

# Proposed Plan Change 129 – Notable and Public Trees (NPT)

## Section 42A Hearing Report

**AUTHOR**

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## **Attachments**

- 1 PC129 Provisions as Notified
- 2 Summary of Submissions by Topic
- 3 Summary of Further submissions
- 4 Recommended Provisions – Track Change Version
- 5 Recommended Provisions – Clean Version
- 6 Statement of Evidence Arborist Simon Patrick Miller.
- 7 Legal Opinion re Designation for Whangarei Intermediate School and Tree 513

## **Appendices (Available Online)**

- A PC129 – Section 32 Evaluation and Appendices

<http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/DistrictPlanChanges/Documents/PC-129-Notable-and-Public-Trees/1-General-Information/Section-32-Report-PC-129.pdf>

- B PC129 – Submissions and Further Submissions

<http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/DistrictPlanChanges/Pages/Plan-Change-129.aspx#Expand>

## 1.0 Introduction

1. This report has been prepared in accordance with s42A of the Resource Management Act 1991 (**RMA**) and forms the Hearing Report for the Whangarei District Council's (**WDC**) Proposed Plan Change 129 (**PC129**) – Notable and Public Trees (**NPT**). This report provides consideration of the proposed provisions, recommendations in relation to submissions and, where appropriate, the report cross-references the s32 Evaluation Report (**s32 Report**), further expert evidence, analysis of any background material and legislative discussions.
2. This s42A report has been prepared by David Eric Badham. I am a Senior Planner and Whangarei Office Manager at Barker and Associates. I hold a Bachelor of Planning with Honours (1st Class) from the University of Auckland. I have been a Full Member of the New Zealand Planning Institute since April 2015.
3. I have over seven years' experience as an environmental planner. During this time, I have been employed in various resource management positions in local government and private companies including experience with:
  - Statutory resource consent planning in the Northland and Auckland regions.
  - Consideration of submissions and formulation of policy and policy advice for Whangarei District Council.
  - Providing planning advice, preparing Cultural Impact Assessments and engaging in consultation on behalf of iwi organisations.
  - Monitoring and compliance of consent conditions in operational mining environments in Queensland Australia.
4. I confirm that the evidence on planning matters that I present is within my area of expertise and 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.
5. For transparency, there are two declarations that I wish to make:
  - During the pre-notification period, a comment form was received from Gabrielle Badham and Mark Adam. This is my sister and brother-in-law. They made comments regarding a large English Oak on the boundary of their property at 85 Fourth Ave. This tree is listed as Heritage Tree / Notable Tree No. 255 in Appendix 2 of the operative district plan and proposed NPT provisions. No submission or further submission was received from them.
  - Earlier this year, Barker & Associates Whangarei office was engaged by Northpower to review WDC's draft Urban & Services Plan Chances, prepare outline plans for designated sites and more recently review PC134 – Designations, which I oversaw. I have had no involvement with Northpower's consideration, assessment or submission on PC129 which I understand has been prepared by Boffa Miskell.

## 2.0 Description of the Plan Change as Notified

6. PC129 proposes a new Notable and Public Trees chapter within the District Wide section of the Whangarei District Plan (**WDP**) and is summarised as follows:
  - NPT.1.1 Description and Expectations: provides a brief introduction explaining the context and the reasons for the NPT provisions.
  - NPT.1.2 Eligibility: outlines what NPT activities are covered and what NPT activities are not covered by the new provisions and states default activity statuses.
  - NPT.1.3 Objectives: provides objectives and specify outcomes sought in relation to activities associated with Notable and Public Trees.
  - NPT.1.4 Policies: specific courses of action to achieve the objectives in the NPT chapter.
  - NPT.1.5 Discretionary Activities (Land Use): specifies what land use activities require resource consent as a discretionary activity.
  - NPT.1.6 Discretionary Activities (Subdivision): species what subdivision activities require resource consent as a discretionary activity.
  - NPT.1.7 Assessment criteria for Discretionary Activities: details the specific matters that assessments for discretionary applications pursuant to NPT.1.5 and NPT.1.6 shall include.
  - NPT.1.8 Criteria for Notable Tree Classification: details the basis on which Notable Trees are classified i.e. describes how the Standard Tree Evaluation Method (STEM<sup>TM</sup>)<sup>1</sup> has been used to select the Notable Trees listed in table NPT.1.9.1.
  - NPT.1.9 Schedule of Notable Trees: contains the schedule of Notable Trees as identified in accordance with NPT.1.8. Trees listed in this schedule are displayed on the District Plan Maps as an overlay.
  - NPT.1.10 Protected Public Trees: details what constitutes a Public Tree. These are identified by description and are not individually mapped.
7. The notified text of PC129 are provided in **Attachment 1**.

## 3.0 Background

### *Rolling Review: New District Plan Architecture*

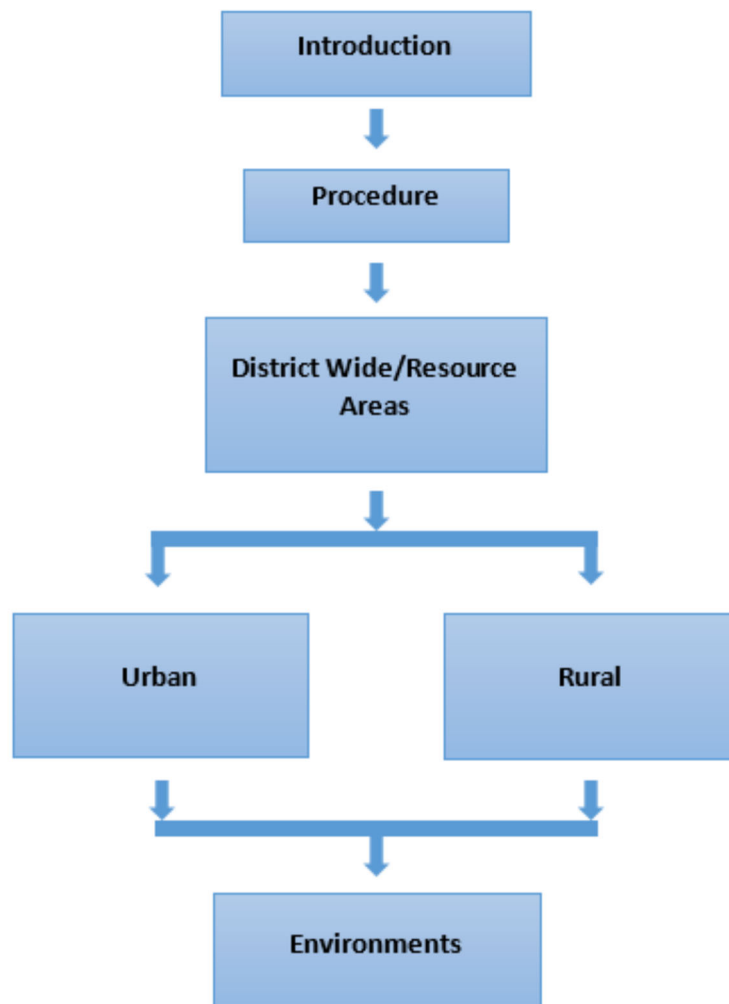
8. S79 of the RMA sets councils' the requirement to review district plan provisions within a 10 year time period. Following a review of provisions, the local authority must notify a plan change whether the local authority considers that the provisions require alteration or considers that no alteration is required.
9. To meet this requirement a rolling review method has been adopted by WDC. As the review progresses the architecture of the WDP is evolving. Outcomes sought<sup>1</sup> in the WDP are:
  - District Plan shall be streamlined and simplified.

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<sup>1</sup> Flook, R. 1996: A Standard Tree Evaluation Method, published by Ron Flook, Lower Hutt, New Zealand.

- Policy and rules shall direct consenting process to provide certainty.
  - Comprehensive policy and objectives shall reflect the sustainable management outcomes sought for the respective District Plan Environments and Policy Areas.
  - District Plan shall address resource management matters only and will cross reference to external legislation as required.
  - Some methods shall only be utilised where expressly stated in the relevant Environment Rules Chapter.
10. The new WDP format introduces a third level of policy direction, seen as previously missing from the WDP:

## NEW DISTRICT PLAN STRUCTURE



11. Progress of the rolling review has been determined by budget and resourcing availability. Many plan changes are currently notified / subject to appeal or in active drafting phase now with differing anticipated notification dates. These plan changes are described below:

***Currently notified / subject to appeal***

- Rural Plan Changes – Rural Production Environment (PC85A); Strategic Rural Industries Environment (PC85B); Rural Village Environment (PC85C); Rural Living Environment (PC85D) Rural (Urban Expansion) Environment (PC86A); Rural (Urban Expansion) Living Environment Zoning (PC86B) – comprehensive rezoning of the Rural Area of the Whangarei District
- PC87 – Coastal Area - proposes changes to the planning maps to replace the Coastal Countryside Environment with a new Coastal Area Overlay.
- PC102 – Minerals - proposes to address the WDP framework for managing minerals and mineral extraction in the district.
- PC114 – Landscapes - proposes the introduction of a new Landscape chapter, revising and consolidating existing natural landscape and natural feature provisions within the WDP.
- PC134 – Designations – Review and update of WDP designations.

### ***Under preparation***

- PC90 Coastal Hazards – Implementation of Northland Regional Council (NRC) hazard mapping and proposed rules to give effect to the RPS.
- PC91 Hazardous Substances – Review of the management of hazardous substances at a district wide level and consequentially replace all provisions relating to hazardous substances in the WDP.
- PC82 Signs and Lighting - Review of WDP signs and lighting rules and introduction of district wide provisions.
- PC88 Urban – Review of all urban zoning, residential and business for Whangarei City and Ruakaka.
- PC100 Sites of Significance – Review of sites of significance to Māori as a district wide Resource Area.
- PC109 Transport – Review of transport provisions, chapter 22 Road Transport policy, updating the road hierarchy, parking standards and Environmental Engineering Standards.
- PC115 Open Space – Review of open space zoning and WDP provisions, chapter 15 Open Space policy, introduction of more specific conservation, recreation, active and passive Environments.
- PC127 Biodiversity and Significant Natural Areas – Review of WDP provisions, chapters 17 and 12 policies and implementation of RPS.

### ***National Planning Standards***

12. In June 2018, the Ministry for the Environment (**MfE**) released 18 draft national planning standards relevant to the various resource management policy statements and plans in New Zealand. These are draft format and have been subject to a consultation period with councils, the planning profession and the general public. It is understood that MfE are collating and considering feedback on the draft and are targeting gazetting the National Planning Standards in April 2019.

## 4.0 Statutory Considerations

### *Section 32 Evaluation*

13. WDC completed an evaluation of PC129 in accordance with s32 of the RMA [**Appendix A**]. S32(1) states that an evaluation must:
  - a. examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
  - b. examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
    - i. identifying other reasonably practicable options for achieving the objectives; and
    - ii. assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
    - iii. summarising the reasons for deciding on the provisions; and
  - c. contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
14. An assessment under subsection s32(1)(b)(ii) must—
  - a. identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
    - i. economic growth that are anticipated to be provided or reduced; and
    - ii. employment that are anticipated to be provided or reduced; and
  - b. if practicable, quantify the benefits and costs referred to in paragraph (a); and
  - c. assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
15. Evaluation in terms of S32 is ongoing, and must be undertaken to confirm the appropriateness of each plan change. Where required, recommendations in this report which differ from the notified provisions are supported by further evaluation in terms of S32AA of the RMA.
16. The S32 Evaluation Report [**Appendix A**] included an evaluation with regard to Part 2 of the RMA which includes:
  - The purpose of the Act as contained in s5;
  - S6 - Matters of National Importance that are required to be recognised and provided for;
  - S7 - Other Matters that require particular regard in achieving the purpose of the Act; and
  - S8 - Treaty of Waitangi.
17. The s32 Evaluation Reports also considered s31 of the RMA which sets out the functions of territorial authorities in giving effect to the purpose of the RMA.



## 5.0 Purpose of Report

18. This report considers submissions received in relation to PC129. It has been prepared in accordance with s42A of the RMA to assist the Commissioners with deliberations on submissions and further submissions in respect of PC129.
19. The report includes recommendations to the Commissioners to accept, accept in part or reject individual submissions. Where appropriate, it also includes recommended amendments to the PC129 provisions. Where any amendment necessitates further evaluation in accordance with section 32AA of the RMA (**s32AA**), the necessary analysis is included within the discussion. Depending on the complexity of the amendment proposed, the s32AA assessment then follows in a separate table underneath or an overall discussion. In accordance with section 32AA(1)(c), the assessment of each amendment has been undertaken at a level of detail that corresponds to the scale and significance of the recommended amendments.
20. When making its decision, WDC is required under Clause 10 of the First Schedule of the RMA to give reasons for allowing or not allowing any submissions (grouped by subject matter or individually). The decisions of the Council may also include consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.

## 6.0 Structure of the Report

21. The report has been structured to provide an assessment of the submissions and further submissions received by WDC, arriving at a recommendation to the Hearing Commissioners.
22. Submission points have been grouped thematically based on topic [ see summary of submissions in **Attachment 2**]. As some submissions relate to multiple topics, cross references are included to the discussion and recommendation sections of other topics. Topic headings for the submission assessed under PC129 are as follows:

A. Chapter Title	M. NPT.1.1 Description and Expectations
B. Cost of Resource Consents	N. NPT.1.2 Eligibility
C. Health and Safety	O. NPT.1.3 Objectives
D. Liability	P. NPT.1.4 Policies
E. Miscellaneous	Q. NPT.1.5 Discretionary Activities (Land Use)
F. Notification	R. NPT.1.6 Discretionary Activities (Subdivision)
G. Permitted Activity Rule	S. NPT.1.7 Assessment Criteria for Discretionary Activities
H. Section 32	T. NPT.1.9 Notable Tree Schedule
I. Specific Tree(s)	U. NPT.1.10 Protected Public Trees
J. STEM™ Criteria	
K. Whole Plan Change	
L. Definitions	

23. All further submissions have been summarised in the further submission summary [see **Attachment 3**]. Responses have not been written for all further submission for the following reasons. The further submissions generally:

- Sought to emphasise the content of the corresponding original submission.
  - Did not present new or additional evidence.
  - Stated either support or opposition to the original submissions of other submitters.
24. Where further submissions present additional evidence that requires a response, this have been dealt with within the report where the primary submission point has been addressed.
25. The assessment of submissions generally adheres to the following format:
- Submission information – Matters raised in the submission points with a brief outline of relief sought and reasons for relevant submission points.
  - Discussion – Discusses responses to the relief sought. Where appropriate, submission points have been grouped together for discussion.
  - Recommendation – Outlines a recommendation to the Commissioners in response to the relief sought.
26. Any recommended amendments to the notified text as a result of submissions are attached to this report [see **Attachment 4** and **Attachment 5**]. Both a “track change version” and a “clean version” of the recommended provisions are included to assist in understanding what changes have been recommended.

## 7.0 Consideration of Submissions

27. Table 1 below outlines a chronology of events relevant to PC129:

Table 1 – Chronology of Events – PC129	
Event	Date
Opening of non-statutory pre-notification consultation period	22 September 2017
Closing date for comment during pre-notification consultation period	10 November 2017
Date of public notification of plan change for submissions	9 May 2018
Closing date for submissions	8 June 2018
Date of public notification for further submissions	29 August 2018
Closing date for further submissions	3 October 2018
Hearing dates	3 – 5 December 2018

28. Pursuant to section 37 of the RMA, WDC resolved to extend the further submission period from 10 working days to 25 working days. This extension was the result of an administrative error whereby the wrong date was listed on the letter and website for the closing of the further submission period. WDC concluded that it was not fair to change this back to the standard statutory 10 working day timeframe specified in the Act so have therefore increased the further submission period accordingly.

### ***Submissions Received***

29. There were 47 submissions received within the statutory timeframes and 11 further submissions for PC129. The original submissions were numbered from PC129-001 to PC129-047. Please refer to **Appendix B** for copies of submissions and further submissions and **Attachment 2** for a summary of submissions.
30. Submissions PC129-048, PC129-049 and PC129-050 were received after the close of the notification submission period on 8 June 2018. I recommend that the Commissioners accept these late submissions because I do not consider that anyone was disadvantaged by these submissions being received late.

### ***Withdrawn Submissions***

31. No submissions were withdrawn.

### ***Invalid or Blank Submissions***

32. Submission PC129-004 was blank and can therefore considered invalid.

## A. Chapter Title

### Submission Information

33. One submission<sup>2</sup> supported the chapter title and sought that it be retained.

### Discussion

34. No other submissions opposing the chapter title have been made.

### Recommendation

35. I recommend that the Commissioners **accept** submission point 1/b and that the chapter title be retained.

## B. Cost of Resource Consents

### Submission Information

36. Three submissions<sup>3</sup> have been made regarding Council contributing or completely waiving fees and reimbursing professional fees for preparing and obtaining resource consent applications relating to scheduled Notable Trees. Reasons include:

- Notable Trees are protected for public benefit and therefore private land owners should not incur costs, risks or liabilities for this.
- Council has not adequately attempted to quantify the costs to landowners relating to the protection of Notable Trees.
- Notable Trees should be assessed based on the level of combined public and private value without the cost of a resource consent.

37. Eight further submissions<sup>4</sup> were made in regard to the cost of resource consents.

### Discussion

38. Resource consent fees fall outside of the scope of the WDP, and consequently outside the scope of this plan change. Council's fees for resource consents and for all other fees and charges are detailed in the 2018 – 2019 Fees and Charges policy<sup>5</sup> which is reviewed annually. The PC129 provisions and the District Plan in general cannot specify a waiver of resource consent processing fees for applications for Notable Trees. This would need to be considered and agreed to by the Council and implemented through the Annual Plan and Long-Term Plan set budgets outside of the District Plan. Should the submitters wish to pursue this relief, I would recommend that they make submissions through the Annual Plan or Long-Term Plan process.

### Recommendation

39. I recommend that the Commissioners **reject** submission points 22/h, 27/d and 33/b.

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<sup>2</sup> 01/b

<sup>3</sup> 022/h, 027/d and 033/b

<sup>4</sup> X069, X070, X080, X081, X088, X105, X106, X113

<sup>5</sup> View at this link – [Fees and Charges Policy 2018 - 19](#)

## C. Health & Safety

### Submission Information

40. One submission<sup>6</sup> was made with regard to the topic of health and safety. This submission generally requests that health and safety legislation<sup>7</sup> be considered when classifying Public and Notable Trees. The reason for this request is that a specific tree on the submitter's property (Tree No. 350) is considered by them to be hazardous to human life and the structural integrity of the submitter's house.
41. Four further submissions<sup>8</sup> were made in regard to the topic of health and safety.

### Discussion

42. It is difficult to respond to this submission when it is not specified what provisions of the Health and Safety Act nor the specific Act that are being identified and requested for consideration.
43. Regardless, this submitter has made the submission on the basis of Tree No. 350. Following the public notification period, arborist Simon Miller re-visited and re-assessed Tree No. 350 using the STEM<sup>TM</sup> method. While it was noted that there was evidence that part of the adjacent pathway was lifting, the tree scored over 100 STEM<sup>TM</sup> points meaning that it meets the criteria of being classified as a Notable Tree. Mr Miller also made the comment that safety issues need to be more clearly defined by way of evidential based assessments provided by the submitter. In my opinion, the classification of Tree No. 350 as a Notable Tree is appropriate given that the tree scored more than 100 STEM<sup>TM</sup> points when re-assessed by Mr Miller. Should the submitter feel that the tree is hazardous to the point where it should be trimmed, altered or removed, I note that the NPT.1.5 rules allow a certain level of trimming per year or resource consent be applied for outside of these terms should the tree wish to be removed.

### Recommendation

44. I recommend that the Commissioners **reject** the relief in submission point 18/a.

## D. Liability

### Submission Information

45. Two submissions<sup>9</sup> have sought that Council indemnify any landowner with a Notable Tree on their property in relation to any loss or liability for damages that may arise from harm caused by a protected Notable tree. The reason for these requests is that private landowners should not incur costs or liability for damages for the protection of trees that benefit the public generally.
46. Two further submissions<sup>10</sup> were made in regard to the topic of liability.

### Discussion

47. In my opinion, the request for Council to accept liability and indemnify landowners is outside of the scope of the WDP and the scope of the plan change. Such relief would be unprecedented within the District

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<sup>6</sup> 018/a

<sup>7</sup> Reference is made to the "Health and Safety Act" but no specific provisions or the year of the Act in question.

<sup>8</sup> X064, X069, X071, X109

<sup>9</sup> 22/g and 27/f

<sup>10</sup> X081, X106

Plan or any other District Plan that I am aware of within New Zealand. Such an approach would need to be considered and agreed to by the Council and implemented and administered outside of the District Plan.

### Recommendation

48. I recommend that the Commissioners **reject** submission points 22/g and 27/f.

## **E. Miscellaneous**

### Submission Information

49. Four submissions<sup>11</sup> have been made seeking the following relief:
- That no heritage tree be removed provided that they are healthy and not depriving a neighbour of sunlight.
  - That deciduous trees be planted along the Hatea Loop Walkway and Mill Road.
  - That Council either sweeps Ross Street on a weekly basis, or maintains/removes the trees on Ross Street.
  - That Council levies targeted rates upon residents living in the Ruakaka area where protected trees have been vandalised.

### Discussion

50. Most of the relief sought is not within the scope of the WDP and PC129. These include a request<sup>12</sup> to levy targeted rates upon residents living in areas where protected trees are vandalised, and requests to plant trees in public spaces, or sweep public roads on which non-scheduled trees are located.<sup>13</sup>
51. In my opinion, the provisions strike the appropriate balance between protecting notable trees and public trees while allowing appropriate works to maintain health, safeguard people and property, and enable the safe and efficient use and development of infrastructure, roading network and network utilities. As such, I recommend that the request<sup>14</sup> for no heritage to be removed, provided that they are healthy and not depriving a neighbour of sunlight, be rejected.

### Recommendation

52. That the Commissioners **reject** submission points 5/a, 5/b, 12/a and 42/c.

## **F. Notification**

### Submission Information

53. Two submissions<sup>15</sup> have been made requesting non-notified rules for the maintenance or removal of Notable Trees. This includes a specific request that any application for maintenance or removal for a tree added to the register in 1976 should be non-notified.

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<sup>11</sup> 42/c, 5/a, 5/b, 12/a

<sup>12</sup> 42/c

<sup>13</sup> 12/a, 5/b

<sup>14</sup> 5/b

<sup>15</sup> 26/c & 27/c

### Discussion

54. The specific request that that any application for maintenance or removal for a tree added to the register in 1976 should be a non-notified is unworkable in my opinion. It will be very difficult to establish whether a tree was added to the register in 1976 and regardless I can see no logical reason to justify such a specific allowance for a non-notified rule.
55. I do not support the general request for a non-notification rule for any application for maintenance or removal of a Notable Tree. Scheduled Notable Trees are protected for a number of reasons including their public benefit in terms of their significant amenity, historical, ecological or cultural values. In my opinion, any application requiring resource consent under the NPT provisions (including removal) should be considered under the normal notification tests in the RMA so that these values can be considered on a case by case basis in light of the potential values of these trees to the wider public.

### Recommendation

56. I recommend that the Commissioners **reject** submission points 26/c and 27/c.

## **G. Permitted Activity Rule**

### Submission Information

57. Three submission points<sup>16</sup> have been made with regards to the topic of permitted activity rules.
58. Four further submissions<sup>17</sup> were made in regard to the permitted activity rules.
59. The basic premise of these submissions is that the discretionary activity rules for land use should be reframed as permitted activity rules.
60. Reasons for this relief include:
- The rules as drafted are confusing and hard to interpret.
  - The framing of the provisions as permitted activity standards will create clarity and provide better consistency with the requested permitted activity standards for public trees.

### Discussion

61. I agree that there is merit in the request for reframing the NPT.1.5 discretionary activity rules to be permitted activity rules. The intent of this change is to change the structure of the rule so that it is drafted in the “positive” rather than “negative” and lists permitted activity criteria rather than stating discretionary activities. It does not change the actual activity status itself for the rules which are breached, which would remain discretionary.
62. The reason for originally drafting NPT.1.5 in the manner that was notified was in order to achieve consistency with the general structure of the Whangarei District Plan under the Rolling Review which does not typically include permitted activity rules. While this is the case for the majority of chapters that have been made operative or which are currently being considered under the rolling review process,

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<sup>16</sup> 22/c, 36/d, 36/e

<sup>17</sup> X059, X054, X061, X124

there is precedent for permitted activity rules. This is apparent in the following chapters that have been recently made operative:

- Noise and Vibration (NAV) – see NAV.6
- Papakāinga (PKA) – see PKA.1.5
- Network Utilities (NTW) – see NTW.2.2, NTW.2.4 and NTW.2.7
- Critical Electricity Lines (CELs) and Substations – see SEL.1.2

63. For various reasons permitted activity rules were included in these chapters despite the prevailing structure for the WDP under the rolling review being to provide discretionary activity rules. The NPT chapter is proposed to be a District Wide chapter. All of the other chapters listed above are District Wide or Resource Area chapters. This suggests that an allowance has been made for providing permitted activity rules within District Wide and Resource Area chapters.
64. Irrespective of the above, when considering the NPT provisions on their own, I agree with some of the criticisms levelled at the discretionary activity rule structure. Given the use of double negatives, I agree that it is not easy for plan users to interpret. I agree that reframing them as permitted activity rules will create clearer provisions that are easier to interpret and implement.
65. As this is a structural change that does not actually change the intent or discretionary activity status should the provisions not be complied with, I do not consider it necessary to undertake a full assessment of reasonably practicable options pursuant to s32AA. For the reasons of improving clarity and avoiding confusion in interpretation of the rules, I consider that reframing NPT.1.5 as a permitted activity rule represents the most efficient and effective option. This conclusion is drawn specifically in terms of structurally reframing the rule. In Topic Q I specifically look at other submissions that have been regarding the content and intent of provisions within NPT.1.5.

### Recommendation

66. I recommend that the Commissioners **accept in part** submission points 22/c, 36/d, 36/e, insofar as they relate to changing the structure of the NPT.1.5 provisions to permitted activity rules rather than discretionary activity rules.

## H. Section 32

### Submission Information

67. One submission<sup>18</sup> was made in regard to the s32 evaluation of PC129. This includes a specific request for a peer review of the arborists report included in the s32 evaluation. The reason for this relief is that the submitter states that the Council has not addressed the relevant costs and risks of notable trees and should not rely on the opinion of one arborist as tree assessments can be highly subjective.
68. Four further submissions<sup>19</sup> were made in regard to the Section 32 analysis.

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<sup>18</sup> 27/r

<sup>19</sup> X096, X121



### Discussion

69. The arborist's report included in the s32 evaluation<sup>20</sup> was prepared by Mr Simon Miller. Council subsequently commissioned Mr Miller to provide further expert arborist advice and to undertake STEM™ assessments of specific trees that were subject to feedback during the pre-notification consultation process or a formal submission. A statement of Mr Miller's qualifications and experience is provided in his evidence in **Attachment 6**. In my opinion, Mr Miller is a qualified and experienced arborist with extensive experience in RMA processes relating to protected trees, STEM™ criteria and tree evidence and I rely on his evidence and opinions when it comes to specific arborist matters and STEM™ assessments.
70. I do not support the submission seeking that the Council commission peer reviews of all of Mr Miller's STEM™ assessments, or agree that the Section 32 evaluation is defective without such a peer review. In my opinion, this would represent an unnecessary expense for Council as I have no reason to question the expertise and integrity of Mr Miller's assessments. No evidence has been provided that Mr Miller's assessment is flawed or deficient. If any submitters are dissatisfied with Mr Miller's comments on arborist matters or STEM™ assessments, it is available to them to commission their own peer reviews or assessments from a similarly qualified and experienced arborist and submit them at the Hearing Panel for consideration. If any such additional assessments from a suitably qualified and experienced arborist are provided before or at the hearing, I will consider them alongside Mr Miller's assessments.

### Recommendation

71. I recommend that the Commissioners **reject** submission point 27/r.

#### **I. Specific Trees(s)**

72. A large proportion of submission received on PC129 were regarding the topic of Specific Trees(s). In total 34 submission points were received on this topic. In these submission points, the submitters generally made submissions regarding a specific tree or group of trees on or near their property with requests including:
- The tree(s) should be removed from the Notable Tree Schedule.
  - The tree(s) have already been physically removed.
  - Council should undertake or fund maintenance and trimming of the tree(s).
  - Correct details for tree(s) in the Notable Tree Schedule e.g. wrong address or legal description.
  - Additional tree(s) should be included for protection in the Notable Tree Schedule.
73. I have grouped these submissions into the following sub-topics:
- *Existing scheduled trees* – the majority of submissions are made under this sub-topic. Generally, submitters have made specific requests with regard to an existing scheduled tree on or adjacent to their property seeking that it be physically removed or removed from the Schedule of Notable Trees.

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- *Locational issues* – addresses submissions where locational issues have been raised with regard to a specific scheduled tree.
- *Trees in public spaces* – addresses submissions relating to trees in public spaces.
- *Non-scheduled trees* – address submissions relating to trees that are not currently scheduled for protection in the operative WDP or proposed NPT provisions.

74. Following the receipt of submissions and further submissions, Mr Miller undertook site visits and assessments of a number of further trees that he had not previously visited.<sup>21</sup> This resulted in some additional STEM™ assessments being undertaken by Mr Miller.<sup>22</sup> A number of the submissions received referred to specific tree(s) or groups of trees that Mr Miller had already visited during the pre-notification consultation process.<sup>23</sup> In the majority of those instances, Mr Miller did not re-visit the tree and instead has relied on his original visit and where appropriate STEM™ assessment undertaken in December 2017 as part of the pre-notification consultation process.
75. Throughout this topic I refer to the common name of the tree species rather than the botanical name.

#### *Submission Information – Existing Scheduled Trees*

76. Eleven submissions<sup>24</sup> were made requesting that specific scheduled trees be physically removed and/or removed from the Notable Tree Schedule in NPT.1.9. Reasons for this relief included:
- The trees pose a health and safety risk to people and private property.
  - They do not have significant amenity, historical, ecological and cultural values.
  - The trees are causing damage to private property and public infrastructure.
  - Taxonomic issues.
77. Five submissions<sup>25</sup> requested greater flexibility to enable private property owners, as well as Council, to undertake works on the trees without resource consent. Reasons for this relief included:
- The shade creates dampness in homes and in turn health issues.
  - The trees pose a safety risk and could damage private property during a storm.
  - The trees are a nuisance.
78. One submission<sup>26</sup> seeks that a scheduled tree retains its original status as it is the only mature tree in the area and it provides privacy and reduces noise and does not pose any safety risk.
79. I discuss these existing scheduled trees below with regard to their Notable Tree number in NPT.1.9, or by the address derived from the submission where the Notable Tree number could not be determined.

<sup>21</sup> See PC129 “Submission Notable Trees- STEM™ assessment report 30.10.18” for summaries of STEM™ assessments from these visits in Appendix 2 of Mr Millers evidence in **Attachment 6**

<sup>22</sup> Copies of full STEM assessments have not been attached to this report. They are available on request.

<sup>23</sup> See PC129 “Submission Notable Trees- STEM™ assessment report 07.02.18” for summaries of STEM™ assessments from these visits in Appendix 1 of Mr Millers evidence in **Attachment 6**

<sup>24</sup> 13/a, 21/a, 22/a, 25/a, 26/a, 29/a, 30/a, 32/f, 35/a, 38/a, 47/a

<sup>25</sup> 10/a, 28/b, 40/a, 41/b, 45/a

<sup>26</sup> 7/a

## Discussion – Existing Scheduled Trees

### **#515**

80. #515 refers to two Italian Cypress Trees located at 74 Pentland Road. The submitter<sup>27</sup> seeks that Council support the possibility of the removal of the protected trees on this property as they pose a public fire and safety risk. The submitter also considers that the trees do not meet the criteria of enhancing the environment, they are not native nor do they have any cultural value, and that they have no social advantage. Two further submissions<sup>28</sup> support this submission and consider that the negative effects and risks of the trees should be factored into the STEM™ assessment.
81. Mr Miller assessed the tree during pre-notification consultation. This resulted in a STEM™ score of 126, 30 less than previously scored. With regards to the risk of complete tree failure (tree falling on house - trees in very close proximity to house), Mr Miller concluded that the trees' current condition does not indicate that complete tree failure is likely in the next 12 months from the time of assessment. Their root zone was examined and no cracking or heaving was evident. The buttress roots of both trees did not display any signs of structural instability. The risk of trees catching on fire were discussed with the owner and there seemed to be general agreement, from an arboricultural perspective (as opposed to a qualified fire risk assessor's perspective) that it would take a deliberate attempt on behalf of a given individual to set the trees on fire.

### **#355**

82. #355 is a Totara Tree located at 84A Morningside Road. The submitter<sup>29</sup> seeks that the tree be retained in its original status. While the submitter has not specified the tree, it is assumed they are referring to Tree #355 which is a Totara listed in the operative WDP and proposed NPT.1.9 schedule as protected at the submitters address.
83. No proposal has been made to remove this from the list in the NPT provisions nor have any other submitters sought that this tree be removed from the list.

### **#200 & #201**

84. These Taraire trees are located at 89 and 89A Crawford Crescent. The submitter<sup>30</sup> seeks that the trees are controlled or removed as they are unsafe. One further submission<sup>31</sup> supports this submission as it is considered that the relief sought will address issues regarding risks and nuisance.
85. Mr Miller assessed tree #201 during pre-notification consultation. This resulted in the STEM™ score of the tree increasing from 102 to 144. Mr Miller has revisited the trees and observed some dieback evidence in some of the trees in question. Mr Miller has advised that safety issues need to be more clearly defined by the submitter based on an evidential based assessment. Otherwise Mr Miller has advised that pruning of canopies could address the issue. Allowance is made in the NPT.1.5 provisions

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<sup>27</sup> 1/a

<sup>28</sup> X073, X098

<sup>29</sup> 7/a

<sup>30</sup> 10/a

<sup>31</sup> X097

for trimming. I have also recommended amendments to policies in Topic P that I consider provide stronger and clearer policy direction as to when tree removal may be appropriate.

### **#513**

86. Tree #513 is a Swamp Cypress located within Whangarei Intermediate School. A resource consent<sup>32</sup> was lodged in 2009 for the tree to be removed.<sup>33</sup> The land is subject to a designation. The submitter<sup>34</sup> seeks that the tree be removed from the schedule and gives a number of reasons, including incorrect species listing, health and safety concerns, ongoing maintenance and repair costs, the roots compromising electricity infrastructure and the protection of the tree contradicting the rationale of a designation.
87. At the time the resource consent was lodged, the incorrect species identification (previously identified as a Dawn Redwood when it is in fact a Swamp Cypress) was discovered. The common and botanical name of the tree was subsequently updated in the proposed NPT.1.9 Schedule of Notable Trees.
88. Mr Miller visited the tree during the pre-notification consultation process and did a STEM™ evaluation based on the tree's correct classification as a Swamp Cypress. This resulted in the tree's STEM™ score increasing from 120 to 144. On the basis of Mr Miller's assessment, the tree meets the threshold for protection under NPT.1.8.
89. WDC sought a legal opinion of whether the designation for Whangarei Intermediate School would preclude the identification tree 513 for protection as a Notable Tree in PC129 [see **Attachment 7**]. By way of context, Whangarei Intermediate School is covered by designation DE25 in the WDP. DE25 has 4 conditions applying to it, including condition 3 which specifically references the scheduled heritage tree on the property and refers to the current operative rules in Chapter 59 of the WDP. The legal opinion concludes that:
- "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."*
90. I rely on this legal opinion, and do not consider that the designation of the site can be used as a reason to remove tree 513 from the Schedule of Notable Trees.
91. Regarding other reasons given to justify removal of the tree, it is my opinion that these are best addressed in a resource consent application. I have recommended amendments to policies in Topic P that I consider provide stronger and clearer policy direction as to when tree removal may be appropriate when compared to the operative WDP provisions.

### **#404**

92. Tree #404 is a Magnolia at 48B George Street. The submitter<sup>35</sup> (not the landowner) seeks that the tree is removed due to safety issues and impact on adjoining buildings.

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<sup>32</sup> LU0900070

<sup>33</sup> That application was later withdrawn following a decision by Council to notify the application in March 2011.

<sup>34</sup> 13/a

<sup>35</sup> 21/a

93. Mr Miller has visited the tree and undertaken a STEM™ assessment. This has resulted in the STEM™ score reducing to 114 due to previous pruning. The tree still meets the threshold for protection under NPT.1.8.

#### **#433**

94. Tree #433 is a Liquidamber located at 76 Mains Avenue. The submitter<sup>36</sup> seeks that the tree is removed due to its adverse effects on private property. If the tree is retained, they seek that its legal description is updated to the correct legal description.

95. Mr Miller visited the tree during the pre-notification consultation process and undertook a STEM™ assessment which gave a score of 150. The tree still meets the threshold for protection under NPT.1.8.

96. It appears that the correction to the legal description for the Tree was not made following pre-notification consultation. Upon reviewing the Certificate of Title for 76 Mains Avenue, it is confirmed that the correct legal description for this site is Lot 1 DP 184341. Based on the above, I recommend that the legal description for Tree #433 be amended accordingly.

#### **#323**

97. Tree #323 is a Sapote located at 109 Hatea Drive. The submitter<sup>37</sup> seeks that the tree is removed or managed with support from WDC due to concerns about damage to property, interaction with power lines and risk of boundary fence collapsing.

98. Mr Miller has undertaken an assessment of the tree following the submission process and undertaken a STEM™ assessment which has resulted in no change to the STEM™ score of 102. The tree still meets the threshold for protection under NPT.1.8. Mr Miller has indicated that pruning could likely be undertaken as a permitted activity under the NPT.1.5 provisions for the branch which is atop the fence.

#### **#271**

99. Tree #271 is an English Oak located at 18 Central Avenue. The submitter<sup>38</sup> seeks that the tree is removed as people are more important than trees, this tree has a long history as detailed in attached correspondence and the submitter disagrees with the STEM™ assessment and score undertaken by Mr Miller.

100. Mr Miller assessed Tree #271 during pre-notification consultation. His assessment resulted in the STEM™ score decreasing by 6 points to 114. Based on Mr Miller's assessment, the tree still meets the threshold for protection under NPT.1.8.

101. The submitter has specifically contested Mr Miller's STEM™ assessment and undertaken their own assessment. It is not clear whether the submitter or whoever<sup>39</sup> undertook the STEM™ assessment within the submission is a suitably qualified and experienced arborist. On this basis, I prefer on the assessment of Mr Miller who has extensive experience with undertaking STEM™ assessments.

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<sup>36</sup> 22/a

<sup>37</sup> 25/a

<sup>38</sup> 26/a

<sup>39</sup> The submission refers to "our specific comments are as follows"

### **#342**

102. Tree #342 is an English Oak located at 2 Kirikiri Stream Lane. The submitter<sup>40</sup> seeks that the tree is removed as the submitter considers that tree evaluation is not true or correct.
103. Mr Miller visited and undertook a STEM<sup>TM</sup> assessment of the tree during pre-notification consultation due to a several requests for its removal. This resulted in the tree obtaining a STEM<sup>TM</sup> score of 141. Mr Miller's assessment during the pre-notification consultation process also made a number of recommendations regarding the future management of the tree. Based on Mr Miller's assessment, the tree still meets the threshold for protection under NPT.1.8.

### **#378**

104. #378 refers to two Rimu located at 1 Apriana Avenue. The submitter<sup>41</sup> seeks that they are removed as they have no significant amenity, historical, ecological or cultural values.
105. Mr Miller visited the trees and undertook a STEM<sup>TM</sup> assessment following the notification process. This resulted in the trees obtaining a STEM<sup>TM</sup> score of 117, 15 more than the previous score. Based on Mr Miller's assessment, the trees meet the threshold for protection under NPT.1.8.

### **#389**

106. #389 refers to two Jacaranda trees located at 174 Bank Street. The submitter<sup>42</sup> seeks that the tree is removed as the submitter considers that the trees do not have significant amenity, historical, ecological or cultural values that they should be required to be retained.
107. These trees were previously subject to a joint STEM<sup>TM</sup> evaluation, Mr Miller has visited the trees following the notification process. This has resulted in the trees STEM<sup>TM</sup> scores increasing from 108 to 114. Based on Mr Miller's assessment, the trees meet the threshold for protection under NPT.1.8.

### **#305**

108. #305 refers to NSW Christmas Bush at 52 Mill Road. The submitter<sup>43</sup> seeks that the tree be physically removed as it causes rashes and hay fever. The submitter also believes that the tree is unsightly and that the roots have caused plumbing problems at a neighbouring property.
109. Unfortunately, Mr Miller was not able to visit this tree during his most recent visit in October 2018. It is recommended that Mr Miller visit this tree and undertake STEM<sup>TM</sup> assessment prior to or during the hearing in early December 2018. He can then present his findings at the hearing or in a written right of reply following the hearing.

### **#401**

110. #401 refers to a Liquidamber tree at 73 George Street. The submitter<sup>44</sup> seeks that the NPT provisions be amended to allow for the trimming of tree #401, and other protected trees, without the need for a

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<sup>40</sup> 29/a

<sup>41</sup> 30/a

<sup>42</sup> 32/f

<sup>43</sup> 38/a

<sup>44</sup> 41/b

resource consent. The reason for this relief sought is that the submitter considers that the tree is unsafe, particularly during a storm, being 20m high and overhanging the house.

111. Mr Miller visited the tree during pre-notification consultation. This has resulted in a STEM™ score of 162, 36 more than the previous score. Mr Miller acknowledges that the owners would like to be able to undertake pruning for the purpose of clearing the canopy away from the roof line of the house, removal of fractured or compromised branches, and keeping the canopy clear from powerlines. Mr Miller concludes that given the history of failure within the canopy of the tree, being exposed to a north-easterly wind, the relief sought seems reasonable from an arboricultural perspective. Permitted activity allowances for pruning and maintenance have been made in NPT.1.5 which I consider provide suitable scope for pruning of the canopy to be undertaken. Based on Mr Miller's assessment, the tree still meets the threshold for protection under NPT.1.8.

### **#202**

112. #202 refers to two Taraire trees at 47 Bush Road. The submitter<sup>45</sup> opposes the continued protection of the trees and seeks that Council prune the trees as the submitter considers that they create too much shade at the rear of the property.
113. Mr Miller visited the tree during pre-notification consultation which resulted in a STEM™ score of 147, 45 more than the previous score. Mr Miller notes that upon his site visit, it was unclear who or what was being shaded given the breadth and volume of the trees within the stand. Permitted activity allowances for pruning and maintenance have been made in NPT.1.5. Based on Mr Miller's assessment, the trees still meet the threshold for protection under NPT.1.8.

### **#508**

114. #508 refers to a Holm Oak (Holly Oak) at 5 Waiaatawa Road. The submitter<sup>46</sup> seeks that the tree be removed from the Notable Tree schedule as it is considered a nuisance tree to the occupants and neighbours. The submitter also considers that the plan change does not take into account the social, economic and cultural well-being of local people and communities who are adversely affected by trees of an inappropriate size in an urban environment.
115. Mr Miller visited the site and undertook an assessment following the notification period. This resulted in a score of 126, 6 less than previously scored. Based on Mr Miller's assessment, the tree still meets the threshold for protection under NPT.1.8.
116. Mr Miller has indicated that pruning or maintenance could be undertaken within the permitted activity rules in NPT.1.5 (e.g. pruning branches up to 100mm in diameter and removal of no more than 20% live growth in any 12 month period) that could help address identified nuisance values of the trees.

### **97 George Street Hikurangi**

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<sup>45</sup> 45/a

<sup>46</sup> 47/a

117. The submitter<sup>47</sup> refers to an existing heritage tree on a property adjacent to theirs at 97 George Street, Hikurangi. The submitter seeks that this unidentified tree is pruned or removed from the schedule due to adverse shading and amenity effects on the submitter's property.
118. Mr Miller and I were unable to specify the location of this unidentified tree therefore no further assessment could be undertaken by Mr Miller. If the submitter can more clearly identify the location of this tree, it is recommended that Mr Miller visit this tree and undertake STEM™ assessment prior to or during the hearing in early December 2018. He can then present his findings at the hearing or in a written right of reply following the hearing.

#### ***41 Puriri Park Road Maunu***

119. The submitter<sup>48</sup> refers to a tree on their property at 41 Puriri Park Road. The submitter requests that Council maintains the tree, including the maintenance of its roots and that generally Northpower be given more authority to undertake alteration, trimming, or removal of Public and Notable Trees. The submitter considers that the tree poses a health and safety risk and that the proposed provisions restrict Northpower's ability to adequately operate and maintain their electricity infrastructure.
120. It was originally thought that the tree referred to in this submission was tree #393 located at 28 Norfolk Street, which Mr Miller had visited previous during pre-notification consultation. However, this appears to have been a mix up as the submitters address is listed as 41 Puriri Park Road and there is no Notable Tree listed in NPT.1.9 at that address. As such, Mr Miller was not able to locate the tree during his site visits following notification. It is recommended that Mr Miller visit this tree and undertake a STEM™ assessment prior to or during the hearing in early December 2018. He can then present his findings at the hearing or in a written right of reply following the hearing. In regards to Northpower's ability to undertake works on Notable Trees, Northpower<sup>49</sup> have made their own submission on the plan change which I address throughout other Topics in this report.

#### ***Recommendation – Existing Scheduled Trees***

121. I recommend that the Commissioners:
- **Accept** submission point 7/a;
  - **Reject** submission points 1/a, 10/a, 13/a, 21/a 22/a, 25/a, 26/a, 28/b, 29/a, 30/a, 32/f, 35/a, 38/a, 41/b, 45/a and 47/a;
  - Make consequential changes to the NPT.1.9 Schedule of Notable Trees to update STEM™ scores and locations.

#### ***Submission Information – Locational Issues***

122. Nine submissions<sup>50</sup> were made in regard to locational issues relating to certain scheduled trees. These submissions either requested that the trees be removed from the schedule, that Council confirm whether

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<sup>47</sup> 35/a

<sup>48</sup> 28/b – this submission point was originally included in the "Infrastructure" Topic in the summary of submissions (**Attachment 2**). However on drafting the s42A Report it was deemed more appropriate for this to be within the "Specific Tree(s)" topic.

<sup>49</sup> Northpower's submission number is 37.

<sup>50</sup> 2/a, 3/a, 8a, 14/a, 20/a, 22/f, 42/b, 48/b, 50/a



the trees still exist, and for Council to confirm the correct legal description pertaining to a tree. The reason for this relief sought is generally because of uncertainty as to whether the trees still exist or not.

123. I discuss these existing scheduled trees below with regard to their Notable Tree number in NPT.1.9, or by the address derived from the submission where the Notable Tree number could not be determined.

### Discussion – Locational Issues

#### **#349**

124. #349 refers to a Sentry Palm at 12 Hilltop Avenue. The submitter<sup>51</sup> seeks that the tree be removed from the Schedule of Notable Trees as the tree no longer exists.
125. Mr Miller visited the site following notification and has confirmed that Tree #349 no longer exists. Based on this assessment, it is recommended that Tree #349 be removed from the Notable Tree Schedule.

#### **#209**

126. #209 refers to a Hawaiian Kowhai at 117 Whau Valley Road. The submitter<sup>52</sup> seeks that the tree be removed from the Notable Tree Schedule due to uncertainty as to whether the tree still exists.
127. Mr Miller visited the site following notification and has confirmed that Tree #209 no longer exists. I therefore recommend that Tree #209 be removed from the Notable Tree Schedule.

#### **#233 and #363**

128. #233 and #363 refers to trees listed in the Operative Heritage Tree Schedule, being an English Oak and two Pohutukawa trees respectively. The submitter<sup>53</sup> seeks that these trees be removed from the schedule as the submitter states that both had been physically removed in 2016 by a qualified arborist due to instability and rotting.
129. Given that these trees are not included in the notified Notable and Tree Schedule, I consider that no further action is required in regards to the relief sought.

#### **#280**

130. The submitter<sup>54</sup> refers to a scheduled tree at 1/127 Kamo Road. Upon viewing the Notable Tree Schedule, it is likely that this submission refers to Tree #280 being a Pohutukawa tree located at 127 Kamo Road. While no specific relief is sought with regards to this tree, the submitter advises that the tree is located on a cross-lease section.
131. If further information from the submitter confirms whether this is the case and, if so, that incorrect legal description is the issue, I recommend that the legal description pertaining to Tree #280 be updated accordingly.

#### **#293 and #507**

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<sup>51</sup> 2/a  
<sup>52</sup> 3/a  
<sup>53</sup> 14/a  
<sup>54</sup> 48/b

132. The submitter<sup>55</sup> refers to trees #293 and #507 being a Maidenhair Tree and a Jacaranda Tree located at 46 Kamo Road. The submitter seeks that both of these trees be removed from the schedule as the submitter states that they no longer exist. The submitter also seeks advice as to whether the remnant pohutukawa on the property should be added to the schedule.
133. Mr Miller visited the site following notification and confirmed that trees #293 and #507 no longer exist. Mr Miller also confirmed that there are trees on the property, including Pohutukawa, that could meet the STEM™ threshold for protection under NPT.1.8 however Mr Miller is unsure if this is the correct tree. I therefore recommended that trees #293 and #507 be removed from the Notable Tree Schedule. I further recommend that the submitter be advised that remnant trees on the property could be added to the schedule should this relief be sought.

### **#393**

134. #393 refers to a Pohutukawa Tree located at 28 Norfolk Street. The submitter<sup>56</sup> requests that the that Council maintain the tree and its roots, using protected tree funds, as the roots are damaging footpaths, driveways and house foundations. Three further submissions<sup>57</sup> were made in support of this submission.
135. Mr Miller visited the site during pre-consultation and undertook a STEM™ assessment where the tree scored 135, 27 more than previously scored. The tree meets the threshold for protection under NPT.1.8. Mr Miller noted that sections of the footpath within the property have been uplifted/cracked by surface roots arising from the tree. However, there was no evidence of cracking of lifting in the side of the house immediately adjacent to the tree.

### **#202**

136. #202 refers to two Taraire trees located at 47 Three Mile Bush Road, Kamo. The submitter<sup>58</sup> requests that the Heritage Tree provisions are left as it as the owner does not want the heritage status taken from the trees. The submitter also advises that more native trees will be planted on the property. I note that the protection of these trees will still be provided under NPT.1.8.
137. I note that the address pertaining to Tree #202 in the Notable Schedule is incorrect. I recommend that this be amended to read 47 Three Mile Bush Road, Kamo.

### **13 Whimp Avenue Onerahi**

138. The submitter<sup>59</sup> refers to a site at 13 Whimp Avenue, Onerahi. The submitter states that no heritage tree exists at 11 Whimp Avenue, and believes that no heritage tree exists at 13 Whimp Avenue. The submitter seeks that Council confirms whether such tree exists at the latter site.
139. While it appears that no such tree is listed in the Notable Tree Schedule, it is noted that the Operative Heritage Tree Schedule lists Tree #363 as being located at 13A Whimp Avenue, being two Pohutukawa trees. It is likely that this submission refers to Tree #363 of the Operative Heritage Schedule which is

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<sup>55</sup> 50/a

<sup>56</sup> 28/a

<sup>57</sup> X052, X085, X110

<sup>58</sup> 6/a

<sup>59</sup> 8/a

addressed above under the heading “#233 and #363.” Based on the discussion provided previously, I consider that no further action is required in regards to the relief sought.

### Recommendation – Locational Issues

140. I recommend that the Commissioners:

- **Accept** submission points 14/a, 22/f;
- **Accept in part** submission point 6/a, 50/a;
- **Reject** submission points 2/a, 3/a, 8a, 20/a, 42/b, 48/b;
- Make consequential changes to the NPT.1.9 Schedule of Notable Trees to update locations and legal descriptions.

### Submission Information – Trees in Public Spaces

141. Four submissions<sup>60</sup> were made in regard to non-scheduled trees in public spaces. These submissions generally requested that the trees either be added to the Notable Tree schedule or for the trees to be maintained. The reasons for the relief sought include:

- The tree provides stability to a steep bank, beautifies the area and provides shelter.
- The trees provide environmental benefits including the ability to absorb carbon dioxide, offsetting climate change, and protection from coastal erosion.
- Concerns about the safety risk, cost of managing leaf litter, and damage to infrastructure.
- The trees overhang private property and are a danger to the house. The trees also promote excessive weed growth.

142. I discuss these trees below with regard to the location described in the submission.

### Discussion – Trees in Public Spaces

#### **Trees outside 23 Ross Street**

143. The submitter<sup>61</sup> refers to an unscheduled tree located outside 23 Ross Street and requests that this tree be removed and replaced with a more suitable species, or not replaced at all. The reason for this relief sought is that the submitter is concerned about the safety risk, cost of managing leaf litter, and the damage the tree causes to infrastructure. Three further submissions<sup>62</sup> were made in support of this submission.

144. Given the limited details provided in the submissions, it is difficult to understand what specific trees the submitter is referring to as there are a number of large street trees along Ross Street. Regardless, it is likely that the trees would meet the criteria to be considered a protected public tree pursuant to NPT.1.10. Provision is made for pruning and maintenance of protected public trees in NPT.1.5. Accordingly, this would appear to be an operational issue to take up directly with Council's Parks Department who

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<sup>60</sup> 12/b, 23/a, 31/a, 42/b

<sup>61</sup> 12/b

<sup>62</sup> X064, X077, X102

administer public trees rather than something that can be addressed through PC129. On behalf of the submitter, a CRM<sup>63</sup> request has been raised on this specific matter for the Park's Department to follow up.

#### ***Trees overhanging 6 Scotia Place (from adjacent Reserve)***

145. The submitter<sup>64</sup> refers to unscheduled trees which are believed to be located within a Council reserve and overhang the property at 6 Scotia Place, Kamo. The submitter requests that Council make the trees more 'user-friendly' as the submitter states that the trees dangerously overhang the submitter's property and pose a danger to the house. The submitter also believes that the trees promote excessive weed growth under the canopy which covers old fences, dangerous stumps and branches. The trees are also not seen as an asset that encourages future generations to appreciate the trees and reserves.
146. Mr Miller visited the site following notification and recommends that the trees/canopies of the trees are cut back to the property/reserve boundary. Provision is made for pruning and maintenance of protected public trees in NPT.1.5. Accordingly, this would appear to be an operational issue to take up directly with Council's Parks Department who administer public trees rather than something that can be addressed through PC129. On behalf of the submitter, a CRM request has been raised on this specific matter for the Park's Department to follow up.

#### ***23 Rurumoki Street Regent***

147. The submitter<sup>65</sup> refers to two trees located at 23 Rurumoki Street, Regent. The submitter requests that Council maintain these trees which overhang the property due to the financial burden of constantly having to clear debris. The submitter considers that the trees pose a risk to their house and that it is unfair that a resource consent is required where the property owner is liable for the cost.
148. It appears that there are no scheduled trees located at or near 23 Rurumoki Street. However, Mr Miller undertook a site visit following notification and has confirmed that the trees are located in the adjacent reserve consisting of mainly Pohutukawa and Totara. Mr Miller notes that a large Pohutukawa in particular overhangs the site close to the submitter's house and recommends that the canopies are cut back to the property/reserve boundary. Provision is made for pruning and maintenance of protected public trees in NPT.1.5. Accordingly, this would appear to be an operational issue to take up directly with Council's Parks Department who administer public trees rather than something that can be addressed through PC129. On behalf of the submitter, a CRM request has been raised on this specific matter for the Park's Department to follow up.

#### ***West Bank of Ruakaka Estuary***

149. The submitter<sup>66</sup> refers to a number of non-scheduled Pohutukawa trees located on the west bank of the Ruakaka Estuary. The submitter requests that these trees be added to the schedule as they provide

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<sup>63</sup> CRM means Customer Relationship Management

<sup>64</sup> 23/a

<sup>65</sup> 31/a

<sup>66</sup> 42/b

vital environmental benefits such as the ability to absorb carbon dioxide, offset climate change, and protect from coastal erosion.

150. Mr Miller visited the site following notification where six Pohutukawa trees at the site were assessed. Of the six, four scored over 100 STEM™ points, being the trees standing opposite 24, 20, 12 and 6 Princes Road. Trees standing opposite 10 and 22 Princes Road did not score above 100 STEM™ points. Mr Miller notes that both trees standing opposite 24 and 20 Princes Road both display some level of undermining of their root plates/ root zone by the action of sea water and some levels of sparseness and tip die back in their canopies. However, this is typical of the coastal Pohutukawa and not considered indicative of short-term incipient decline or 'defective'. Similarly, the proximity of powerlines is not considered in and of itself an arboricultural factor in any potential downgrading of the STEM™ assessment. Scheduled trees are regularly pruned in order to minimise conflicts with infrastructure. On the basis of Mr Millers STEM™ assessment, I recommend that the trees scoring over 100 are added to the Notable Tree Schedule in NPT.1.9.

### Recommendation – Trees in Public Spaces

151. I recommend that the Commissioners:

- **Accept in part** submission point 42/b;
- **Reject** submission points 12/b, 23/a and 31/a;
- Make consequential changes to the NPT.1.9 Schedule of Notable Trees to include new scheduled trees.

### Submission Information – Non-scheduled trees

152. Two submissions<sup>67</sup> were made in regard to trees which don't appear to be scheduled. Generally, these submissions request that either the tree be protected under the NPT provisions, or that the tree be maintained. The reasons for the latter relief sought include:

- The trees are causing damage to private property and infrastructure.
- The trees pose a public fire and safety risk.

153. I discuss these trees below with regard to the location described in the submission.

### Discussion – Non-scheduled trees

#### **Whangarei Hospital Carpark**

154. The submitter<sup>68</sup> refers to a tree located in the Whangarei Hospital Carpark believed to be a Morton Bay Fig Tree. The submitter requests full protection of this tree as it is believed to provide stability for the steep bank on which it is located. The submitter also considers that the tree beautifies the area and provides shelter.

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<sup>67</sup> 20/a, 11/a

<sup>68</sup> 20/a

155. Mr Miller visited the site following notification but was unable to locate a tree of any such description in any of the carparks he visited. Mr Miller noted a low vigour Magnolia outside an administration building but was unable to locate a Morton Bay Fig Tree. As Mr Miller was unable to specify the location of this unidentified tree, no further assessment could be undertaken.

### **5 Conifer Grove Kamo**

156. The submitter<sup>69</sup> refers to two trees located at 5 Conifer Grove, Kamo where it is requested that the trees be removed or cut low as the submitter states that they pose a safety risk during adverse weather conditions. Three further submissions<sup>70</sup> were made in support of this submission. It appears that there are no scheduled trees located at 5 Conifer Grove. However, it is assumed that the submitter is referring #436 which includes two Totara at the boundary of 9 Te Puia Street and 3 Conifer Grove, and one Totara at 13 Conifer Grove.

157. Mr Miller undertook a site visit following consultation but was unable to access the site as no one was home. However, Mr Miller could view the site from the street and was able to confirm that there are three Totara trees which appear to be well-foliated (indicating vigour), but was unable to make a complete assessment. Mr Miller recommends that, if the trees are scheduled, the submitter submits an evidence-based assessment of the condition of the trees and why they consider them to be 'unsafe'

### Recommendation – Non-scheduled trees

158. I recommend that the Commissioners **reject** submission points 11/a and 20/a.

## **J. STEM™ Criteria**

### Submission Information

159. Eight submissions<sup>71</sup> were made in regard to the STEM™ Criteria. Eleven cost

160. Eleven further submissions<sup>72</sup> were made in regard to the STEM™ Criteria.

161. Relief requested varies but includes:

- Apply a more appropriate and robust set of criteria to assess trees.
- Modify STEM™ to take into account negative effects as required in the RMA.
- Require each tree to be reassessed at least bi-annually.
- Trees should only be entered onto the Notable Trees Register with consent of the owner and subsequent owner who should have the absolute right to remove the tree every 5 years.
- Delete STEM™ and use a Tree Evaluation System.
- The threshold for inclusion in the register should be higher than 100. A threshold of 126 is requested.

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<sup>69</sup> 11/a

<sup>70</sup> X063, X076, X101

<sup>71</sup> 22/b, 26/b, 27/a, 27/b, 27/e, 27/g, 27/h, 27/q

<sup>72</sup> X051, X071, X072, X086, X087, X096, X109, X111, X112, X121, X125

- Landowners should have the right to commission their own Tree Evaluation, and there should be an objection and appeal process to contest a STEM™ evaluation undertaken by Council.

162. The reason for these submissions include:

- The STEM™ system ignores the detrimental effects of having a protected tree on private property.
- The STEM™ system is too subjective and the land owners should have the right to commission their own tree evaluation.
- Notable Trees should be re-assessed at least bi-annually to ensure the STEM™ score remains current and accurate.
- The criteria should take into account matters such as risk to public and private safety, damage to property and/or public infrastructure, personal liability and costs associated with compliance.
- Half of Council's use another method other than STEM™.

### Discussion

163. The background to the STEM™ evaluation method is discussed and evaluated in in the s32 Report [see **Appendix A**].<sup>73</sup> This assessment ultimately settled on the utilisation of STEM™ as the most efficient and effective option.

164. Mr Miller has provided a further explanation of the STEM™ criteria and how it is applied in his evidence [see **Attachment 6**].

165. Based on the assessment undertaken in the s32 Report and the evidence provided by Mr Miller, it is still my opinion that the STEM™ criteria represents the most efficient and effective tree evaluation option. The submitters who have opposed or sought amendment have not presented any evidence has caused me to change my opinion. Nor has a reasonably practicable alternative evaluation methodology been presented in full for consideration pursuant to Section 32 of the RMA.

166. I do not agree with the request that trees be reassessed bi-annually. Over the 10 year life-span<sup>74</sup> of the NPT provisions, a scheduled notable tree(s) would need to be reassessed 20 times. Irrespective of whether the land owner or council paid for the bi-annual reviews, in my opinion this would represent an unnecessary and unreasonable expense for no real benefit. If a land-owner wished to have a tree removed from their property, the resource consent process for removal is available and I have recommended amendments to policies in Topic P that I consider provide stronger and clearer policy direction as to when tree removal may be appropriate.

167. As a tree evaluation method, STEM™ provides objective criteria for the value of a tree or trees based on evidential based assessment. This is highlighted by Mr Miller in his evidence [see **Attachment 6**]. As I have highlighted in Topic H, I have no reason to question Mr Miller's expertise and I rely on the STEM™ assessments he has undertaken for specific trees during the pre-notification consultation and submission processes. Submitters have the ability to commission their own peer reviews or assessments

<sup>73</sup> See section 1.2.4 from page 6 onwards. This section is taken and amended from section 4.0 of the Peers Brown Miller Arboricultural Report in **Appendix I**. See also Section 5.2.10 on the assessment of reasonably practicable options for Notable Tree Classification.

<sup>74</sup> Being the length of time that every district plan is required to be reviewed pursuant to section 79 of the RMA.

from a similarly experienced and qualified arborist and submit them to the Hearing Panel for consideration.

### Recommendation

168. I recommend that the Commissioners **reject** submission points 22/b, 26/b, 27/a, 27/b, 27/e, 27/g, 27/h and 27/q.

## **K. Whole Plan Change**

### Submission Information

169. Four submissions have been made with regard to the plan change as a whole.<sup>75</sup>
170. Three submissions<sup>76</sup> seek that the proposed restrictions on public and notable trees be more relaxed to enable private landowners greater ability to undertake works on Notable and Public Trees with less restrictions. The reasons provided for this specific relief sought are broad but are primarily derived from concerns of the safety risk that some public and notable trees pose, and the damage that trees cause to infrastructure.
171. One submission<sup>77</sup> requests that the benefit associated with enabling trees on road reserves, parks or reserves should also apply to trees on private land. The reason for this specific relief sought is that private landowners will typically have proportionately fewer resources to maintain trees with the physical characteristics of a Public and Notable Tree.
172. One further submission<sup>78</sup> was made in relation to the plan change as a whole.

### Discussion

173. In my opinion, the relief sought and the reasons for the relief sought are very broad and provide no real justification or detail as to what relief would actually satisfy these submissions. It is difficult to provide a detailed response to this other than to state that scheduled Notable Trees and generally protected public trees are protected for a number of reasons including their public benefit in terms of their significant amenity, historical, ecological or cultural values. Provisions need to be logical, practical and enforceable so as to ensure that these values are protected. I have recommended a number of amendments throughout this report that in my opinion represent the most efficient and effective option pursuant to Section 32 of the RMA for achieving the proposed objectives and addressing the resource management issues. In my opinion, no further changes are merited in response to these submissions.

### Recommendation

174. I recommend that the Commissioners **reject** submission points 28/c, 33/c, 43/a and 48/a.

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<sup>75</sup> 28/c, 33/c, 43/a, 48/a.

<sup>76</sup> 28/c, 33/c, 43/a

<sup>77</sup> 48/a

<sup>78</sup> X121



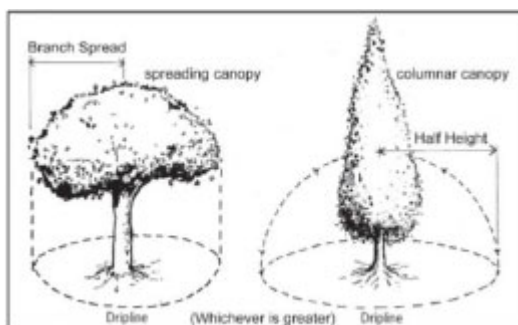
## L. Definitions

### Submission Information

175. Two submissions<sup>79</sup> from Northpower and Transpower have been made in regard to the topic of definitions.
176. Transpower<sup>80</sup> requests definitions for the terms “trimming”, “alteration” and “removal” but has not suggested any wording for these requested definitions. The reason given for the request is that not having definitions could lead to plan interpretation and application issues.
177. Northpower<sup>81</sup> requests definitions for “dripline”, “trimming” and “alteration.” The definitions are requested to improve clarity and provide certainty to plan users. No wording is offered for “alteration” however wording is proposed for “dripline” and “trimming” as below:

**“Dripline** – means the area (whichever is greater) of:

- a. The line formed when a vertical line from the outermost extent of the spread of a tree's branches or canopy meets the ground; or
- b. The line formed at a radius of half the height of the tree measured from the baseline of the trunk.



*Note: The "dripline" for "Public Trees" only applies to land within road reserve, park or reserve land administered by Whangarei District Council.*

**“Trimming** – means the trimming necessary to maintain the health of the tree, or the removal of branches interfering with or anticipated to interfere with buildings, structures, overhead wires or network utilities, or likely to compromise the effective operation of those overhead wires or network utilities.”

178. Five further submissions<sup>82</sup> were made in regard to the topic of definitions.

### Discussion

179. I do not support the inclusion of a definition for the term “removal.” In my opinion, the term “removal” is clear in its interpretation in the provisions in the proposed NPT chapter. In my view any definition would

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<sup>79</sup>15/h and 37/n

<sup>80</sup> 15/h

<sup>81</sup> 37/n

<sup>82</sup> X055, X060, X094, X119, X123

likely create unintended consequences where the term “removal” is used in the context of other provisions<sup>83</sup> and is ultimately unnecessary.

180. I do not support the inclusion of a definition for the term “trimming.” Mr Miller has addressed this request in his evidence [Attachment 6]. He has highlighted that the term “trimming” is meaningless from an arboricultural perspective and has recommended that the term is replaced with “pruning and maintenance” as these terms are more widely utilised in provisions for the management of trees. Mr Miller does not consider that the terms “pruning and maintenance” need to be defined. From a planning perspective, I agree that these terms are clearer in their interpretation for plan users than “trimming”. On this basis, I have recommended that the term “trimming” is replaced by “pruning and maintenance” throughout the NPT provisions.

181. Mr Miller has considered the requested definition of “dripline.” He states:

*“From an arboricultural perspective, the term “root zone” is a more meaningful description of the extent of a tree’s zone of influence (in terms of root spread) and also more meaningful when trying to quantify the effects of a change in land use or development works on the growing conditions of a given tree.”*

182. On this basis, Mr Miller recommends that the term “root zone” should be used in place of “dripline” throughout the NPT provisions and has recommended a definition and image in accordance with that outlined in the Auckland Unitary Plan. I rely on Mr Miller’s evidence in this regard, and therefore recommend that “root zone” replaces “dripline” throughout the proposed NPT provisions and that his definition is included as well. In my opinion this will give certainty to plan users as to where the applicable provisions apply. In particular I consider that the diagram is useful for providing a visual representation of the meaning of “root zone.”

183. I do not support the inclusion of a definition of the term “alteration” as it relates to Notable and Public Trees. Apart from no wording being offered by the submitter, “alteration” is a term used throughout the District Plan in relation to a number of other provisions that do not relate to the proposed NPT provisions in particular. The term is also already defined in the WDP as follows:

*“Alteration means reconstruction, relocation or structural changes to a building.”*

184. Until this submission was received, I had not identified that there was already a definition for “alteration” in the District Plan. This means that the use of the “alteration” in the NPT provisions could be confusing and misleading as the current definition refers specifically to buildings. In the notified NPT chapter “alteration” is referred to in the following specific provisions:

- Policy NPT.1.4.1.c – I recommend that “alteration” can be deleted from this provision and reliance placed on the term “pruning and maintenance”.
- NPT.1.5.1 – I recommend that “alteration” can be deleted from this provision and reliance placed on the term “pruning and maintenance”.

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<sup>83</sup> E.g. removal of a building or structure.

- NPT.1.5.2 – the use of the term “alteration” in this provision is made in the context of “any structure”. Given the existing definition, this is an appropriate use of the term in my opinion and I recommend that it remains.
- NPT.1.5.4 – I recommend that “alteration” can be deleted from this provision and reliance placed on the term “pruning and maintenance”.
- NPT.1.5.5 – the use of the term “alteration” in this provision is made in the context of “any structure”. Given the existing definition, this is an appropriate use of the term in my opinion and I recommend that it remains.
- NPT.1.7.1.a - I recommend that “alteration” can be deleted from this provision and reliance placed on the term “pruning” and “removal”.

185. The changes I have recommended above are also addressed in Topic Q.

186. I do not consider it necessary to undertake a full assessment of reasonably practicable options pursuant to s32AA. For the reasons of providing clarity, I consider that the recommended deletions and changes throughout the provisions along with the definition of the term “root zone” represents the most efficient and effective option.

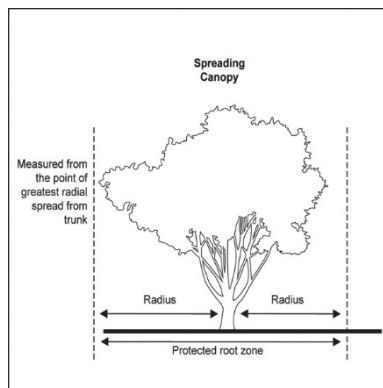
### Recommendation

187. I recommend that the Commissioners:

- **Accept in part** submission point 37/n;
- **Reject** submission point 15/h;
- Make a consequential amendment to include the following definition for “root zone” in Chapter 4 and make further consequential amendments as detailed above.

#### New Definition in Chapter 4

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



## M. NPT.1.1 Description and Expectations

### Submission Information

188. One submission<sup>84</sup> was made with regard to Section NPT.1.1 Description and Expectations. This submission requests that the final paragraph of this section be amended to acknowledge that careful consideration should be required as to where significant trees are planted in relation to existing and planned infrastructure and network utilities. The reasons for the specific relief sought is that trees that are inappropriately located or are of a certain size can have significant adverse effects on road safety, and the safe and efficient operation of network utilities including root damage to footpaths and roads, larger trees blocking community lighting, trees blocking design sight-lines for public roads, and damage to overhead network utilities within the road reserve.
189. Two further submissions<sup>85</sup> were received.

### Discussion

190. I support the addition of the requested additional sentence in the description and expectations. I agree that careful consideration may be required of where trees are planted during future subdivision and development and the requested sentence provides useful context. However, in my view the word "significant" should not be included. When new trees are initially planted during new subdivisions and developments, it is unlikely that they would immediately be considered as "significant", as it takes time for them to grow and become established. In my opinion, the planting of all trees may require careful consideration in relation to existing and planned infrastructure and network utilities. Otherwise, I agree with the wording requested.
191. As this is a change to the description and expectations that does not actually change the intent or direction of the provisions, I do not consider it necessary to undertake a full assessment of reasonably practicable options pursuant to s32AA. For the reasons of providing useful context for the provisions that follow, I consider that the recommended sentence addition represents the most efficient and effective option.

### Recommendation

192. I recommend that the Commissioners **accept in part** submission point 36/a and consequently recommend the following change to NPT.1.1:

NPT.1.1 Description and Expectations

Amend final paragraph of NPT.1.1:

"Future subdivision and development needs to consider how to accommodate existing and new trees and vegetation that contribute to ecological, cultural and amenity values, especially in new road reserves parks and reserves. This may require careful consideration of where trees are planted, in relation to existing and planned infrastructure and network utilities. Council encourages the use of indigenous trees and vegetation in road reserves, parks and reserves and private land."

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<sup>84</sup> 36/a

<sup>85</sup> X054, X059

## N. NPT.1.2 Eligibility

### Submission Information

193. Two submissions<sup>86</sup> have been made in support of NPT.1.2 Eligibility and specifically requests that this section be retained. The reason for this relief is that while the submitters generally support the provision of an explicit permitted activity rule, the approach in PC129 of providing a default permitted rule is accepted.
194. One further submission<sup>87</sup> was made in regard to NPT.1.2 Eligibility.

### Discussion

195. As outlined in Topic G, I have recommended that NPT.1.5 be restructured as a permitted activity rule. As a result, NPT.1.2.2 will need to be deleted, as this provision will have essentially been “flipped” the other way. On the face of it, this would appear to be a rejection of the submitters request, but when considering the reason the submitters have given for supporting NPT.1.2, I consider it is likely that they will support this change.<sup>88</sup>
196. As this is a structural change that does not actually change the intent or outcome of the provisions, I do not consider it necessary to undertake a full assessment of reasonably practicable options pursuant to s32AA. For the reasons of improving clarity and avoiding confusion in interpretation of the rules, I consider that deleting NPT.1.2.2 alongside my recommendation in Topic G represents the most efficient and effective option.

### Recommendation

197. I recommend that the Commissioners **reject** submission points 15/b and 37/b and consequently recommend the following change to NPT.1.2:

#### NPT.1.2 Eligibility

Amend NPT.1.2 as follows.

“1. The following provisions shall apply district wide in addition to any other provisions in the District Plan applicable to the same area or site.

~~2. Any land use activity not requiring resource consent as a discretionary activity pursuant to NPT.1.5 is a permitted activity.~~

3. Any subdivision not requiring resource consent as a discretionary activity pursuant to NPT.1.6 is a controlled activity.

4. Where a tree or group of trees has been identified as a Notable Tree in NPT.1.9.1 and is located in a road reserve, park or reserve, the rules relating to Notable Trees shall take precedence.”

<sup>86</sup> 15/b and 37/b

<sup>87</sup> X054

<sup>88</sup> Both submitters, Northpower and Transpower have made further submissions supporting the change to a permitted activity rule

## O. NPT.1.3 Objectives

### Submission Information

198. Six submissions<sup>89</sup> have been made in regard to NPT.1.3 Objectives.
199. Two of these submissions<sup>90</sup> are in support of Objective NPT.1.3.2 and seek that it be retained as notified.
200. Three submissions<sup>91</sup> seek the specific amendments to the NPT1.3 Objectives. Reasons include:
- Maintenance, trimming and alteration of notable trees is important to support their ongoing viability and to limit interference with critical network utilities, especially following a storm event.
  - The objectives and policies relating to notable trees do not provide an appropriate balance between tree protection, and the use and development of natural and physical resources.
  - To address the significant adverse effects that inappropriately located or sized trees can have on road safety and the efficient operation of network utilities.
201. One submission<sup>92</sup> opposes NPT.1.3 Objectives and requests that a new objective is added with reference to avoiding the risk of the spread of plant pathogens with the management of notable and public trees. No specific wording is given for this objective. The reason for this relief sought is that kauri dieback disease is easily spread through soil movements thus the submitter states that an additional objective is necessary to ensure the avoidance of the spread of plant pathogens including kauri dieback.

### Discussion

202. I support the minor amendment to NPT.1.3.1. I agree that it is important that Notable Trees and Notable groups of trees are “maintained” as well as being “retained” and “protected” as it is important that these trees are maintained to ensure their health and to limit interference with network utilities.
203. I consider that the inclusion of the word “use” in NPT.1.3.2 is an appropriate addition. It clarifies that the “use” of the “roading network and network utility” is also covered along with “development, maintenance, operation and upgrading.”
204. I support the addition of “appropriately” to NPT.1.3.3. I agree that this better qualifies the provision for existing and new trees in future subdivision, use and development.
205. I support the further requested change to NPT.1.3.3. I agree that it is important that the provision of new trees in future subdivision, use and development should be balanced against ensuring that the trees avoid future conflicts with the roading network and network utility infrastructure. This intent is consistent with the provisions that follow.
206. I agree in principle that the issue of the spread of plant pathogens, and in particular Kauri dieback disease, is a significant resource management issue and it is appropriate to consider how this is addressed in the management of notable and public trees within the proposed NPT provisions. However, I do not agree that an objective specific to this matter is required and rather consider that this can be addressed by policies in NPT.1.4. In my opinion objectives 1 and 2 provide sufficient scope to

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<sup>89</sup> 15/c, 32/a, 34/a, 36/b, 37/c and 37/d

<sup>90</sup> 15/c, 37/c

<sup>91</sup> 32/a, 36/b, 37/c

<sup>92</sup> 34/a

include policies to address the spread of plant pathogens. I discuss this further and make recommended changes in Topic P and Q below.

207. In accordance with s32AA, four reasonably practicable options have been identified for the proposed change to the objectives in NPT.1.3:
- Option 1 – Status Quo Operative Provisions – one objective as per Chapter 14.
  - Option 2 – Notified provisions – see **Attachment 1**.
  - Option 3 – Submitter wording – as exactly requested by the submitters
  - Option 4 – Recommended revised wording – see **Attachment 4 & 5**
208. In my view, option 1 does not represent the most appropriate objective to achieve the Part 2 purpose of the RMA as it is limited to one objective that does not adequately address the outcomes sought for the proposed NPT chapter.
209. For the reasons outlined above, I no longer consider option 2 to be the most appropriate option. In my opinion, the suggested changes requested by the submitters, subject to my recommended amendments, improve the clarity of the objectives and are consistent with the provisions that follow.
210. In my opinion, option 3 is not the most appropriate option. While I have recommended the adoption of most of the wording requested by the submitters, for the reasons outline above, I consider that revisions are required.
211. Option 4 is the most appropriate wording of the objectives in NPT.1.3. In my opinion, the recommended revised wording improves the clarity of the objectives and are consistent with the provisions that follow.
212. There is no economic growth and employment opportunities / implications / issues arising from the options for this component of PC129.
213. There is no risk due to insufficient information.
214. In my opinion, option 4 is considered to be the most appropriate wording for objective NPT.1.3 to achieve the purpose of the Act.

### Recommendation

215. I recommend that the Commissioners:
- **Accept** submission point 32/a, 36/b and 37/c;
  - **Reject** submission points 15/c and 37/c as they relate to NPT.1.3.2;
  - **Reject** submission point 34/a.

#### NPT.1.3 Objectives

Amend NPT.1.3 as follows:

1. Notable Trees and notable groups of trees with significant amenity, historical, ecological or cultural values are maintained, retained and protected from inappropriate subdivision, use and development.

2. Public trees in road reserves, parks and reserves are protected and maintained where they positively contribute to amenity, historical, ecological or cultural values, while enabling the safe and efficient use, development, maintenance, operation and upgrading of the roading network and network utilities.

3. Future subdivision, use and development appropriately provides for existing and new trees that contribute to amenity, historical, ecological or cultural values, ensuring that any design can accommodate such trees, whilst recognising the need to avoid future conflicts with roading and network utility infrastructure.

## **P. NPT.1.4 Policies**

### Submission Information

216. Eight submissions<sup>93</sup> were made in regard to NPT.1.4 Policies.

217. Six submissions<sup>94</sup> generally supported the proposed policies as notified but requested amendments to specific policies. Reasons given include:

- The objectives and policies relating to Notable Trees and notable groups of trees do not provide an appropriate balance between tree protection and the use development of natural and physical resources.
- The proposed activity status for trimming, altering notable trees is not commensurate with the level of assessment required to determine whether the Council should grant consent or not.
- Enabling the safe use of the road network and the operation of network utilities is paramount and at present is not appropriately recognised by the policies. The Policies as worded are not consistent with the Rules in the Proposed Plan Change 129 and therefore cannot provide adequate support for the provisions.
- To recognise that maintenance of notable trees is important to support their ongoing viability and to limit interference with critical network utilities.
- The policies are not consistent with the purpose of sustainable management of the RMA 1991.

218. Two submissions<sup>95</sup> opposed the proposed policies and requested that a new policy be added to avoid the spread of plant pathogens, and to exclude trees within road reserves from the policies. Reasons for these submissions included:

- Kauri dieback disease is easily spread through soil movements. An additional policy is necessary to ensure the avoidance of the spread of plant pathogens including kauri dieback.
- The policies do not adequately provide for the operation and maintenance of infrastructure which can be affected by trees within the road reserve area.

219. Two further submissions<sup>96</sup> were made in regard to NPT.1.4 Policies.

<sup>93</sup> 15/d, 32/b, 32/c, 34/b, 36/c, 37/e, 37/f, 39/a

<sup>94</sup> 15/d, 32/b, 32/c & 36/c, 37/e, 37/f

<sup>95</sup> 34/b, 39/a

<sup>96</sup> X055, X060



## Discussion

220. A common theme within the submissions on policies is a lack of direction as to when notable and public tree removal may be appropriate. Having reviewed these submission points in the context of other submissions made, in particular regarding specific trees in Topic I, I agree that there is some validity to these submissions.
221. During the research and preparation of the s32 Report, it was highlighted that the Operative WDP provisions<sup>97</sup> contained insufficient policy direction regarding the management of Heritage Trees. In particular there is no real reference or guidance regarding the general protection of trees within road reserve or reserves administered by council pursuant to the note in Appendix 2. The notified NPT provisions sought to address this lack of direction by providing stronger and clearer policy direction in NPT.1.4 as follows:
- NPT.1.4.1 – this policy provides specific policy direction for scheduled notable trees and notable groups of trees.
  - NPT.1.4.2 – this policy provides specific policy direction for the protection and management of protected public trees.
  - NPT.1.4.3 – this policy provides for the provision of existing and new trees when designing future subdivision and development.
222. The submissions received on the NPT.1.4 Policies have identified some gaps in the policy direction that in my opinion need to be addressed. The most significant gap that I have identified based on a review of submissions, is the lack of policy direction regarding the removal of a scheduled notable tree or protected public tree(s). Removal of both are identified as discretionary activities in NPT.1.5. A discretionary activity status implies that removal is anticipated in the plan and requires a case by case assessment under a resource consent process as to whether it is appropriate for removal to occur. I still consider that a discretionary activity status is the most appropriate, but I consider that there is a disconnect between the rule and the policies, which do not currently provide clear direction for an applicant or decision maker to apply to consider whether the removal may be appropriate. In response, I recommend the addition of the following clauses to NPT.1.4:
223. NPT.1.4.1 – I have proposed an additional clause f. specifying criteria as to when the removal of an identified notable tree or notable groups of trees may be appropriate. This includes:
- i. Demonstration 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. These elements are all elements that submitters have highlighted for the justification of removal of specific scheduled notable trees. Based on a case by case assessment, these may represent appropriate grounds to justify the removal of a tree, but in my opinion, this should be based on a risk assessment by a qualified arborist to ensure that they are founded on an evidence-based risk assessment rather than an unsubstantiated perception of risk.

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<sup>97</sup> Chapter 14, 59 and Appendix 2 – see Appendix A of the s32 Report [**Appendix A**]

- ii. Demonstration that there is no practicable alternative to the removal. Given the significant value of trees that have been scheduled in NPT.1.9, I consider that thorough consideration of alternatives to removal need to be considered before removal can be considered appropriate. If it can be demonstrated there are no practicable alternatives (e.g. pruning, relocation, redesign) to removal, then it may be appropriate to allow the removal.
- iii. Details are provided of suitable mitigation or offset for the removal. If there are no practicable alternatives to the removal, then consideration should be given to whether and how the removal should be mitigated or offset. This could include for instance, replanting of replacement species on the same site or within the same locality.

224. NPT.1.4.2 – I have proposed an additional clause e. specifying criteria as to when the removal of any protected public tree(s) may be appropriate. The criteria in ii.- iv. is identical to NPT.1.4.1.i. – iii. above, with the same rationale applied. The only difference is that I have added a different criterion in i. This provides another option for justifying the removal of a protected public tree if it is demonstrated that the tree or trees would not meet the threshold for protection pursuant to the STEM™ criteria in NPT.1.8. The reasoning for this is that protected public trees are different to scheduled notable trees. A scheduled notable tree has been subject to a STEM™ assessment pursuant to NPT.1.8 and therefore has been identified as being worthy of protection. Protected public tree(s) however are generally protected based on the specifications in NPT.1.10 and have not been subject to an individual STEM™ assessment. If on undertaking a STEM™ assessment the public tree(s) in question do not meet the 100 point threshold in NPT.1.8 then I consider it may be appropriate to consider the removal of that tree as it would otherwise not meet the criteria for protection for a Notable Tree.
225. Submissions<sup>98</sup> have also requested a number of changes to the existing clauses. In my opinion, my suggested changes outlined above regarding assessment of the removal of a Notable Tree or protected public tree go some way to addressing these submissions. However, I have considered the specific wording provided in the submissions and have recommended the following amendments / additions as follows:
226. NPT.1.4.1 – I have recommended the inclusion of the word “maintained”. I agree that it is important that notable trees and notable groups of trees are maintained as well as retained and protected from inappropriate subdivision, use and development.
227. NPT.1.4.1.b – I have recommended the inclusion of the word “inappropriate.” I agree that this word should be added, especially as I have recommended clause f. which outlines where tree removal may be appropriate.
228. NPT.1.4.1.c – I have recommended the deletion of “alteration” as a consequential change in response to submission made in Topic L in light of identifying that this is already identified as a term in the District Plan. I have recommended the inclusion of “maintenance” and further amendments to the end of this clause in response to submissions.

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<sup>98</sup> 15/d, 32/b, 32/c & 36/c, 37/e, 37/f

229. NPT.1.4.2 – I have recommended the addition of the word “network”. This was a typo and should have stated “network utilities” in accordance with how this is referred to throughout the other NPT provisions.
230. NPT.1.4.2.d – consistent with my recommended change to objective NPT.1.3.3 in Topic O above, I have recommended the addition of a new clause d. stating “recognising the need to avoid future conflicts with roading and network utility infrastructure.” I agree that it is important that the provision of new trees in future subdivision, use and development should be balanced against ensuring that the trees avoid future conflicts with roading and network utility infrastructure.
231. I agree that there is merit in the request<sup>99</sup> to include policies to address the spread of plant pathogens in the management of scheduled notable and protected public trees. As noted in Topic O above, I acknowledge the seriousness of the spread of Kauri dieback disease, and the spread of other potential plant pathogens, and agree that they need to be addressed. However, I do not consider total avoidance is possible in every scenario, so I have recommended wording within NPT.1.4.1.g and NPT.1.4.2.f that seeks to “avoid, or where avoidance is not possible, contain or control the spread of plant pathogens.” The reason for this recommendation is that avoidance may not be possible in every scenario. For instance, a plant pathogen such as Kauri dieback disease may already be present or have been spread by other means (e.g. people bringing in foreign soil on their shoes). In such an instance, avoidance may be impossible, in which case it would be appropriate to contain or control the spread during the management of protected notable or public trees.
232. I do not support the request<sup>100</sup> to exclude trees within road reserves from policy NPT.1.4.2. In my opinion the policy and provisions that follow provide an appropriate balance between the protection of trees within road reserves parks and reserves while providing for the safe and efficient development, operation, use, maintenance and upgrading of infrastructure, network utilities and the roading network.
233. In accordance with s32AA, four reasonably practicable options have been identified for the recommended change to the policies in NPT.1.4:
- Option 1 – Status Quo Operative Provisions – policies as per Chapter 14.
  - Option 2 – Notified provisions – see **Attachment 1**.
  - Option 3 – Submitter wording – as exactly requested by the submitters.
  - Option 4 – Recommended revised wording – see **Attachment 4 & 5**
234. Option 1 is, in my opinion, not the most efficient and effective option for the reasons outline in the s32 Report.
235. Option 2 is no longer the most efficient and effective option in my opinion. Some submissions have helpfully identified gaps within the policy direction in NPT.1.4. For the reasons outlined above, I consider that these need to be addressed by amendments to the policies.

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<sup>99</sup> 34/b

<sup>100</sup> 39/a

236. In my view, option 3 is not the most efficient and effective option. While I have accepted some of the wording proposed by the submitters, I have not recommended adoption of all of the wording for the various reasons outlined above.
237. I consider that option 4 is the most efficient and effective option. As noted above, the submissions have identified gaps within the policy direction in NPT.1.4. For the reasons outlined previously, I consider that the recommended wording is necessary to address these gaps. In particular, the inclusion of NPT.1.4.1.f and NPT.1.4.2.e are needed to clearly identify when the removal of a scheduled notable tree or protected public tree may be appropriate. This policy direction is lacking in the Operative WDP provisions and the notified provisions. NPT.1.4.1.g and NPT.1.4.2.f is also necessary in my opinion to address the spread of plant pathogens.
238. There is no economic growth and employment opportunities / implications / issues arising from the options for this component of PC129.
239. There is no risk due to insufficient information.

### Recommendation

240. I recommend that the Commissioners:

- **Reject** submission points 15/d, 32/c, 37/f and 39/a;
- **Accept in part** submission points 32/b, 34/b, 36/c and 37/e;
- make the following amendments to NPT.1.4.

#### NPT.1.4 Policies

1. To require that notable trees and notable groups of trees are maintained, retained and protected from inappropriate subdivision, use and development by:
  - a. Identifying and scheduling notable trees and notable groups of trees by applying the STEM™ criteria in NPT.1.8.
  - b. Ensuring that subdivision, use or development does not result in the inappropriate removal of notable trees or notable groups of trees, or have adverse effects on the life of the tree or identified significant amenity, historical, ecological or cultural values.
  - c. Enabling trimming and ~~alteration~~ maintenance of notable trees and notable groups of trees in accordance with arboricultural best practice where works are required to safeguard life or property or where the works are necessary to provide for ~~accommodate~~ the safe and efficient use and operation of the roading network or network utilities.
  - d. Providing education and advice to encourage the protection of notable trees and notable groups of trees.
  - e. Requiring future subdivision, use or development to respond to, accommodate and protect notable trees and notable groups of trees.
  - f. 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 adverse 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.
- 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.
- g. Managing identified notable trees to avoid, or where avoidance is not possible, contain or control, the spread of plant pathogens.
- 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:
  - a. Providing protection to public trees over a certain size in road reserves, parks and reserves.
  - b. Enabling the ongoing maintenance of public trees in road reserves, parks and reserves, while ensuring that tree selection and location recognises existing uses and adjoining landowners.
  - c. Encouraging the use of indigenous trees and vegetation, where appropriate, for planting within road reserves, parks and reserves, to recognise amenity, cultural and ecological values.
  - d. Enabling appropriate works to public trees to provide for the safe and efficient operation, use, maintenance and upgrading of network utilities.
  - 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. Details are provided of suitable mitigation or offset for the removal.
  - f. Managing protected public trees to avoid, or where avoidance is not possible, contain or control, the spread of plant pathogens.
- 3. To recognise and provide for existing and new trees when designing future subdivision and development by:
  - a. Identifying existing trees on sites or in new road reserves, parks and reserves which meet the NPT.1.8 criteria and requiring the design of subdivision and development to respond to, and where appropriate schedule, these identified trees.
  - b. Assessing the need for new trees to contribute to the amenity, historical, ecological or cultural values of the neighbourhood.
  - c. Encouraging the use of indigenous trees and vegetation for planting, where appropriate, to recognise amenity, cultural and ecological values.

d. Recognising the need to avoid future conflicts with roading and network utility infrastructure.

## Q. NPT.1.5 Discretionary Activities (Land Use)

### Submission Information

241. A total of 24 submissions<sup>101</sup> were made with regards to NPT.1.5 Discretionary Activities (Land Use).
242. Several submissions opposed the provisions and sought changes to the provisions in NPT.1.5. without actually specifying specific relief e.g. wording in the provisions. Reasons for these requests included:
- Housing is affected in many ways including through the restriction of sunlight.
  - The layout of PC129 is unclear as to what constitutes a Permitted Activity. This has the potential to create confusion and ultimately unintentional non-compliance with the rules.
  - Private owners of notable trees should be able to have the same rights to undertake works on such trees as is afforded the Council and Network Utility Operators in relation to Public Trees.
243. The remaining submissions sought relief in changes to the provisions relating to a number of matters including:
- Changes / additions to specific terms within the NPT.1.5 rules.
  - Increase thresholds for maximum branch diameter and crown removal.
  - Changing the activity status to permitted, controlled or restricted discretionary.
  - Amendments to enable compliance with the Electricity (Hazards from Trees) Regulations 2003.
  - Addition of new rules for works undertaken within the radius of the canopy dripline of Kauri trees.
  - Specific changes to allow greater works on trees for network utility operators, infrastructure providers and Council.
  - Notable tree works should only be carried out by a registered arborist.
244. Reasons for this relief sought included:
- To enable network utility operators more ability to trim or remove any vegetation that could affect the safe operation, maintenance or upgrades of their lines.
  - To avoid unintentional non-compliance with the rules.
  - To provide a clearer and more easily enforceable rule framework within the NPT provisions.
  - To allow for proper consideration for the management and containment of Kauri dieback disease.
  - The rules are onerous and unnecessary.
245. Some submissions were less specific in terms of relief sought but generally requested that private property owners have greater authority to alter trees without resource consent.

<sup>101</sup> 9/a, 15/e, 15/f, 16/a, 22/c, 22/d, 24/a, 27/i, 27/j, 27/k, 27/l, 27/m, 32/d, 34/c, 36/f, 37/g, 37/h, 37/i, 37/j, 37/k, 37/l, 39/b, 41/a. submission point 22/e is also addressed in this Topic despite being included in the topic "Other Regulations" in the summary of submissions by Topic – see **Attachment 2**.

246. Four further submissions<sup>102</sup> were made in regard to NPT.1.5 Discretionary Activities (Land Use).

### Discussion

247. As discussed in Topic G, I have agreed with submissions that have sought that the NPT.1.5 rules be restructured as permitted activity rules rather than discretionary activity rules. I have recommended this structural change along with the inclusion of a new NPT.1.X<sup>103</sup> Discretionary Activities (Land Use) which specifies discretionary activities for land use.

248. I do not agree with submissions<sup>104</sup> seeking controlled or restricted discretionary activity status. The discretionary activity status was evaluated in the s32 Report and determined the most efficient and effective option.<sup>105</sup> In my opinion a discretionary activity status is appropriate as it allows Council to undertake a case by case assessment of any relevant matters. While assessment criteria are provided in NPT.1.7 to provide a clear indication as to what matters Council would consider when reviewing a resource consent application, I consider that is not appropriate to restrict council's discretion to these matters as there are potentially other matters that need to be addressed that are not covered within NPT.1.7. Furthermore, I consider that the assessment criteria in NPT.1.7 would be too long of a list of matters to restrict discretion to for a restricted discretionary activity.

249. The majority of submissions<sup>106</sup> in Topic Q have requested a number of additions or amendments to the provisions in NPT.1.5. I have considered the specific wording requested in these submissions in the context of the change highlighted above to “flip” the provision to a permitted activity rule with discretionary activities listed in NPT.1.X. I assess recommended amendments below under the following sub-headings:

### **Overall recommended changes**

250. I have recommended changes throughout to make the provisions within NPT.1.5 read as a permitted activity rule.

251. In accordance with recommendations in Topic L, I have deleted the terms “trimming” and “alteration” and generally replaced them with “pruning” and “maintenance” as based on the advice of Mr Miller, these terms are clearer in their interpretation from an arboricultural perspective.

252. In accordance with the recommendations in Topic L and R I have replaced the term “dripline” with “root zone” throughout. I have accepted Mr Miller’s definition of “root zone” as in my opinion it provides clarity and certainty which will avoid interpretation issues for plan users. Mr Miller has also stated that “root zone” is more meaningful from an arboricultural perspective.

253. “Broken” has been added to NPT.1.5.1.a and NPT.1.5.4.a.<sup>107</sup> I agree that if a branch is “broken” (e.g. from a storm), it should be permitted to be removed. I have discussed this change with Mr Miller who has supported this change from an arboricultural perspective.

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<sup>102</sup> X054, X055, X059, X069

<sup>103</sup> X has been used to avoid confusion in numbering referenced by submitters and within the s42A Report.

<sup>104</sup> 32/d, 39/a

<sup>105</sup> See section 5.2.8 of s32 Report in **Appendix A**

<sup>106</sup> 15/e, 15/f, 24/a, 27/l, 27/j, 27/k, 27/l, 27/m, 37/g, 37/h, 37/i, 37/j, 37/k, 37/l, 41/a

<sup>107</sup> 15/e, 37/g

254. “Damage to” in NPT.1.5.3 and NPT.1.5.6 has been deleted and reliance placed on “removal”.<sup>108</sup> I agree that “damage” is not an appropriate term to utilise within these provisions and “removal” is clearer in its application and interpretation.
255. The removal of “a dead tree based on an assessment from a qualified arborist” has been included as a permitted activity allowance in NPT.1.5.3.a and 1.5.6.a. I agree that if a tree is dead it should be allowed to be removed, but in my opinion this should be verified by a qualified arborist as a lay person may think a tree is dead when it is not.<sup>109</sup>
256. “Network utility operator” has been added in NPT.1.5.1.c and NPT.1.5.3.c. I agree that a “network utility operator” or their authorised representative should be permitted to undertake emergency tree works.<sup>110</sup>
257. Discretionary activities are listed in NPT.1.X for Notable Trees (NPT.1.X.1 – 3) and public trees (NPT.1.x.4 – 6). These provisions confirm the discretionary activity status for activities that do not comply with the various permitted activity requirements in NPT.1.5.
258. I have also included a specific discretionary activity rule requirement in NPT.1.X.2.b. and NPT.1.X.5.b. which requires discretionary activity consent where certain works are undertaken within “three times the radius of the canopy root zone of a New Zealand Kauri tree (*agathis australis*)” listed in NPT.1.9.1 and NPT.1.10.1.<sup>111</sup> As I have already addressed in Topic O and P I consider that the issue of Kauri dieback disease is a significant resource management issue that needs to be addressed. Mr Miller has agreed that these provisions are necessary to ensure that works in the vicinity of a scheduled or generally protected Kauri tree are managed to avoid, or where avoidance is not possible, contain or control the spread of Kauri dieback disease. Where these rules are breached, in my opinion a case by case assessment within a discretionary activity resource consent is required to determine the best way to manage this.

#### ***Recommended changes specific to Notable Trees***

259. “With the exception of tree works in clause c and d above” has been added to NPT.1.5.1.e.<sup>112</sup> I agree that it is not necessary or practicable for the network utility operator or Council to notify itself for emergency works to be undertaken.
260. “the works are thrusting to a depth of greater than 650mm for the installation of network utilities supervised by a qualified arborist” has been added to NPT.1.5.2.a. as a permitted allowance for works within the root zone of a Notable Tree.<sup>113</sup> I agree that this provision should be made similar to that made for public trees.

#### ***Recommended changes specific Public Trees***

261. Removal of a public tree which is “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

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<sup>108</sup> 15/f

<sup>109</sup> For instance a deciduous tree may shed its leaves and appear dead when it is not.

<sup>110</sup> 37/g

<sup>111</sup> 34/c

<sup>112</sup> 37/g, 37/j

<sup>113</sup> 37/h



infrastructure” has been included as a permitted activity allowance in NPT.1.5.6.b. I agree that provision should be made for the removal of a generally protected public tree in these circumstances as a permitted activity. To be classified as a public tree pursuant to NPT.1.10, the tree must be located within a road reserve, park or reserve administered by Whangarei District Council and be over a certain size. There are a number of exceptions in NPT.1.10.a – e., but it is accepted that the scope for trees that meet the specifications is significant, and a large number of trees across road reserves, parks and reserves throughout the District will be captured by this rule. Road reserves in particular contain critical electricity and telecommunication infrastructure and it I agree that it is important that removal is allowed as a result of emergency works.

### ***Changes not supported***

262. Changing the maximum branch diameter to 200mm at severance in NPT.1.5.1.b.i.<sup>114</sup> as 100mm was accepted as being a suitable allowance by Mr Miller from an arboriculture perspective to allow sufficient flexibility for pruning while maintaining the health of the tree. No technical evidence has been provided to support an increase to 200mm.
263. Including the term “private landowner” for NPT.1.5.1.c and d., as I consider that it is only appropriate to allow Council and network utility operators to undertake emergency tree works which is consistent with the direction in the objectives and policies.<sup>115</sup>
264. I do not support the addition of “Northland Regional Council” to NPT.1.5.1.c and NPT.1.5.4.c or the inclusion of a new clause regarding works undertaken by NRC where the works compromise the performance of flood schemes or cause or exacerbate flooding or streambank erosion.<sup>116</sup> In my opinion insufficient evidence is provided to justify this change. For instance, how many scheduled Notable Trees are actually located on land administered by NRC where this is an issue? The change to NPT.1.5.4.c may be justifiable, but I do not consider that NRC have provided sufficient justification for this change. I also consider that the wording of the new clause is too broad and open to interpretation.
265. Including an allowance for maintaining access in NPT.1.5.4, as “Access” is too broad and open to interpretation. In my opinion this change would be inconsistent with the direction within the objectives and policies.<sup>117</sup>
266. Changes to the 5 working day timeframe specified in NPT.1.5.1.e.<sup>118</sup> I consider that five working days (e.g. one week) represents a reasonable timeframe through which to notify Council of the intention to undertake tree works. This will give Council enough time to inspect the works or make comment if required.
267. The addition of a new clause stating “tree works undertaken by a landowner or their designated agent required to maintain vehicle sight lines for traffic safety or to maintain clearance height and width above a private accessway.”<sup>119</sup> I consider that sufficient provision is made for landowners to undertake pruning of Notable Trees within NPT.1.5.1. An allowance is already made in NPT.1.5.4.e. for WDC or a road

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<sup>114</sup> 27/i

<sup>115</sup> 27/k

<sup>116</sup> 24/a

<sup>117</sup> 15/e

<sup>118</sup> 27/l

<sup>119</sup> 27/m

controlling authority to undertake such works for public trees. In my opinion, it is not appropriate to permit landowners to undertake work on public trees, which by their definition in NPT.1.10 are located within a road reserve, park or reserve administered by WDC.

268. The addition of other exceptions in NPT.1.5.2 and NPT.1.5.5 relating to other works.<sup>120</sup> I am not satisfied that sufficient information has been provided to justify the additional exceptions, or that there has been a consenting / compliance issue previously with such works given that the proposed wording is similar to the equivalent operative provision.<sup>121</sup> In my opinion, such works within the root zone should be considered on a case by case basis to determine the most efficient management techniques to ensure that the health of the trees or trees in question are maintained.
269. The addition of other exceptions for the removal of notable trees in NPT.1.5.3.<sup>122</sup> While I have recommended an exception in NPT.1.5.6.b for public trees, I do not support a similar exception being made for Notable Trees NPT.1.5.3. Protected public trees are different to scheduled Notable Trees. A scheduled notable tree has been subject to a STEM™ assessment pursuant to NPT.1.8 and therefore has been identified as being worthy of protection. Furthermore, there are only approximately 150 scheduled Notable Trees or groups of trees within NPT.1.9. Protected public tree(s) however are generally protected based on the specifications in NPT.1.10 and have not been subject to an individual STEM™ assessment. There are a number of exceptions in NPT.1.10.a – e., but the scope for trees that meet the specifications is significant, and a large number of trees across road reserves, parks and reserves throughout the District will be captured by this rule. Further, because public trees are located within road reserves, parks or reserves administered by WDC they have a greater likelihood of requiring emergency works that necessitate removal. In my opinion, it would not be consistent with the objectives and policies to allow the further requested exception for removal of Notable Trees as a permitted activity. Given the relative scarcity of scheduled notable trees and their significance, it is my opinion that their removal<sup>123</sup> should be considered on a case by case basis. I consider that sufficient policy direction has been provided in NPT.1.4.1.f. to determine when removal of a scheduled notable tree may be appropriate.
270. The addition of further exceptions for the removal of public trees in NPT.1.5.6.<sup>124</sup> While I have agreed to include an exception in NPT.1.5.6.b relating to emergency works, in my opinion the requested additions for removal based on the road speed environment is not sufficiently justified or consistent with the objectives and policies. I also consider that the wording is too broad in its scope and open to interpretation as to its application. In my view, such removals should be considered on a case by case basis. Allowing removal in such instances as a permitted activity will not allow a proper consideration of the value of the tree(s) in question<sup>125</sup>, whether there are any practicable alternatives to tree removal, or allow consideration of mitigation or offsetting.<sup>126</sup> These matters are all addressed in NPT.1.4.4.f which I consider provides sufficient policy direction to determine when removal of a protected public tree may be appropriate.

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<sup>120</sup> 37/h, 37/k

<sup>121</sup> See Rule 59.2.3 Activities Near a Heritage Tree in the Operative WDP.

<sup>122</sup> 37/i

<sup>123</sup> Other than a dead tree as listed in NPT.1.5.3.a

<sup>124</sup> 36/e

<sup>125</sup> E.g. would they meet the STEM™ criteria and threshold for scheduling in NPT.1.8?

<sup>126</sup> E.g. replanting of replacement specimens elsewhere in the locality.

271. General and non-specific requests about private property owners having greater authority to alter trees.<sup>127</sup> In my opinion, the recommended provisions strike an appropriate balance between allowing property owners the ability to undertake pruning and maintenance on Notable Trees within their properties in certain circumstances while protecting the long-term health of the trees.
272. Request that all pruning and maintenance be undertaken by an arborist. Mr Miller has addressed this in his evidence and stated that the use of “an arborist should not be mandated in the rules.” I agree that it is important to allow landowners some ability to undertake pruning and maintenance works on Notable Trees and in my opinion, the recommended provisions in NPT.1.5.1 strike an appropriate balance.
273. In accordance with s32AA, four reasonably practicable options have been identified for the recommended change to the policies in NPT.1.5:
- Option 1 – Status Quo Operative Provisions – rules in Chapter 59 and Appendix 2 note.
  - Option 2 – Notified provisions – see **Attachment 1**.
  - Option 3 – Submitter wording – as exactly requested by the submitters.
  - Option 4 – Recommended revised wording – see **Attachment 4 & 5**
274. Option 1 is, in my opinion, not the most efficient and effective option for the reasons outline in the s32 Report.
275. Option 2 is no longer the most efficient and effective option in my opinion. After careful consideration of the submissions, I consider that amendments to the rules in NPT.1.5 are required to achieve the proposed NPT objectives and policies.
276. In my view, option 3 is not the most efficient and effective option. While I have accepted some of the wording proposed by the submitters, I have not recommended adoption of all of the wording for the various reasons outlined above.
277. I consider that option 4 is the most efficient and effective option. As noted above, a large number of submissions have been made regarding the NPT.1.5 rules. While I have accepted some of the wording requested in submissions, I have not accepted all requests for the reasons I have outlined previously. In my opinion, the recommended amendments I have made to the NPT.1.5 rules are necessary to improve their clarity and to ensure that they achieve the objectives and policies outlined previously. I consider that in accordance with those objectives and policies, the recommend revised provisions strike an appropriate balance between allowing the pruning, maintenance and in some cases removal of Notable Trees and generally protected public trees, while protecting these trees from inappropriate subdivision, use and development.
278. In undertaking the above assessment, consideration has been given to the economic costs of tree protection. In my opinion, the recommended provisions provide suitable scope to allow pruning and maintenance on Notable Trees and protected public trees without the need for resource consent, while balancing this with the need to protect these trees from inappropriate subdivision, use and development.

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<sup>127</sup> 9/a, 16/a

279. There is some risk due to insufficient information that I have identified above in response to several submissions.<sup>128</sup> My response has been to not recommend accepting the changes sought where I consider that there is insufficient information / evidence to support the request.

### Recommendation

280. I recommend that the Commissioners:

- **Accept** submission points 15/f, 22/c and 27/j;
- **Accept in part** submission points 15/e, 27/g, 34/c, 36/f, 37/g, 37/h and 37/j;
- **Reject** submission points 9/a, 16/a, 22/d, 22/e, 24/a, 27/i, 27/k, 27/l, 27/m, 32/d, 37/i, 37/k, 37/l, 39/a and 41/a;
- Make the following amendments to NPT.1.5 and NPT.1.X

#### NPT.1.5 Discretionary Permitted Activities (Land Use)

##### **Notable Trees**

1. Pruning or maintenance ~~Trimming or alteration~~ of any Notable Trees listed in NPT.1.9.1 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 u~~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 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 in order to safeguard life or property, or to restore power or telecommunications infrastructure.
  - d. ~~Tree works u~~Undertaken by a qualified arborist on behalf of a network utility operator where branches are interfering with 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. ~~Council are n~~Notified in writing to Whangarei District Council at least five working days prior to the tree works being undertaken, with the exception of tree works in clause c and d above.
2. Construction or alteration of any structure, excavation of land, compaction of soil or formation of any new impervious surfaces within the drip line root zone of a Notable Tree listed NPT.1.9.1 where:
  - a. The works are thrusting to a depth of greater than 650mm for the installation of network utilities supervised by a qualified arborist.

<sup>128</sup> 24/a, 36/e, 37/h, 37/k

3. ~~Damage to or r~~Removal of a Notable Tree listed in NPT.1.9.1 which is:

a. A dead tree based on an assessment from a qualified arborist.

### **Public Trees**

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.

5. Construction or alteration of any structure, excavation of land, compaction of soil or formation of any new impervious surfaces within the ~~drip line~~ root zone 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.

6. ~~Damage to or r~~Removal of any public tree defined in NPT.1.10.1 which is:

a. A dead tree based on an assessment from a qualified arborist.

b. 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.

### NPT.1.X Discretionary Activities (Land Use)

#### **Notable Trees**

1. Pruning or maintenance of any Notable Tree listed in NPT.1.9.1 which does not comply with the permitted activity rules within NPT.1.5.1.

2. Construction or alteration of any structure, excavation of land, compaction of soil or formation of any new impervious surfaces within:
  - a. The root zone of a Notable Tree listed NPT.1.9.1 which does not comply with permitted activity rules within NPT.1.5.2.
  - b. Three times of the radius of the canopy root zone of a New Zealand Kauri tree (agathis australis) listed in NPT.1.9.1.
3. Removal of a Notable Tree listed in NPT.1.9.1 which does not comply with the permitted activity rules within NPT.1.5.3.

**Public Trees**

4. Pruning or maintenance of any public tree defined in NPT.1.10.1 which does not comply with the permitted activity rules within NPT.1.5.2.
5. Construction or alteration of any structure, excavation of land, compaction of soil or formation of any new impervious surfaces within:
  - a. The root zone of any public tree identified in NPT.1.10.1 which does not comply with permitted activity rules within NPT.1.5.4.
  - b. Three times of the radius of the canopy root zone of a New Zealand Kauri tree (agathis australis) listed in NPT.1.10.1.
6. Removal of any public tree defined in NPT.1.10.1 which does not comply with the permitted activity rules within NPT.1.5.6.

**R. NPT.1.6 Discretionary Activities (Subdivision)**

*Submission Information*

281. Two submissions<sup>129</sup> were made in regard to NPT.1.6 Discretionary Activities (Subdivision).
282. One submission<sup>130</sup> generally opposes this section and seeks amendment to clauses NPT.1.6.1 and NPT.1.6.2 to refer to a building platform of 200m<sup>2</sup> rather than a 100m<sup>2</sup> building platform as is stated in the proposed provisions. The reason given is that the submitter rejects the response given in the s32 Report to a similar request during pre-notification consultation based on consistency with other provisions in the District Plan.
283. One submission<sup>131</sup> supports Rule NPT.1.6.3 subject to amendment of the provision to refer specifically to the “root zone” of a Notable Tree listed in NPT.1.9.1 being located on more than one site, and that “dripline” is deleted. No specific reason is given for the requested amendment.

*Discussion*

284. I do not support the increase in the stated building platform area in NPT.1.6.1 and NPT.1.6.2. from 100m<sup>2</sup> to 200m<sup>2</sup>. A similar request was made by the submitter during the pre-notification consultation phase

<sup>129</sup> 027/n, 034/d

<sup>130</sup> 027/n

<sup>131</sup> 034/d

which gave the reason of 200m<sup>2</sup> “being the average size of new dwellings” with no justification or evidence for this statement being given. This request was specifically addressed in the s32 Report.<sup>132</sup> The reason given for rejecting that request at the time was:

*“The 100m<sup>2</sup> building platform is standard and used in the District Plan at present. A change to 200m<sup>2</sup> is not supported or consistent with that approach.”*

285. To expand on this reason further, a 100m<sup>2</sup> building platform is used as a standard minimum area for a building platform to be specified for new allotments throughout the Operative District Plan and the Proposed District Plan.<sup>133</sup> I have underlined the term minimum as it is important to emphasise that the requirement in NPT.1.6.1 and NPT.1.6.2 is intended to be a minimum and does not restrict a larger building area being shown on proposed allotments for a hypothetical subdivision. I am unable to determine the veracity of the submitter’s unsubstantiated statement that 200m<sup>2</sup> is the average size of new dwellings. Irrespective of this, I consider that it is appropriate to utilise a 100m<sup>2</sup> minimum limit as it is consistent with existing and proposed provisions and because it provides a sufficient area for a residential unit to be constructed outside of the root zone of a Notable Tree listed in NPT.1.9.1 or a public tree pursuant to NPT.1.10.1. I do however consider that it is useful to clarify the provisions by adding the word “minimum” in front of 100m<sup>2</sup> so that it is clear that this is a minimum requirement and that larger building platforms are not constrained by this rule, and for consistency with other Plan rules.
286. No specific reason was given for the deletion of “dripline” and the use of “root zone” solely in NPT.1.6.3. In response to this submission point, I have sought the advice of Mr Miller. Mr Miller has advised that he would support the exclusive inclusion of “root zone” in this provision as it represents the most meaningful description of the extent of a tree’s zone of influence (in terms of root spread), and is also more meaningful when trying to quantify the effects of a change in land use or development works on the growing conditions of a given tree. From a planning perspective, I consider that including both “root zone” and “dripline” is confusing and unnecessary. On this basis, I agree with the deletion of “dripline” from this provision. I have already addressed the definition of “root zone” in Topic L.
287. As this is a minor deletion and wording addition that clarifies the provision and that does not actually change the intent or outcome of the provisions, I do not consider it necessary to undertake a full assessment of reasonably practicable options pursuant to s32AA. For the reasons of improving clarity and avoiding confusion in interpretation of the provisions, I consider that adding “minimum” and deleting “or dripline” in NPT.1.6 represents the most efficient and effective option.

### Recommendation

288. I recommend that the Commissioners:
- **Reject** submission point 27/n;
  - **Accept** submission point 34/d;

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<sup>132</sup> See paragraph 83 of the s32 Report.

<sup>133</sup> See for instance Rule 71.3.4 Building Area for the Living 1, 2 and 3 Environments and the equivalent provisions for the Countryside and Coastal Countryside Environments in Rule 73.3.4 of the Operative District Plan. Equivalent provisions are also included in the Decisions Version of provisions for the proposed Rural Living Environment (RLE.3.3.1.c), Rural Village Environment (RVE.3.3.2.c), Rural (Urban Expansion) Environment (RUEE.3.3.1.b) and Rural Countryside Environment (RCE.3.3.1.b) for the proposed Rural Plan Changes. It is noted that the later provision in the RCE is subject to an appeal from the submitter.

- Make the following consequential amendments:

NPT.1.6 Discretionary Activities (Subdivision)

Amend NPT.1.6:

“1. Subdivision of land that contains a Notable Tree listed in NPT.1.9.1 which is not able to locate a minimum 100m<sup>2</sup> building platform, accessway(s) and associated services outside of the root zone dripline of the identified tree or group of trees.

2. Subdivision of land that contains a public tree identified in NPT.1.10.1, which is not able to locate a minimum 100m<sup>2</sup> building platform, accessway(s) and associated services outside of the root zone dripline of the identified tree or group of trees.

3. Subdivision of land that results in the root zone or dripline of a Notable tree listed in NPT.1.9.1 being located on more than one site.”

## S. NPT.1.7 Assessment Criteria for Discretionary Activities

### Submission Information

289. Six submissions<sup>134</sup> were made in regard to the assessment criteria for discretionary activities. Four submissions were in support of the assessment criteria, one subject to amendment. Two submissions did not support nor oppose the assessment criteria but requested specific amendments. The reasons for the submissions seeking amendments included:

- It is illogical that tangata whenua be considered an affected party for exotic tree species.
- The discretionary activity status will result in unreasonably high costs to the applicant.
- Clause (h) should acknowledge ‘network utilities’ as well as infrastructure for consistency.

### Discussion

290. Two submissions<sup>135</sup> were made in regard to provisions relating to network utilities and infrastructure. One submitter requests that NPT.1.7 be retained, particularly clauses (e) and (h) as they acknowledge the issue of risk, and the functional and operational needs of infrastructure. One submitter also requests that NPT.1.7(h) be amended to refer to ‘network utilities’ as well as infrastructure. In my opinion, it is agreed that reference to ‘network utilities’ should be included in NPT.1.7.

291. Other submissions have requested specific amendments to be made including an amendment to limit all reference to “cultural values” in PC129 to indigenous trees<sup>136</sup>. I disagree with the submission point where it states that it is illogical that tangata whenua be considered an affected party for exotic tree species. In my opinion, reference to cultural values in NPT.1.7 is consistent with the NPT objectives and policies and purpose of the RMA in Part 2 s5, s6(e) 7(a) and s8.

<sup>134</sup> 15/h, 27/o, 27/p, 32/e, 34/e, 37/m

<sup>135</sup> 15/h, 37/m

<sup>136</sup> 27/o



292. Another submission<sup>137</sup> seeks that rule NPT.1.7 be amended so that the so that the assessment criteria set out in rule NPT.1.7.1(a)-(j) apply to the relief sought in submission point 32/d. In my opinion, a discretionary activity status is the most appropriate based on the analysis undertaken in section 5.2.8 of the s32 [see **Appendix A**].

293. As this is a minor wording addition and deletion that clarifies the provision and that does not actually change the intent or outcome of the provisions, I do not consider it necessary to undertake a full assessment of reasonably practicable options pursuant to s32AA. For the reasons of improving clarity and avoiding confusion in interpretation of the rules, I consider that adding “and network utilities” and deleting “trimming, alteration” in NPT.1.7 represents the most efficient and effective option.

### Recommendation

294. I recommend that the Commissioners:

- **Reject** submission points 27/o and 32/e;
- **Accept in part** submission point 15/h, 27/p, 34/e and 37m;
- Make the following amendments to NPT.1.7:

#### NPT.1.7 Assessment Criteria for Discretionary Activities

1. When assessing discretionary applications pursuant to NPT.1.5 and NOT.1.6, the assessment shall include (but is not limited to:
  - a. The extent to which alternative methods to avoid the ~~trimming, alteration~~ pruning or removal of the tree or trees have been considered.
  - b. ...
  - h. The functional and operational needs of infrastructure and network utilities.

## T. NPT.1.9 Notable Tree Schedule

### Submission Information

295. One submission<sup>138</sup> was made requesting that all Notable Trees as identified in the schedule be retained, and all trees proposed to be removed from the schedule be re-assessed. The reason for this request is that trees provide vital environmental benefits e.g. the ability to absorb carbon dioxide and offset climate change and protection from coastal erosion.

### Discussion

296. The schedule of Notable Trees in NPT.1.9 largely replicates Appendix 2 of the current operative Heritage Tree Provisions, however trees which had been previously physically removed or their location or other recorded details has been determined to be inaccurate have been deleted or updated. Further changes have also been made as a result of the revised STEM<sup>TM</sup> assessments undertaken by Mr Miller in

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<sup>137</sup> 32/e  
<sup>138</sup> 042/a

response to the feedback received during pre-notification consultation. Mr Miller has also assessed a number of trees following the submission and further submission period.

297. As a result of Mr Miller's feedback, none of the existing trees within Appendix 2 have seen their STEM™ scores drop below 100 and subsequently be deleted from the proposed schedule of Notable Trees in NPT.1.9.

### Recommendation

298. I recommend that the Commissioners **reject** submission point 042/a.

## **U. NPT.1.10 Protected Public Trees**

### Submission Information

299. Three submissions<sup>139</sup> were made in regards to NPT.1.10 Protected Public Trees.
300. One submission<sup>140</sup> supported NPT.1.0 and seek that it be retained as notified.
301. One submission<sup>141</sup> seeks that bamboo (*Bambuseae*) be added to the list of species that are not subject to protection in the road reserve. The reasons for the relief sought is that bamboo is a species that poses a risk to Northpower's networks, and therefore should be added to the list.
302. One submission<sup>142</sup> opposes NPT.1.10 and requests that road reserves are excluded from this rule, or that an additional criteria be added to NPT.1.0 to the effect of:
- e. areas of road reserve adjoining the State Highway network" OR any other relief to address this issue.*
303. The reason for this relief sought is that while the rule relates only to trees located within the road reserve administered by WDC, the New Zealand Transport Agency seeks further clarification that this excludes areas of road reserve adjoining the State Highway Network.

### Discussion

304. I agree adding Bamboo (*Bambuseae*) to the list of species not subject to protection in the road reserve is appropriate given that it is a pest species.
305. I note that NPT.1.10 states that any public tree must be located within a "road reserve, park or reserve administered by WDC." If a tree or trees are located within a designated State Highway corridor administered by NZTA, then it is clear that this provision would not apply. I therefore do not support the requested change to add an additional clause e.
306. As this is a minor wording addition that does not actually change the intent or outcome of the provisions, I do not consider it necessary to undertake a full assessment of reasonably practicable options pursuant to s32AA. I consider that adding "bamboo" in NPT.1.10 represents the most efficient and effective option.

### Recommendation

307. I recommend that Commissioners:

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<sup>139</sup> 15/a, 37/a, 39/a

<sup>140</sup> 15/a, 37/a

<sup>141</sup> 37/a

<sup>142</sup> 39/c

- **Accept** submission points 15/a and 37/a;
- **Reject** submission point 39/c;
- Make the following amendments:

NPT.1.10 Protected Public Trees

- e. The following additional tree species are not subject to protection within a road reserve, park or reserve administered by Whangarei District Council:
- i. Acacia species – all except *Acacia melanoxylon*.
  - ii. ...
  - xvi. Bamboo (Bambuseae)

## 8.0 Conclusions and Recommendations

308. After carefully considering the submissions and further submissions received in relation to each topic, I recommend that PC129 be amended to the extent detailed in the preceding sections of this s42A report and as illustrated in **Attachment 4** and **Attachment 5**. I further recommend that those submissions and further submissions that request the recommended amendments be accepted in whole or in part, and that all other submissions be rejected.

309. The revised provisions have been detailed and compared above against viable alternatives in terms of their costs, benefits, efficiency and effectiveness and risk in accordance with the relevant clauses of s32AA. Overall, it is considered that the revised provisions represent the most efficient and effective means of achieving the RMA and PC129.

### AUTHOR



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