

**IN THE ENVIRONMENT COURT
AT WELLINGTON**

**I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA**

Decision No. [2024] NZEnvC 195

IN THE MATTER of an appeal under cl 14 of Schedule 1 of
the Resource Management Act 1991

BETWEEN POWERCO LIMITED
(ENV-2024-WLG-000016)

Appellant

AND WHANGANUI DISTRICT COUNCIL
Respondent

Court: Judge L J Semple sitting alone under s 279 of the Act

Hearing: In chambers at Wellington

Last case event: 12 August 2024

Date of Decision: 13 August 2024
(On the papers)

Date of Issue: 13 August 2024

CONSENT ORDER

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

- (1) the appeal is allowed to the extent that the Whanganui District Council is directed to amend Plan Change 60 to the Whanganui District Plan as set out in Appendix 1 attached to and forming part of this order;
- (2) The appeal is otherwise dismissed.



B: Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] The Court has read and considered the appeal and the memorandum of the parties dated 31 July 2024 which proposed to resolve the appeal. The Court issued a minute on 8 August 2024 suggesting a minor amendment to the wording of Rule NFL-PT-R2, and the parties responded on 12 August 2024 with agreed amended wording, which is incorporated into Appendix 1 attached to this order.

Other relevant matters

[2] No person gave notice of intention to become a party under s 274 of the Resource Management Act 1991.

Orders

[3] The Court is making this order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the consent memorandum requesting this order;
- (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.



L J Semple

Environment Judge



APPENDIX 1

(amendments shown in underline and ~~strikethrough~~ text)

Rules – Protected Trees

NFL – PT – Protected Trees

The following rules apply to any tree shown as a Protected Tree in Appendix C.

<p>NFL-PT-R1</p>	<ol style="list-style-type: none"> 1. Minor pruning and maintenance to any protected tree that meets the NFL-PT standards. This is limited to: <ol style="list-style-type: none"> a. Pruning and clearance of foliage or branches no greater than 50mm in diameter at the point of severance from existing network utilities utility networks, which have the potential to compromise the operation of the network utility (or access to) street lights or land boundary encroachments and that does not alter the shape or health of the tree; b. <u>Pruning and</u> Cclearance of foliage or branches no greater than 50mm in diameter at the point of severance from: <ol style="list-style-type: none"> i. <u>roads;</u> ii. <u>footpaths, and;</u> iii. <u>driveways;</u> iv. <u>street lights; or</u> v. <u>land boundary encroachments,</u> that does not alter the shape or health of the tree; c. Removal of deadwood from trees; d. Removal of dead or diseased vegetation. 2. Destruction, or removal, <u>or pruning</u> of any protected tree, that meets NFL-PT standards (except NFL-PT-S3.a) that is: <ol style="list-style-type: none"> a. An emergency work to maintain or restore existing network utilities; or b. To safeguard life. 3. <u>Earthworks associated with network utilities located within the dripline of a protected tree that meets the NFL-PT standards (except NFL-PT-S3a) where the earthworks are required for the repair of damage preventing the operation of the network utility.</u> 4. <u>Temporary above-ground fencing (eg. block and mesh) associated with existing network utilities located within the dripline of a protected tree, that does not penetrate the ground.</u> 	<p>Permitted (PER)</p>
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	<p>Note:</p> <p><u>The dripline shall be considered the outermost circumference of the tree's canopy. With irregular-shaped trees, the dripline shall be calculated by taking the greatest radial spread of the canopy from the trunk in a full circle around the tree.</u></p>	
<u>NFL-PT-R2</u>	<p>1. <u>Earthworks associated with minor upgrades to an existing network utility service within the dripline of a protected tree.</u></p> <p>Note:</p> <p><u>The dripline shall be considered the outermost circumference of the tree's canopy. With irregular-shaped trees, the dripline shall be calculated by taking the greatest radial spread of the canopy from the trunk in a full circle around the tree.</u></p> <p><u>Council restricts its discretion to:</u></p> <ol style="list-style-type: none"> a. <u>The impact that the proposal will have on the integrity, ongoing viability, and values of the tree;</u> b. <u>Whether arboricultural best practice, including opportunities to minimise loss or damage to the tree, will be implemented as far as practicable;</u> c. <u>Whether there is an operational need for the earthworks to be located in that location, and whether there are any practical alternatives;</u> d. <u>The potential impact on the levels of service of the network utility if the works are not undertaken.</u> 	<u>Restricted Discretionary (RDIS)</u>
<u>NFL-PT-R32</u>	<ol style="list-style-type: none"> 1. Any activity that does not meet the NFL-PT standards. 2. Fencing, earthworks, construction or reconstruction work within the dripline of protected trees supported by an Arboricultural report submitted to Council. <p>Note:</p> <p>The dripline shall be considered the outermost circumference of the tree's canopy. With irregular-shaped trees, the dripline shall be calculated by taking the greatest radial spread of the canopy from the trunk in a full circle around the tree.</p> <ol style="list-style-type: none"> 3. Destruction of any protected tree supported by an Arboricultural report submitted to Council stating: <ol style="list-style-type: none"> a. The tree is dead or diseased. 4. The pruning or maintenance of any protected tree that is not a permitted activity. 5. Crown reduction. 	<u>Discretionary (DIS)</u>

	6. Works required for a new or altered vehicle access. 7. The destruction, removal, pruning or maintenance of any protected tree unless otherwise stated.	
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Standards

The following standards apply to the rules above:

NFL-PT-S1

All works will comply with Minimum Industry Standards, including Tree Care Guidelines produced, supported or recommended by the New Zealand Arboricultural Association, for:

- a. Tree pruning;
- b. Tree care on construction / development sites;
- c. Utility line clearance;
- d. Tree protection zones.

NFL-PT-S2

Works to be undertaken by a suitably qualified Arborist.

NFL-PT-S3

- a. An arborist's description of any intended destruction, removal, pruning or maintenance of any protected tree shall be submitted to Council a minimum of 10 working days prior to any such works commencing; and
- b. Photographic evidence of the completed works shall be submitted to Council within 10 working days of the completion of the works.