertaken by a qualified arborist.
 - iii. It is demonstrated that there is no practicable alternative to the removal.
 - iv. **Where relevant**, details of suitable proposed mitigation or offset is provided, **in accordance with the values that the tree or trees provide**

Please do not hesitate to contact me at marina.hetaraka@northpower.com or 09 430 1927, should you have any queries or require clarification on any of the matters raised in this letter or Northpower's previous submissions.

Yours sincerely

Marina Hetaraka



Environmental and Consents Advisor

On behalf of Northpower Limited and Northpower Fibre Limited.