

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2019-AKL**

**I MUA I TE KOOTI TAIAO  
I TĀMAKI MAKAURAU ROHE**

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of Clause 14(1) of Schedule One of the Act

**BETWEEN**

**HEATHER RYE  
Appellant**

**AND**

**WHANGAREI DISTRICT COUNCIL  
Respondent**

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**NOTICE OF APPEAL TO THE ENVIRONMENT COURT  
AGAINST THE DECISIONS ON PROPOSED PLAN  
CHANGE 129 (NOTABLE AND PUBLIC TREES) TO  
THE WHANGAREI DISTRICT PLAN**

**17 MAY 2019**

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To: The Registrar  
The Environment Court  
AUCKLAND

1. I, **HEATHER RYE**, appeal against parts of the decisions of the Whangarei District Council ("**Council**") in respect of Proposed Plan Change 129 – NPT Public and Notable Trees to the Whangarei District Plan ("**PC129**").

### **Decision**

2. I made a submission on PC129 on 8 June 2019.
3. A hearing was held on 3 December 2019. Evidence was presented to the Council Hearings Committee on a range of matters raised in my submission.
4. I received Notice of the Council's decision on PC129 ("**Decision**") on 3 April 2019. That notice directed that any appeals should be filed within 30 working days.
5. The parts of the Decision being appealed are the decisions to reject or accept only in part a number of the matters raised in my submission that relate to the *Liquidamber styraciflua* located at 76 Mains Avenue, Whangarei and recorded in PC129 as Notable Tree 433. Specifically, my appeal relates to the Decisions on PC129 that relate to the following plan provisions:
  - (a) Policy NPT.1.4(a);
  - (b) Renumbered NPT.1.9 - Criteria for Notable Tree Classification;
  - (c) Renumbered NPT.1.10 Schedule of Notable Trees: including but not limited to listing of Tree 433;
  - (d) Rule NPT.1.5 – Permitted Activities (Land Use) and new Rule NPT.1.6 – Discretionary Activity (Land Use);
  - (e) All other aspects of PC129 as it relates to oversized exotic trees on private land that represent a potential hazard to the community and a potential breach of relevant regulations.
6. I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("**RMA**").

## **Background to Appeal- Liquidamber Tree located at 76 Mains Avenue, Whangarei**

7. I have significant concerns about the existing *Liquidamber styraciflua* located at 76 Mains Avenue, Whangarei being listed as Notable Tree 433 in renumbered NPT.1.10 Schedule of Notable Trees in PC129.
8. The *Liquidamber* in question is an exotic tree otherwise known as “American Sweetgum”. The tree is large and dominates the 485m<sup>2</sup> lot on which it is located. Arboricultural assessment indicates potential structural instability. Additionally, the tree overhangs, to a substantial degree, the adjacent carriageway, footpaths and a Council operated bus stop. Furthermore, the tree is in close proximity to local electricity and telephone lines.

### **Reasons for the appeal**

9. The reasons for the appeal are:
  - (a) the decisions are contrary to and/or inconsistent with Part 2 of the RMA in particular parts of sections 6 and 7 of the RMA;
  - (b) the decisions are contrary to the Electricity (Hazards from Trees) Regulations 2003;
  - (c) the requirement for a resource consent to maintain a tree by way of pruning is inefficient, costly and cannot be justified in terms of s32 of the RMA;
  - (d) The extent to which maintenance can occur as a permitted activity under PC129 is insufficient in relation to the tree at 76 Mains Avenue, Whangarei;
  - (e) Rule NPT.1.5 is inequitable in that it provides, as a permitted activity, for public trees to be pruned to a greater extent (one third annually under NPT.1.5.4.b.ii) than notable trees on private property (20% annually under NPT.1.5.1.b.ii);
  - (f) The nature of the rules presents an inefficient method. As was revealed

at the hearing, the cost of the resource consent application process alone is likely to be significantly greater than the cost of undertaking of the maintenance work / pruning of the tree;

- (g) The STEM assessment mandated in Policy NPT.1.4.1.a and renumbered NPT.1.9 – Criteria for Notable Tree Classification, is limited in its scope and does not take into account the actual or potential adverse effects associated with the protection of a tree, or the appropriateness of its retention in the particular location. It should not be the sole determinant as to whether a tree is included in the schedule;
- (h) The rules do not ensure the health and safety of people will be maintained, and are consequently not the most appropriate way to achieve Objective NPT.1.3.1; and
- (i) The owners of notable trees are personally and financially liable for damage that might be caused (e.g. by falling branches) to public or private property and could be held responsible for injury to people. PC129 provides no certainty in terms of an ability to avoid or mitigate the effects of such a situation arising, which could be very significant. The provisions in PC129 place landowners in a potentially impossible situation of being responsible and/or liable for damage caused to public and or private property and/or harm to people in circumstances where there may not be any certain lawful way of avoiding or mitigating that situation / effect.

### **Relief sought**

10. I seek the following relief:

- (a) As a first preference, delete the *Liquidamber styraciflua* at 76 Mains Avenue, Whangarei, recorded in PC129 as Notable Tree 433 from the schedule of Notable Trees so that the provisions of PC129 do not apply to the tree;

or, in the alternative:

- (b) Make the listing of Notable Trees, in particular exotic species, conditional on the Whangarei District Council either:
- i. taking responsibility for the maintenance and pruning of any listed notable tree on private land, particularly where those trees are causing a potential hazard or nuisance; or
  - ii. Processing any resource consent application in relation to works associated with a Notable Tree (including trimming or felling) at no charge to the applicant and reimbursing the costs incurred by the applicant in the preparation of any such application.
- (c) Amend Policy NPT.1.4(a) and the criteria in renumbered NPT.1.9 to require application of a more appropriate and robust set of criteria to assess not only the “notability” of the tree but also the appropriateness of its retention or otherwise taking into account matters such as its location in relation to other activities, risk to public and private safety, damage to property and/or public infrastructure, personal liability, and costs associated with compliance;
- (d) Amend Rules NPT.1.5 and NPT.1.6 to provide a greater ability for owners of notable trees to undertake maintenance and trimming (including crown lowering) without the need for a resource consent, but possibly being subject to arboricultural advice being first obtained. At the very least, provide for private owners of notable trees 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;
- (e) Amend Rule NPT.1.5.d to enable compliance with The Electricity (Hazards from Trees) Regulations 2003. The current wording of the rule requires branches to be “interfering” with overhead lines before action can be taken. If interference has occurred then a breach of the regulations has already occurred. Compliance with the law should not be contingent upon securing a resource consent which as a Discretionary Activity may be declined; and
- (f) Such consequential or alternative relief to address my concerns.

**Attachments**

11. The following documents are attached to this notice:
- (a) A copy of the Decision.
  - (b) A copy of my submission.
  - (c) A list of relevant names and addresses of persons who lodged submissions who are to be served with a copy of this notice.

**Heather Rye**

**Signature:**



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Nicola Chrisp  
Duly authorised agent of Heather Rye

**Date:** 17 May 2019

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**TO:** The Registrar of the Environment Court at Auckland  
**AND TO:** The Whangarei District Council  
**AND TO:** The relevant submitters on the provisions appealed