

**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

Landowners Coalition
Incorporated

Appellant

AND

Whangārei District Council

Respondent

NOTICE OF APPEAL Dated 14 May 2019

To: **The Registrar
Environment Court
Auckland**

1. The Landowners Coalition Incorporated (“Landowners”) appeals part of the decisions of the Whangarei District Council on Plan Change 129 and Consequential Amendments to the Whangarei District Plan.
2. Landowners made a submission and further submissions on Plan Change 129 – Notable and Public Trees and Consequential Amendments to the Whangarei District Plan.
3. Landowners is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Landowners 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 proposed STEM threshold of 100 is too low and will result in the protection of trees that do not warrant protection.
- (d) The activity status for trimming or altering notable trees, working within the drip line of notable trees, and removing notable trees is not commensurate with the level of assessment required to determine whether the Council should grant consent or not in respect of any particular application;

(e) The actual and potential effects of these activities are such that the Council does not require an unfettered discretion to determine such applications; and

(f) The discretionary activity status will result in unreasonably high costs for applicants who will be required to address all relevant matters under section 104 of the RMA.

8. The following documents are attached to this notice:

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



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

14 May 2019

Date

Address for service of appellant: Landowners Coalition Incorporated
PO Box 984
Whangārei 0140

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

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

Appeal Point	Provision or Decision	Scope	Reason	Relief sought
		Landowners made submissions and further submissions on NPT.1.1.	<p>NPT1.1 describes the purpose and expectations of the chapter as being to protect "...the most significant trees in Whangarei..." This expectation will not be met if trees of lesser quality are given equal status and protection as those that make a truly significant contribution to the amenity, historical, ecological and cultural values of the District.</p> <p>Council's arborist evidence has acknowledged that those listed on the schedule "<i>is a drop in the ocean when the likely number of trees worthy for scheduling in the Whangarei District is considered.</i>"</p>	Increase threshold to 160.
	NPT. 1.1	Landowners made submissions and further submissions requesting new policy.	<p>To ensure the adequate management of Schedule trees.</p> <p>Council to acknowledge that it has a role in the responsible management of Notable and Public trees and a role to play in the responsible management of those trees.</p>	Add, "Council acknowledges it has a role in the management and responsibility of heritage trees in our District".
	NPT.1.3.	Landowners made submissions and further submissions on NPT.1.3.	NPT1.3.1 refers to trees with "...significant amenity, historical, or ecological values...". Trees that score less than 160 may have amenity, historical, ecological or cultural values, but are unlikely to be significant.	<p>Increase threshold to 160.</p> <p>Amend 1. to, "Notable trees and notable groups of trees with significant amenity, historical, or ecological or cultural values are maintained, retained and protected from inappropriate subdivision, use and development while minimise the adverse effects on the living environment of</p>

				residents".
	NPT. 1.4	Landowners made submissions and further submissions on NPT.1.4.	<p>STEM ignores the detrimental effects of having a protected tree on private property and does not reflect the net community benefit of a notable tree.</p> <p>The emphasis of the STEM process as an arboricultural focuses exercise is misplaced given that with the exception of the identification of "scientific interest" as a basis of meriting selection, the other criteria of "landscape", "landmark" and "visual" are better assessed by a landscape architect (together with a planner providing a Part 2 analysis).</p>	<p>Delete reference to STEM. Replace with a tree evaluation system that takes into account the adverse effects.</p> <p>or alternatively increase STEM threshold from 100 to 160.</p>
	NPT. 1.4	Landowners made submissions and further submissions on NPT.1.4.	<p>The living amenity should be treated with equal importance as the infrastructure that supports that amenity.</p> <p>Any risk to human health is unacceptable.</p> <p>Mitigation should not be necessary for removal of a single tree that is not material to the bio-diversity of the district unless removal is of a healthy and safe tree. It should be accepted that trees have a natural life cycle.</p>	<p>Amend 1.c. adding after utilities, "...and housing to minimise the adverse effects on the living environment of residents".</p> <p>Amend 1.f. to, "Recognising that the removal of an identified notable tree or notable groups of trees may be appropriate if:</p> <ul style="list-style-type: none"> i. 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. ii. It is demonstrated that there is no practicable alternative to the removal. iii. Where necessary, details are provided of suitable mitigation or offset for the removal."

			The living amenity should be treated with equal importance as the infrastructure that supports that amenity.	Amend 3.d. adding after infrastructure, "...and housing to minimise the adverse effects on the living environment of residents".
	NPT. 1.4	Landowners made submissions and further submissions requesting new policy.	To ensure a tree's evaluation score remains current.	Add new policy 4.a. "The Council shall appoint a qualified arborist to reassess the STEM score of each tree on the Schedule of Notable Trees at least bi-annually, and at risk trees more frequently as deemed appropriate by a qualified arborist."
	NPT. 1.4	Landowners made submissions and further submissions requesting new policy.	Avoids the situation where a landowner consents to a tree being entered on the register on the understanding that it could be removed should it become a nuisance, only to find the WDC changes its position and refuses to remove that tree, and accommodates the reality that trees grow - they get bigger and can create new negative effects.	Add new policy 4.b. "Trees shall only be entered onto the Schedule of Notable Trees with the consent of the landowner, and may elect to remove the tree from the Schedule at every fifth anniversary of its entry."
	NPT. 1.4	Landowners made submissions and further submissions requesting new policy.	To ensure the adequate management of Schedule trees.	Add new policy 4.c. "Maintenance on Scheduled trees shall be treated as a non-notified consent."
	NPT. 1.4	Landowners made submissions and further submissions requesting new policy.	To ensure the adequate management of Schedule trees.	Add new policy 4.d. "Council shall contribute to the costs associated with tree care and management, proportional to the assessed public/private benefit of the tree."
	NPT. 1.4	Landowners made submissions and further submissions requesting new policy.	To ensure the adequate management of Schedule trees.	Add new policy 4.e. "Council shall prepare and have available for public inspection a tree management plan for each tree listed on the Schedule of Notable Trees."

	NPT.1.5	Landowners made submissions and further submissions on NPT.1.5.	For consistency with Public Trees 4.b.ii.	Amend 1.b.ii from 20% to "...one third".
	NPT.1.5	Landowners made submissions and further submissions on NPT.1.5.	In the event of a widespread emergency, the District Council or their representative may not be in the position to effect emergency repairs to safeguard life or property.	1(c) amend "Based on a risk assessment from a qualified arborist, is required as emergency tree works or", to, "Is required as emergency tree works or...".
	NPT.1.5	Landowners made submissions and further submissions on NPT.1.5.	Council has not justified five days notice.	Amend 1.e to two days.
	NPT.1.5	Landowners made submissions and further submissions on NPT.1.5.	To reflect the wording of ordinance 6.8(v) of the Whangarei District Scheme that existed when the Horticultural Supervisor wrote a draft report to Works and Services Committee about tree 271. Requiring a landowner to obtain a qualified arborist report prior to removal of a tree in an emergency is impractical and inconsistent with NPT.1.4c. Allow at risk decaying trees to be removed.	3. (a) Add after arborist, " <i>or the tree has grown to the point of adversely affecting the health and well-being of affected residents or is causing significant loss of sunlight or daylight to nearby residences and pruning will not or has not ameliorated the problem.</i> " Delete 3.b. Add 3.c. "Or is a veteran tree in decline and may place the health and safety of the public or private property at risk."
	NPT.1.5	Landowners made submissions and further submissions on NPT.1.5.	Traffic safety and access are health and safety issues and more important than the potential affect pruning may have on a tree's health.	Add 4.f "Tree pruning 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 vehicle access way."

	NPT.1.8	Landowners made submissions and further submissions on NPT.1.8.	The detrimental effects of having a protected tree on private property should be considered as apart of the assessment criteria for discretionary activities.	<p>Add i. "The detrimental effects of the tree on the heath and safety of residents, including:</p> <ul style="list-style-type: none"> I. The suitability of a trees location (proximity to buildings and roads). II. Shading effects on private dwellings and places of work. III. The impact of the regulatory restrictions on building under the drip line of a tree or near to it, when considered on a site (being measured as a percentage of the total available practical building footprint of the site). IV. Potential damage to the building from branch fall or tree collapse. V. Increased building maintenance (gutters, paintwork). VI. Leaf fall nuisance and hazard to residents and public. VII. Safety risk to members of the public and residents from the potential risk of tree a major limb failure or tree collapse. VIII. Actual and potential damage to public and private infrastructure and the provision of utility services."
	NPT.1.9	Landowners made submissions and further submissions on NPT.1.9.	<p>The proposed STEM threshold of 100 is too low with the effect that trees that are not "significant" are protected.</p> <p>Other local authorities that use STEM have set a threshold substantially higher than 100.</p> <p>160 threshold is as recommended by Ron Flock (founder of STEM analysis).</p>	<p>Parts 1 and 2, increase threshold from 100 to 160.</p> <p>Or alternatively change 100 points to "150 points for exotic species and 120 points for native species."</p>

			Differentiating between exotic and native species is an approach adopted by other councils as noted in submission and further submission.	
	NPT.1.10.1	Landowners made submissions and further submissions requesting removal.	Tree No. 271 is a risk to public safety and private property and does not have such significant amenity, historical, ecological or cultural values that warrant protection.	Remove Tree 271 from the Schedule.
	NPT.1 Definitions	Landowners made submissions and further submissions on root zone definition.	<p>The actual drip-line is a more practical measure as it is readily visible.</p> <p>The definition as proposed enlarges the actual drip zone by including atypical limbs.</p>	Amend to "The line formed when a vertical line from a tree's branches or canopy meets the ground".

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.