

IN THE ENVIRONMENT COURT  
AT AUCKLAND

ENV-2019-AKL-

IN THE MATTER

of the Whangārei District Plan  
and the Resource Management  
Act 1991 (RMA)

AND

IN THE MATTER

of an appeal under Clause  
14(1) of Schedule 1 of the RMA

AND

IN THE MATTER

of Plan Change 129 – Notable  
and Public Trees

BETWEEN

Kelbrook Holdings Limited

**Appellant**

AND

Whangārei District Council

**Respondent**

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NOTICE OF APPEAL Dated 14 May 2019

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To: **The Registrar  
Environment Court  
Auckland**

1. Kelbrook Holdings Limited (“Kelbrook”) appeals part of the decisions of the Whangarei District Council on Plan Change 129 and Consequential Amendments to the Whangarei District Plan.
2. Kelbrook made a submission and further submissions on Plan Change 129 – Notable and Public Trees and Consequential Amendments to the Whangarei District Plan.
3. Kelbrook is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Kelbrook received notice of the decisions on 3 April 2019.
5. The decisions were made by the Whangarei District Council.
6. The reasons for the appeals and relief sought are detailed in the table below and any other or further consequential amendments required to give effect to this appeal.
7. General relief sought:

That the Court suspend progress of PC129 and instruct the Whangarei District Council to undertake a comprehensive review of the Heritage tree provisions of the District Plan. Our view is consistent with the comments of the Hearings Panel that the plan change as proposed may not represent the most appropriate way to achieve Objective NPT.1.3.1.

If the Court is not of a mind to instruct Council to undertake a complete review, we alternatively seek relief as stated in the table below.

It is our appeal that:

(a) 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 and development of natural and physical resources;

(b) The objectives and policies relating to notable trees and notable groups of trees do not meet the requirements of Part 2 of the Resource Management Act 1991 (RMA);

(c) The STEM threshold appealed will result in the protection of trees that do not warrant it.

(d) Tree 271 should be removed from the Schedule of Notable Trees.

8. The following documents are attached to this notice:

- (a) a copy of Kelbrook's submissions and further submissions
- (b) a copy of the Council decision as appealed.
- (c) Notification of decision on plan change, and
- (d) a list of names and addresses of persons to be served with a copy of this notice.



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Signature of appellant  
(being the person authorised to sign on behalf of appellant)

14 May 2019

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Date

Address for service of appellant: Kelbrook Holdings Ltd  
PO Box 984, Whangarei 0140

Telephone: (09) 4344 224 or (021) 718 478  
email: frank@newman.co.nz  
Contact person: Frank Newman (Director)

**Decisions of Whangarei District Council on Plan Change 129 and Consequential Amendments to the Whangarei District Plan which are appealed by Kelbrook:**

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
	NPT.1.10.	Kelbrook made submissions and further submissions on NPT.1.10.	<ol style="list-style-type: none"> <li>1. 271 is a veteran tree in decline.</li> <li>2. The trees location and stature put the health and safety of the public and the protection of private property at unreasonable risk.</li> <li>3. There is little correlation between the assessed risk of trees by arborists and the actual risk. This requires a precautionary approach when assessing veteran trees in high risk locations.</li> <li>4. The shading effect creates excessive dampness inside the residence.</li> <li>5. The leaves are a nuisance and hazard to the public and residents in the area.</li> <li>6. The regulatory restrictions on building under the drip line of a tree unreasonably limit future development of the site.</li> <li>7. Dampness and mould imposes additional financial cost to clear gutters and remove mould from the exterior of the house, and increased building maintenance.</li> <li>8. The roots are causing damage to the footpath and boundary fence, and is likely to cause damage to public and private infrastructure.</li> <li>9. The tree has no significant amenity, historical, or ecological value</li> <li>10. The Councils STEM assessment for the tree is</li> </ol>	That Tree 271 be removed from the Schedule of Notable Trees.

			arbitrary.	
	NPT.1.9.	Kelbrook made submissions and further submissions on NPT.1.9.	<p>Given the highly subjective nature of the STEM evaluation, the threshold for inclusion in the register should be greater than 100.</p> <p>The threshold is too low and will result in the protection of trees that do not warrant it.</p> <p>The threshold is inconsistent with that adopted by other local authorities that use STEM.</p>	<p>Parts 1 and 2, increase threshold to 160.</p> <p>Or alternatively change 100 points to "150 points for exotic species and 120 points for native species."</p>
	NPT.1.4.	Kelbrook made submissions and further submissions requesting new policy.	<p>Require the Council to honour an undertaking made to landowners in 1976 when Tree 271 was admitted onto the Schedule of Notable Trees. Council gave the then landowner the undertaking, "<i>Council accepts that at some time in its life any particular tree may become a problem, so you may be assured that at all times any justifiable request for consent to remove a registered tree will be considered favourably by Council.</i>"</p> <p>The new policies would give effect to a partnership between Council and landowners and likely increase the number of trees on the Schedule.</p>	<p>Add new policy 4.a. "Trees may only be entered onto the Schedule of Notable Trees with the consent of the landowner."</p> <p>Add new policy 4.b. "At each fifth anniversary of a tree being accepted onto the Schedule of Notable Trees the landowner may require the Council to remove the tree from the Schedule."</p>

## **Advice to recipients of copy of notice of appeal**

### *How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

You may apply to the Environment Court under [section 281](#) of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* [form 38](#)).

### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.