

STATEMENT OF EVIDENCE on behalf of NORTHLAND DISTRICT MASONIC TRUST
in regard to PC129 – NPT Notable and Public Trees; Submission 047.

QUALIFICATIONS AND EXPERIENCE

1. My name is Stephen Westgate. I have a science degree and have worked as a self-employed resource management consultant since the introduction of the RMA in 1991. In that time, I have also been actively involved with environmental issues:-

- I was appointed to the Northland Conservation Board from 1993-1998. During that time, I co-developed a pest-free eradication programme for the islands of the Bay of Islands; this was not considered feasible by DOC but a plan has subsequently been implemented. I also prepared a draft management plan for the Poor Knights marine Reserve.
- I then became chairman of the Northland branch of Forest & Bird from 1999 – 2003. I wrote a regular newsletter for members which included a series of articles entitled “Towards a Pest-free Northland.” This was little more than a dream but now we have a national pest-free goal.
- I served as a trustee of Bream Head Conservation Trust from approximately 2003 – 2014.

I would describe myself as a pragmatic conservationist. I recognise that conservation must co-exist with the needs of modern society, as evidenced by the focus of the RMA on the social, cultural and economic wellbeing of people.

ASSOCIATION WITH NORTHLAND DISTRICT MASONIC TRUST AND PROBLEM TREES

2. I have been closely associated with the Masonic Trust and their tree problems for several years. I provided supporting information for the Trust’s submission on Plan Change 129, in which they sought to have Tree 508 removed from the Notable tree register.

3. Although the specific relief sought by the Trust was the removal of the problem tree, the approach of our submission was to question aspects of the existing and proposed plan, and to thereby seek a review of the protection regime and process by which the removal of Tree 508 might be achieved. In particular, questions were raised about the application of the STEM system, the current plan’s failure to have regard to adverse effects on people and property, and the inconsistency between the plan’s tree protection regime and Part 2 of the RMA.

4. Tree 508 is a Holm oak. Its branches overhang two of the units of the Masonic Trust’s Lupton Village. In the UK, the Holm oak is considered to be an invasive species and as such, it must be considered to have the potential to become one in New Zealand.

REVIEW OF SIMILAR SUBMISSIONS ON PC 129.

5. The matters which we raised in our original submission feature strongly as common threads running through a large number of the submissions made on this proposed plan change. The Trust elected to further submit in support of a number of those submissions.

6. The common threads that featured in our original submission and to which we referred in our further submissions included, in brief:

- failure to have regard to the social and economic wellbeing of affected property owners and nearby residents caused by the adverse effects of large urban trees;
- the manner of application of the STEM scoring system by WDC;
- overstatement of the benefits derived from a single tree;

- failure to differentiate between native and exotic pest species

These issues as they related to Tree 508 were raised in a report that I wrote for the Trust in 2015, and which was attached to our submission. The response from the Parks Department at the time was that they would oppose any application to remove the tree. Advice to the Trust from the council was that a notified application could cost in the order of \$10 000, with no guarantee of success.

MATTERS RAISED IN OUR ORIGINAL SUBMISSION

7. To re-iterate the concerns that we raised in our original submission on PC 129:

Providing for people’s social & economic wellbeing, and for their health & safety.

- (i) A fundamental failure in PC129 to acknowledge the rights of private property owners to “*promote the **sustainable management** ... of natural ... resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety*” as set out clearly in Section 5, Purpose, of the Resource Management Act. (See Section 9 below).
- (ii) The failure of Whangarei District Council to consult with landowners over the protection of trees on private property, e.g. Kaipara District Council and others seek landowners’ approval before classifying a tree as notable (see Note ??? 2(ii) below). Private landowners should be encouraged to protect significant trees, but not obligated to whatever the social and economic cost.
- (iii) The high maintenance and compliance costs (amounting to thousands of dollars per tree) imposed on private landowners arising from the draconian provisions of the current plan and proposed plan change in regard to ‘notable’ trees on private property.
- (iv) The consequent health and safety risks, and adverse social and amenity impacts, arising from the growth of mature trees beyond the reasonable carrying capacity of their urban environment; and a parallel failure to acknowledge the Government’s commitment to warm, dry housing for all New Zealanders.
- (v) The inability of routine monitoring to identify trees at risk of shedding branches or completely toppling, as evidenced by significant and sometimes tragic events elsewhere in New Zealand.
- (vi) Trees rated as having only a 1 in a million chance of falling have fallen in recent times. Trees with no visible signs of external decay have fallen and in one instance, killed a person. The Holm oak at Lupton Masonic village shows signs of decay and like many other trees in the district which are the subject of submissions, presents an undue risk to local residents.

The STEM System and its Application by WDC

- (vii) The failure of the STEM system (Standard Tree Evaluation Method) to take account of negative impacts of large trees in an out-of-context urban environment on nearby residents. Some other local authorities are observed to recognise this deficiency and make due allowance in their district plans (see Section 9.5 below) but Whangarei District Council has not done so previously. However, we do note a minor concession in the proposed changes recommended in the Planners’ Reports which will be referred to later.
- (viii) A ‘one size fits all’ classification system whereas some districts apply differing levels of protection to natives and exotics, and differ between high ranking and moderate-ranking trees, and differentiate between public and private trees.

- (ix) The setting of a very low STEM points threshold in Whangarei (100) compared with the benchmark of 160 suggested by the STEM system's author.
- (x) The failure of the STEM system to differentiate between natives and potentially invasive exotic species. To me as a practical conservationist, it appears to be nonsensical to award points for rarity to a potentially invasive pest tree.
- (xi) Overstatement of the value of individual urban trees to the natural environment, given that Whangarei is surrounded by bush-clad hills and its gardens are filled with trees and shrubs (see 10.7 below).

Conclusions

From the above, it could reasonably be concluded that:

- (xii) The current plan and the proposed plan represent an over-zealous ideological approach to saving individual trees at any cost, often amounting to thousands of dollars to both ratepayers and property owners. The Masonic Trust itself has spent thousands of dollars on arborists' reports and maintenance as directed by our Parks Department, to save an aging exotic nuisance tree that has been identified in the UK as an invasive species.
- (xiii) From the submissions received and consideration of other district plans, I would suggest that the proposed plan change needs to go back to the drawing board and to be re-written by more pragmatic authors who recognise that people are important and have rights, as other local authorities have done.
- (xiv) The Maori proverb often quoted by government agencies and local authorities should be taken into account:

“He aha te mea nui o te ao. He tāngata, he tāngata, he tāngata

What is the most important thing in the world? It is people, it is people, it is people.”

The most important thing is not trees as some would have you believe; it is people!

EXPANSION ON ABOVE CONCERNS.

8. Further Consideration of the STEM System and its Application by WDC.

8.1 Why has WDC adopted the STEM system with a very low benchmark of 100 points?

8.2 We acknowledge that the STEM system is widely applied throughout New Zealand, by 35 local councils as noted by Mr Miller in his Statement of Evidence (Attachment 6). However, there are considerable variations in the manner in which the STEM system is applied:-

- (a) by way of a benchmark;
- (b) by way of differentiation between public trees and trees on private property; and
- (c) by differentiating between native trees and exotics.

8.3 Mr Miller does not address these issues, other than to refer to a score of 100 being adopted by WDC at the outset, in 1996. These are highly significant issues which we believe should be taken into account, as other councils have done. It is relevant to consider the approaches taken by other councils, but firstly, to consider what Ron Flook himself (the author of the STEM system) had to say with regard to an appropriate benchmark.

8.4 While Mr Miller refers to The Royal New Zealand Institute of Horticulture's adoption of the STEM system, he omits to note that the Institute has also written in “The Royal New Zealand Horticultural Institute – Notable Trees New Zealand”, compiled in 2001 by Ron Flook that:

“General experience has shown that Notable tree status is achieved by trees attaining over 160 points, and can be used as an initial benchmark for recognising a Notable tree.”

8.5 If Ron Flook himself proposed 160 points as being an appropriate benchmark for Notable status, what does that say about WDC’s adoption of 100 as a benchmark? A score of 100 can only be seen as significantly less than the original concept of ‘Notable’ when the STEM system was developed. To claim that 100 points constitutes ‘Notable’ appears to be a gross corruption of the STEM system.

8.6 So how do other councils approach their application of the STEM system? An internet search reveals the following:

8.7 The Proposed South Taranaki District Plan states that:

“While STEM is commonly used, there is variability in the total score for a tree to be considered “notable”. 150 is the current score which is used by other similar Councils (e.g. Wanganui, Horowhenua, Masterton, and Carterton). However, other councils apply higher scores (e.g. 160 Palmerston North, 170 Thames-Coromandel) or lower scores (e.g. 100 Kaipara). Given the number and nature of trees currently protected in the schedule, 150 is considered to capture the most Notable Trees in South Taranaki. However, as part of the District Plan Review, to protect more notable trees and continually improve amenity, a lower threshold of 130 has been applied to newly identified indigenous trees. These trees are recognised as attractive and noteworthy, and their value is likely to increase with age.”

South Taranaki also notes: *“Landowner agreement was obtained to include the trees located on private property on the notable tree schedule.”*

8.8 The Matamata Piako District Council in 2017 *“... agreed to protect trees of a high standard and remove from the schedule those trees that do not meet a STEM threshold of 140 points.”*

8.9 While Kaipara has adopted a benchmark of 100, trees on private property are only identified as “notable” with the consent of the landowner.

8.10 The Napier City Plan applies the STEM system only to the protection of public trees. The protection of trees in private ownership is *“encouraged”*, not enforced through a planning regime.

8.11 The following table summarises the findings of my internet research:

COUNCIL	STEM SCORE BENCHMARK	VOLUNTARY ON PRIVATE LAND	Difference between Natives and Exotics
RNZIH suggested	160		
Thames-Coromandel	170	Yes, upon request.	Not known
Palmerston North	160	Not known	Not known
Wanganui	150	Not known	Not known
Horowhenua	150	Not known	Not known
Masterton	150	Not known	Not known
Carterton	150	Not known	Not known
South Taranaki	150 / 130	Not known	Yes
Matamata-Piako	140	Not known	Not known
Napier	Not known	Yes	Not known

Kaipara	100	Yes	Not known
Whangarei	100	No	No

So compared to ten other councils surveyed, WDC has:

- (i) adopted the lowest benchmark of 100 points, far below the 160 that Ron Flook suggested;
- (ii) failed to differentiate between native species and exotic, potentially pest species; and
- (iii) failed to differentiate between public and private trees insofar as it does not seek landowner agreement but imposes compulsory onerous conditions.

8.12 The Section 32 report prepared by Barker & Associates does look at the approach taken by several other councils, but in a very selective manner. It primarily looks at the use of STEM or other method of assessment of trees, but makes no reference to

- (a) the reasons and appropriateness of adopting a very low benchmark of 100 to be applied across the board in Whangarei; nor
- (b) the different benchmark score levels adopted by different councils; nor
- (c) the voluntary approach of some councils regarding trees on private property; nor
- (d) the different benchmarks that some councils apply to natives as compared to exotics.

The Section 32 report appears to focus largely on justifying the approach taken by WDC. It would seem to be far from objective in that regard.

9 Social & Economic Wellbeing, Health & Safety; and the RMA.

9.1 Part 2 of the RMA – the overarching purpose - requires that sustainable management “... enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -
... (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

The RMA definition of “**environment** includes—

- (a) ecosystems and their constituent parts, including people and communities;”

9.2 Section 76 of the RMA sets out the procedures whereby territorial authorities may make rules for inclusion in a district plan. Section 76 (3) prescribes that “(3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.”

9.3 Clearly, any adverse effects on the social & economic well-being, the health and safety of people, must be had regard to when developing a protected tree policy.

9.4 The Section 32 report prepared for PC129 notes the requirements of Part 2 of the RMA (paragraph 104) but does not specifically address the adverse effects on people in any detail, other than to state that “*The WDP already contains a number of ‘settled’ higher order objectives*” and in paragraph 138 Table 1, that “*The proposed objectives meet Section 5 of the Act ...*”

9.5 By way of example of what consideration to Part 2 could reasonably be expected:

- (i) Kaipara District Council in its relevant Section 32 Evaluation report, assesses the provisions of its Notable tree regime against Part 2 of the RMA and notes that: “*Social wellbeing is*

also provided for landowners, by requiring them to agree with their trees being identified as a 'notable tree'.

(ii) Napier City Plan 60.1.3 notes: "*The need to achieve a balance between the protection of trees and private property rights.* The preservation and protection of trees for public enjoyment, amenity, historic, cultural, scientific and horticultural purposes is important for the City. However, this must be balanced with the right of property owners to utilise their land and to alleviate adverse effects, such as fire risk or excessive shading, that trees may have on their own sites and on adjacent sites. Trees can have adverse effects on people living in close proximity to them. The reasonable expectations of adjacent residents to a satisfactory living environment must be provided for. Any perceived or actual negative impacts i.e. leaf drop, shading, blockage of views and safety threats should be balanced against the benefits of tree retention, i.e. visual amenity, ecological benefit, particularly to the wider environment and for the individual concerned."

9.6 Regarding Section 76 of the RMA, the Section 32 report appears to selectively focus on clauses (4A) and (4B) which relate to optional rules that councils may adopt regarding tree protection on private property. As far as I can see, the report makes no reference to, or note of, the mandatory qualifying clause (3) as shown in 9.2 above.

10. Adverse Effects and Section 32 Evaluation Report on PC129.

10.1 Section 32(2)(a) of the RMA requires that an evaluation report **must** "*identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions ...*" insofar as the amendments to the existing plan provisions are concerned. Adverse effects are not considered in any detail in the Section 32 report. The report primarily focuses on protecting trees, not people, from adverse effects although it does note that: "*Adverse effects from shading or damage from tree roots or branches are acknowledged, and the proposed objectives provide an ability to undertake maintenance to ensure notable trees do not reduce amenity values to a level that impacts on people's health and safety if the notable tree is compromised.*"

However, the relevant rules are restrictive and expensive to apply, as discussed later in this statement.

Fourteen Masonic village residents and fifteen residents of neighbouring properties have previously lent their written support to the removal of Tree 508 because of adverse social and economic effects.

Adverse Economic Effects

10.2 The PC129 Section 32 report highlights the existing cost to council for consents to remove 'public' trees, viz: "*Cost of Consents: The Parks and Roading Departments highlighted that the general tree protection note in Appendix 2 required them to obtain consent for the removal of 'Heritage Trees' on Council reserves and road reserves. This is a cumbersome and costly process..*" However, the report fails to address the adverse economic effect (cost) to private property owners of going through the same "*cumbersome and costly process*" of obtaining an arborist's report and applying for a resource consent, with no guaranteed outcome given that the Parks Department have been so intransigent in the past. In the case of the Masonic Trust, it has been noted above that the Trust would incur the costs of an arborist's report, followed by a notified hearing estimated to cost in the order of \$10 000 plus professional fees for appearance at the hearing, and if successful, followed by the tree removal costs amounting to thousands of dollars.

10.3 In addition, the Trust and its neighbours face routine maintenance costs dealing with the nuisance issues previously noted in the 2015 report attached to our submission, including clearing blocked gutters, water-blasting stained driveways and footpaths, rewashing stained laundry. Tree 508

blocks prevents sun access to the living area of one of the units for much of the day, until late afternoon, necessitating additional heating costs in winter.

10.4 Any costs incurred by the Trust regarding imposed tree maintenance, arborist reports and maintenance costs have to be passed on to the village residents by way of rental increases.

Adverse Social Effects

10.5 As noted in the 2015 report:-

(i) Tree 508 overhangs private dwellings occupied by elderly widows who are tenants of the Trust. These tenants ~~Tenants~~ have a real fear, whether perceived or real, that large branches may well fall off in high winds and fall over their bedroom roofs, prompting one to regularly sleep in her lounge during periods of high winds.

(ii) In spring-early summer, the tree drops numerous catkins creating slippery and hazardous conditions for the elderly village residents who are more prone to falls and consequent bone breakage than the general population ~~occupants~~.

(iii) Problems associated with Tree 508 restrict the ability of the Masonic Trust to comply with health and safety regulations insofar as the Trust believes (pers. com. Malcolm McKerrow) that it cannot provide a safe and secure living environment for its residents.

(iv) Overall, Tree 508 adversely impacts on the social and economic well-being of the village residents and adjoining property owners, and creates an unsafe and unsatisfactory living environment.

What is PC129 seeking to achieve?

10.6 Objective NPT 1.3.3 in Attachment 5 is to ensure that there are notable trees for the benefit of future generations. The associated rules would appear to imply that this can only be achieved by the enforcement of restrictive rules, and that without an overarching, restrictive plan, all notable trees are going to be felled by a population of environmental vandals. This ignores the obvious fact that when the Notable tree plan was introduced around 1998, all of the scheduled trees were in existence, and had been informally 'protected' without recourse to a restrictive plan.

One might ask: What special characteristics does the population of Whangarei display that warrants what appears to be the most restrictive protected tree regime on private property in the country? This issue is not addressed in the Section 32 report; nor have I observed any attempt elsewhere to justify the current and proposed regimes.

10.7 In 1999, Napier City Council undertook a survey and found there were 18600 trees in public spaces. With Parihaka, the Western Hills and Reed Memorial Park, I would be confident that Whangarei would have a far greater number than Napier, probably numbering in the hundreds of thousands. In addition, there are a multitude of trees and shrubs in urban gardens that are not classed as 'Notable' but nonetheless contribute collectively and significantly to the attributes listed in the various planning documents (e.g. amenity, ecological, visual, etc.). In the 2013 census, there were more than 35000 dwellings in the Whangarei district. If each of these has on average 10 shrubs or trees, that equates to a total of the order of 350 000. So how significant then is a single 'Notable' tree such as Tree 508 which scores less than 160 points? The Executive Summary of the Section 32 report states:

"Both individually and collectively trees provide a significant contribution to the historical, ecological, cultural and amenity values of the District. Those specimens that exemplify these characteristics are identified as being "notable"."

10.8 In my experience as a resource management consultant, I would quite confidently assert that the loss of an individual tree amongst hundreds of thousands, other than in exceptional circumstances such as great historical significance or habitat for endangered bats, would have to be regarded as insignificant, or “less than minor” in RMA terms. The contribution made by individual trees appears to be grossly overstated throughout the planning documents.

11. What concessions to private property owners have been made in the review of PC129?

11.1 ‘NPT 1.3 Objectives’ only refers to the protection of notable trees. It makes no reference to the protection of people’s economic and social wellbeing.

11.2. ‘NPT 1.4 Policies’ does make reference to exceptions to the protection regime by way of allowing for “*pruning and maintenance of notable trees .. in accordance with arboricultural best practice where works are required to safeguard life or property.*”

and

“Recognising that the removal of an identified notable tree or notable groups of trees may be appropriate if:

- i. It is demonstrated that there is a significant risk to human health and / or property, ... based on a risk assessment undertaken by a qualified arborist.*
- ii. It is demonstrated that there is no practicable alternative to the removal.*
- iii. Details are provided of suitable mitigation or offset for the removal.”*

11.3 However, the concessions come with restrictions, and at a cost to the landowner. As a permitted activity (NPT Rule 1.5): *Pruning or maintenance [is]*

b. Undertaken in accordance with arboricultural best practice where:

- i. The maximum branch diameter must not exceed 100mm at severance;*
- ii. No more than 20% of live growth of the tree is removed in any 12 month period and;*
- iii. Any works must retain the natural shape, form and branch habit of the tree is retained.*

e. Notified in writing to Whangarei District Council at least five working days prior to the tree works being undertaken.

A dangerous branch of more than 100mm diameter can only be pruned as a discretionary activity; and it would be difficult to remove the lower, dangerous branches of Tree 508 while maintaining its natural form and branch habit.

For a discretionary activity, resource consents can cost several thousand dollars, and as noted in the paragraph 10.2 above.

Risk assessments by qualified arborists have been frequently shown to be unreliable, resulting in death and injury.

11.4 Tree 508 could potentially be removed, or trimmed to a safe extent as a discretionary activity, pursuant to NPT Rule 1.X, but subject to a number of limiting assessment criteria which “*include (but is not limited to)*” those criteria as set out in NPT 1.7. These criteria again include the unreliable assessment of “*actual and potential risk of actual damage to people and property from the tree or trees.*” An arborist’s report in 2006 concluded that “*... it is likely that there is some decay in the trunk of this tree.*” Subsequently, at an overall cost of several thousand dollars, the Trust applied for and was granted resource consent to prune some weight off the heavier branches overhanging the village units, in order *to reduce* (N.B. but not to eliminate!) *the risk of breakage.*

12. CONCLUSIONS

12.1 Of the other local authorities reviewed, Whangarei District Council has the most restrictive regime of assessing and protecting trees on private property which it assesses as being notable. No justification has been made for this approach.

12.2 The Northland District Masonic Trust has been battling for at least 12 years to remove Tree 508, an exotic tree rated as an invasive alien in the UK, in order to provide a safe living environment for its Lupton village residents, consistent with the Purpose of the RMA (Section 5) which includes provision for “*their social, economic, and cultural well-being and for their health and safety.*”

12.3 While the WDC Parks Department has made some financial contributions during this period, the Trust has nonetheless incurred costs of many thousands of dollars in tree maintenance and resource consent activities. All the while, village residents and local residents have had to endure ongoing adverse effects on their social and economic wellbeing, and potential risks to their health and safety.

12.4 The Northland District Masonic Trust has the goal of removing Tree 508. It sees a thorough review of the appropriateness of, and the need for, the current and proposed overly-restrictive regime as being a mechanism by which this might be achieved.

Stephen L Westgate

For Northland District Masonic Trust

23 November 2018