

**BEFORE THE ENVIRONMENT COURT**

IN THE MATTER of an appeal pursuant to Clause 14 of  
the First Schedule of the Resource  
Management Act 1991 ("RMA")

BETWEEN POWERCO LIMITED  
  
(ENV-2016-AKL-000170)

Appellant

AND MATAMATA-PIAKO DISTRICT  
COUNCIL

Respondent

Environment Judge D A Kirkpatrick sitting alone under section 279 of the RMA

In CHAMBERS at Auckland

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**CONSENT ORDER**

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[A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to the amendments to Plan Change 48 to the Matamata-Piako District Plan set out in **Annexure A** to this order;
- (2) the appeal is otherwise dismissed.

[B] Under s 285 of the RMA, there is no order as to costs.



## REASONS

### **Introduction**

- [1] This appeal relates to the decisions of the Matamata-Piako District Council on Proposed Plan Change 48 (**PPC48**) to the Matamata-Piako District Plan. PPC48 reviewed Schedule 3 and Section 10 of the District Plan, relating to protected trees. Schedule 3 includes a register of all the protected trees in the district, and Section 10 contains rules that relate to the pruning, maintenance and removal of protected trees. PPC48 seeks to ensure that Schedule 3 includes the appropriate trees, and provides greater flexibility to land owners in terms of the rules in Section 10 of the District Plan.
- [2] PowerCo Limited appealed the following provisions of the District Plan that were amended through the Council's decisions on PPC48:
- (a) Policy 5;
  - (b) Rule 10.2.2(a) and advice note regarding the Electricity (Hazards from Trees) Regulations;
  - (c) Rule 10.2.2(b) and (d); and
  - (d) Performance Standard 10.3.1.
- [3] Mike Gribble gave notice of intention to become a party to the appeal under s 274 of the Act, and has signed the memorandum of the parties setting out the relief sought.
- [4] The parties have now reached an agreement that will resolve PowerCo's appeal in its entirety. The agreement will also resolve Mr Gribble's interest in the appeal in its entirety.
- [5] In making this order the Court has read and considered the appeal and the memorandum of the parties dated 29 March 2017.



[6] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297 of the Act.

[7] The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order; and
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act, including in particular Part 2 of the Act.

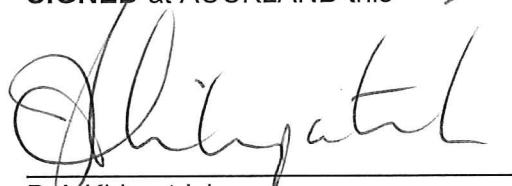
#### Order

[8] Under s 279 of the Act, the Court orders, by consent, that the PowerCo appeal is allowed to the extent that the sections of Plan Change 48 to the Matamata-Piako District Plan listed at paragraph [2] of this Consent Order, are amended as shown in Annexure "A" to this order (additions are underlined and deletions are ~~struckthrough~~).

[9] This order resolves the appeal by PowerCo in its entirety. This Order also resolves Mr Gribble's interest in the appeal in its entirety.

[10] There is no order as to costs in relation to this order.

SIGNED at AUCKLAND this 30<sup>th</sup> day of March 2017



D A Kirkpatrick  
Environment Judge



**"A"**

1. Make the following amendment to Policy 5, and include new Policies 6 and 7, in Section 3.2.1.2 of the District Plan as follows:

**3.2.1 Natural Environment and heritage**

...

**2. Natural environment**

...

P5

Protect significant trees while also ~~managing the financial impact on landowners who have a protected tree on their property.~~ enabling the maintenance and management of significant trees where such works are necessary to:

- a) Ensure the continuing health, structural integrity and amenity value of a tree; and
- b) Minimise the risk, where practicable, from trees to public safety, property, buildings and infrastructure.

P6

Work on or within the vicinity of a significant tree shall be carried out in a way that does not adversely affect the health of the tree.

P7

The removal or felling of significant trees shall be avoided unless there is an imminent threat to life or property.

2. Make the following amendment to Rule 10.2.2(a) of the District Plan as follows:

**10.2 Activity Table**

...

**2. Protected Trees within Part A of Schedule 3**

- a) Minor trimming, pruning or maintenance of any tree undertaken in accordance with accepted arboriculture practice and limited to either:
  - Pruning and removal of branches with a maximum diameter of 40mm; and
  - No more than 10% canopy removal per calendar year; or
  - Trimming, pruning or maintenance required to comply with Electricity (Hazards from Trees) Regulations 2003.

...



3. Amend the Advice Note contained at the end of Section 10.2 of the District Plan as follows:

### 10.2 Activity Table

...

#### 2. Protected Trees within Part A of Schedule 3

...

*Advice Note: It is noted that all works on Protected Trees listed in Schedule 3 (Part A), shall be undertaken in accordance with the Electricity (Hazards from Trees) Regulations 2003.*

*Advice note: Works on trees in close proximity to electricity lines are subject to compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances 34:2001.*

*Any work to a protected tree required under and carried out in accordance with the Electricity (Hazards from Trees) Regulations 2003, shall be undertaken by an arborist who has the appropriate qualifications and experience to do work near power lines. The Council holds a reference list of arborists who have such qualifications and experience and have been approved by the council or accepted by the relevant electricity network operator.*

4. Amend Performance Standard 10.3.1 of the District Plan as follows:

### 10.3 Performance Standards

#### 10.3.1 Tree Protection

For the permitted activity rules which are subject to compliance with this performance standard, a report from a qualified arborist on ~~e~~Council's list of approved arborists shall be lodged with submitted to Council and the report shall be acknowledged and accepted by Council a minimum of 10 working days prior to any works commencing, with the exception of works to be undertaken in accordance with Rule 10.2.2(e), in which case the report can be submitted within 5 working days of any works being undertaken.

The Report shall:

- a) Document the rationale for why the works are required; and
- b) Include photos of the tree before the works; and
- c) Where the tree is to be retained, assess the impact of the works on the long term health and vitality of the tree (where the tree is to be retained).

~~Photographic records of before and after works shall be submitted.~~

