

BEFORE THE ENVIRONMENT COURT

ENV-2012-AKL-000039

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of an application by **PROPERTY
COUNCIL NEW ZEALAND
INCORPORATED** for
declarations under section 311 of
the Act

**NOTICE OF APPLICATION FOR DECLARATIONS
UNDER SECTION 311 OF THE RESOURCE MANAGEMENT ACT 1991
CONCERNING GENERAL TREE PROTECTION PROVISIONS
IN THE AUCKLAND COUNCIL DISTRICT PLAN**

Solicitor for the Appellant:
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To: Auckland Council
Private Bag 92300
Auckland 1142

And to: Others named in the directions of the Court issued on 7 March 2012.

1. **PROPERTY COUNCIL NEW ZEALAND INCORPORATED** gives notice that on 28 February 2012 it applied for declarations from the Environment Court that section 152(1) and section 152(2) of the Resource Management (Simplifying and Streamlining) Act (2009) revoke the following general tree protection rules:

AUCKLAND COUNCIL DISTRICT PLAN (RODNEY SECTION)

- (i) Activity Table 2 and Rule 18.12.9
- (ii) Activity Table 2 and Rule 18.12.10
- (iii) Activity Table 2 and Rule 18.12.11
- (iv) Activity Table 2 and Rule 18.12.12
- (v) Activity Table 2 and Rule 18.12.13

AUCKLAND COUNCIL DISTRICT PLAN (NORTH SHORE SECTION)

- (i) Rule 8.4.6.1.2
- (ii) Rule 8.4.6.1.3

AUCKLAND COUNCIL DISTRICT PLAN (WAITAKERE SECTION)

- (i) Rule 2.2 Controlled Activities – General Natural Area:

- (ii) Rule 2.3 Limited Discretionary Activities – General Natural Area:
- (iii) Rule 2.2 Controlled Activities – Restoration Natural Area
- (iv) Rule 2.3 Limited Discretionary Activities – Restoration Natural Area
- (v) Rule 2.2 Controlled Activities – Managed Natural Area
- (vi) Rule 2.3 Limited Discretionary Activities – Managed Natural Area
- (vii) Rule 2.4 Discretionary Activities – Managed Natural Area
- (viii) Rule 2.5 Non-Complying Activities – Managed Natural Area
- (ix) Rule 2.2 Controlled Activities – Coastal Natural Area
- (x) Rule 2.3 Limited Discretionary Activities – Coastal Natural Area
- (xi) Rule 2.4 Discretionary Activity – Coastal Natural Area
- (xii) Rule 2.5 Non-Complying Activities – Coastal Natural Area
- (xiii) Rule 2.2 Controlled Activities – Protected Natural Area
- (xiv) Rule 2.3 Limited Discretionary Activities – Protected Natural Area
- (xv) Rule 2.4 Discretionary Activities – Protected Natural Area
- (xvi) Rule 2.5 Non-Complying Activities – Protected Natural Area
- (xvii) Rule 2.2 Controlled Activities – Riparian Margins/Coastal Edges Natural Area
- (xviii) Rule 2.3 Limited Discretionary Activities – Riparian Margins/Coastal Edges Natural Area

- (xix) Rule 2.4 Discretionary Activities - Riparian Margins/Coastal Edges Natural Area
- (xx) Rule 2.5 Non-Complying Activities - Riparian Margins/Coastal Edges Natural Area

AUCKLAND COUNCIL DISTRICT PLAN (ISTHMUS SECTION)

- (i) Rule 5B.7.2A(iii) General Provisions
- (ii) Rule 5B.7.2B Additional Tree Protection
- (iii) Rule 5C.7.3.3 C. General Tree Protection

AUCKLAND COUNCIL DISTRICT PLAN (MANUKAU SECTION)

- (i) Rule 6.9.2 – Activity Table: Trees

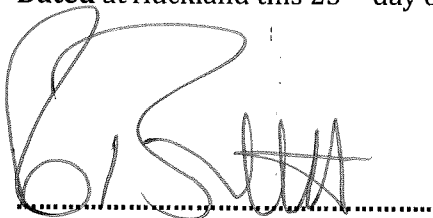
AUCKLAND COUNCIL DISTRICT PLAN (PAPAKURA SECTION)

- (i) Rule 2.10.2.1
- (ii) Rule 3.8.1(e)
- (iii) Rule 3.8.2
- (iv) Rule 3.8.4 – Scheduled Items to be Protected

2. If you wish to be heard at the hearing to determine this matter, you should notify the Environment Court within 15 working days after 24 March 2012. If you do not notify the Registrar of your wish to be heard, the case may proceed without further notice to you.

3. A copy of the application, memorandum of Counsel for the applicant, the Court directions of 7 March 2012 and the Auckland Council memorandum of 19 March 2012 are attached.

Dated at Auckland this 23rd day of March 2012.

A handwritten signature in black ink, appearing to be 'R E Bartlett', written over a dotted line.

R E Bartlett

Counsel for Property Council New Zealand Incorporated

Address for Service:

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Advice to recipient of notice of application

It is recommended that you consult a lawyer without delay, although it is not essential for you to have a lawyer for the purpose of these proceedings. If you want a lawyer but think that you cannot afford one and wish to apply for legal aid, contact the Environment Court Unit of the Ministry of Justice, a Citizen's Advice Bureau, a community law centre, or a lawyer for assistance. If you have any questions about this notice, contact the Environment Court Unit of the Ministry of Justice in Auckland, Wellington or Christchurch.

BEFORE THE ENVIRONMENT COURT**ENV-2012-AKL-000039**

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of an application by **PROPERTY
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declarations under section 311 of
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**APPLICATION FOR DECLARATIONS
UNDER SECTION 311 OF THE RESOURCE MANAGEMENT ACT 1991
CONCERNING GENERAL TREE PROTECTION PROVISIONS
IN THE AUCKLAND COUNCIL DISTRICT PLAN**

Solicitor for the Appellant:
Russell McVeagh
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Counsel for Appellant:
Russell Bartlett
Barrister
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Ph: 09 307 9827
Fax: 09 366 1599
Email: bartlett@shortlandchambers.co.nz

To: The Registrar
Environment Court
Auckland

And to: Auckland Council

PROPERTY COUNCIL NEW ZEALAND INCORPORATED applies for the following declarations:

1. AUCKLAND COUNCIL DISTRICT PLAN (RODNEY SECTION)

That section 152(1) and section 152(2) of the Resource Management (Simplifying and Streamlining) Act (2009) revoke the following general tree protection rules.

(i) Activity Table 2 and Rule 18.12.9 (restricted discretionary activity)

"The cutting, damaging or removal of any native tree less than 3m in height within 10m of a cliff or within 10m of mean high water springs."

(ii) Activity Table 2 and Rule 18.12.10 (restricted discretionary activity)

"The cutting, damaging or removal of any native tree greater than 3 metres in height within 200 metres of mean high water springs (MHWS)."

(iii) Activity Table 2 and Rule 18.12.11 (restricted discretionary activity)

"The cutting, damaging or removal of any native tree greater than 3 metres in height and less than or equal to 6 metres in height (unless within 200 metres of MHWS) within the Landscape Protection Zone and the following areas zoned Residential Medium Intensity: Muriwai, Baddeleys Beach, Buckletons Bay and Campbells Beach or from areas defined as Significant Natural Areas (SNA) on the planning maps."

(iv) Activity Table 2 and Rule 18.12.12 (restricted discretionary activity)

"The cutting, damaging or removal of any native or exotic tree greater than 6 metres in height."

(v) Activity Table 2 and Rule 18.12.13 (restricted discretionary activity)

"The cutting, damaging or removal of any native vegetation greater than 25m² in area."

UPON THE GROUNDS that the Rules quoted above:

- (1) Do not specifically identify any tree or group of trees; and
- (2) Do not invoke the exceptions provided for in section 152(3) of the Act.

2. AUCKLAND COUNCIL DISTRICT PLAN (NORTH SHORE SECTION)

That section 152(1) and section 152(2) of the Resource Management (Simplifying and Streamlining) Act (2009) revoke the following general tree protection rules:

(i) Rule 8.4.6.1.2

"Limited Discretionary Activities

The following shall be Limited Discretionary activities, which require a resource consent, with no application fee in the first instance:

- a) *Any alteration or removal within the Residential 1, 2C, 3, 4, 5, 6 and 7 zones, Residential Expansion zone, Areas B, C and D of the Albany and Greenhithe Structure Plan zones and the Long Bay 1 to 4 zones:*
 - i) *Any native tree of 8 metres or more in height or 800mm or more in girth (measured at 1.4 metres above the ground), and*
 - ii) *Any exotic tree, of 10 metres or more in height or 1000mm or more in girth (measured at 1.4 metres above the ground) with the exception of any of the species listed in Appendix 8D, and*
 - iii) *Any exotic tree, of 15 metres or more in height or 1500mm or more in girth (measured at 1.4 metres above the ground) belonging to any of the species listed in Appendix 8D.*
- b) *Any alteration, or removal of any native tree of 6 metres or more in height or 600mm or more in girth (measured at 1.4 metres above the ground) or any exotic tree of 8 metres or more in height or 800mm in girth (measured at 1.4 metres above the ground) in the Residential 2B zone.*
- c) *All works including any excavation, deposition of materials, construction activity, emplacement of services, discharge or dispersal of any toxic substance, emplacement of any weed control membrane, or storage of vehicles, machinery, or materials above,*

below, or within the root zone of any tree described in Rule 8.4.6.1.2.

- d) The alteration or removal of any continuous area of native trees or plants, including undergrowth, in excess of 100m² in Area B – Large Lot Residential, Area C: Standard Residential, Area D: Varied Residential and Mixed Use Overlay Area.*
- e) The alteration or removal of any native vegetation (including the roots) when it is part of a continuous, naturally occurring area of native vegetation in the Residential 2A, 2A1 and 2B zones.*
- f) Any alteration, removal of any exotic trees of 10 metres or more in height or 1000mm or more in girth (measured at 1.4 metres above the ground) in any Landscape Protection or Management Area within the Long Bay Structure Plan as identified in the Structure Plan maps.”*

(ii) Rule 8.4.6.1.3

“Discretionary Activities

The following shall be Discretionary activities, which require a resource consent, with no application fee in the first instance:

- a) Any trimming, alteration, or removal of:*
 - i) Any pohutukawa tree, Metrosideros excelsa, (including the roots) of 3 metres or more in height located within the Coastal Conservation Area, or in the area of Lake Pupuke Site of Geological Significance 3.*
 - ii) Any native vegetation within the foreshore yard, and any vegetation (excluding invasive weed species) within the 30 metres lakeside yard.*
 - iii) Any tree (native or exotic) which is the subject of a covenant or condition to a resource consent or subdivision consent.*
 - iv) Any native vegetation within the Long Bay 6 zone, Long Bay 7 zone (Heritage Protection), Riparian Margins, Piripiri Point Protection Area and any Management Areas, within the Long Bay Structure Plan as identified in the Structure Plan maps. Any alteration or removal of native*

vegetation in the Landscape Protection Areas – Conservation and Restoration and the Park Interface Protection Area, on the crest, north and east of the Ridgeline Height Control Line is a Non-complying activity.

- b) All works including any excavation, deposition of materials, construction activity, emplacement of services, discharge or dispersal of any toxic substance, emplacement of any weed control membrane, or storage of vehicles, machinery, or materials above, below, or within the root zone of any tree described in Rule 8.4.6.1.3.*
- c) The clearing or damaging of any native vegetation (including the roots) in the Rural 2, 3 and 4 zones and Area A of the Structure Plan zones.*
- d) The clearing or damaging of any native vegetation (including the roots) when it is part of a continuous, naturally occurring area of native vegetation in the Rural 1 and Residential Expansion zones, provided that successive permitted clearances of the same continuous area of vegetation shall not cumulatively exceed a total area of 100m².*

Exception

This rule shall not apply to

- Trimming of trees or groups of trees within the urban environment as defined in Chapter 21.*

UPON THE GROUNDS that the Rules quoted above:

- (1) Do not specifically identify any tree or group of trees; and
- (2) Do not invoke the exceptions provided for in section 152(3) of the Act.

3. AUCKLAND COUNCIL DISTRICT PLAN (WAITAKERE SECTION)

That section 152(1) and section 152(2) of the Resource Management (Simplifying and Streamlining) Act 2009 revoke the following general tree protection rules.

(i) Rule 2.2 Controlled Activities – General Natural Area:

“Activities meeting the following Performance Standard are a Controlled Activity

- (a) any vegetation alteration of:

 - (i) native vegetation and exotic vegetation which is less than 6m in height and less than 600mm in girth (measured at 1.4m above the ground)*
 - (ii) vegetation listed in the Removable Vegetation Appendix and the Environmentally Damaging Plants Appendix, to a total cleared area greater than 500m².**
- (b) any work within the dripline of native vegetation and exotic vegetation which is more than 6m in height or more than 600mm in girth (measured at 1.4m above the ground).*
- (c) the pruning of native vegetation and exotic vegetation which is more than 6m in height or more than 600mm in girth (measured at 1.4m above the ground and), not meeting the standards in Rule 2.1.*
- (d) any vegetation alteration not meeting the standards in Rule 2.1 undertaken or required by a network utility operator necessary for the maintenance of that operator’s works.*

Assessment of Controlled Activity applications will be limited to the matters of landscape treatment, scale, method and location and will be considered in accordance with Assessment Criteria 2(a)-2(n).”

(ii) Rule 2.3 Limited Discretionary Activities – General Natural Area:

“Activities meeting the following Performance Standard are Limited Discretionary Activities:

- *the clearance of native vegetation and exotic vegetation which is more than 6.0m in height or more than 600mm in girth (measured at 1.4m above the ground).*
- *any vegetation alteration for Parks Maintenance in the Open Space Environment not meeting the performance standards in Rule 2.1(c) or where the enhancement/improvements to a footbridge, boardwalk or culvert exceed 40%.*
- *vegetation alteration for Parks Infrastructure not meeting the Performance Standards in Rule 2.1(d), or where a footbridge or boardwalk is greater than 15m in length, or a culvert is over 10m in length, or for car parks with more than 8 car parking spaces in the Open Space Environment.*

Assessment of Limited Discretionary Activity applications will be limited to the matters of landscape treatment, scale, method and location and will be considered in accordance with Assessment Criteria 2(a)-2(n)."

(iii) Rule 2.2 Controlled Activities – Restoration Natural Area

"Activities meeting the following Performance Standards are Controlled Activities:

- (a) *any vegetation alteration of:*
 - (i) *exotic vegetation less than 6.0 metres in height and less than 600mm in girth (as measured at any point higher than 1.4 metres above the ground, and*
 - (ii) *vegetation appearing in the Environmentally Damaging Plants Appendix,*

not meeting the standards of Rule 2.1.

- (b) *any work within the dripline of all native vegetation (except native vegetation described in 2.1(d)).*
- (c) *the pruning of native vegetation not meeting the standards of Rule 2.1.*
- (d) *any vegetation alteration not meeting the standards in Rule 2.1 undertaken or required by a network utility operator necessary for the maintenance of that operator's works.*
- (e) *Parks Infrastructure in the Open Space Environment.*

Assessment of Controlled Activity Applications will be limited to the matters of landscape treatment, scale, method and location and will be considered in accordance with Assessment Criteria 2(a)-2(o)."

(iv) Rule 2.3 Limited Discretionary Activities – Restoration Natural Area

"Activities meeting the following Performance Standard are Limited Discretionary Activities:

- *any vegetation alternation not meeting the standards in Rule 2.1(a), (b), (c) and (d) or 2.2*
- *any vegetation alterations for Parks Maintenance in the Open Space Environment not meeting the performance standards in Rule 2.1(e), or where the enhancement/improvement to a foot bridge, boardwalk or culvert exceeds 40%.*
- *any vegetation alterations for Parks Infrastructure where a foot bridge or boardwalk is greater than 15m in length, or for culverts over 10m in length, or for car parks with more than 5 car parking spaces in the Open Space Environment.*

Assessment of Limited Discretionary Activity Applications will be limited to the matters of scale, method, landscape treatment and location and will be considered in accordance with Assessment Criteria 2(a)-2(o)."

(v) Rule 2.2 Controlled Activities – Managed Natural Area

"Activities meeting the following Performance Standards are Controlled Activities:

- (a) *any clearance or exotic vegetation and vegetation listed in the Environmentally Damaging Plants Appendix not meeting the standards in Rule 2.1.*
- (b) *any work within the dripline of all native vegetation (except native vegetation described in 2.1(c)).*
- (c) *any vegetation alteration not meeting the standards in Rule 2.1 undertaken or required by a network utility operator necessary for the maintenance of that operator's works.*

(d) any pruning of native vegetation not meeting the standards of Rule 2.1.

(e) Parks Infrastructure in the Open Space Environment.
Assessment of Controlled Activity applications will be limited to the matters of landscape treatment, scale, method and location and will be considered in accordance with Assessment Criteria 2(a)-2(u)."

(vi) Rule 2.3 Limited Discretionary Activities – Managed Natural Area

"Activities meeting the following Performance Standard are Limited Discretionary Activities:

- (a) clearance of any native vegetation not meeting the standards in Rule 2.1 and 2.2 provided that the clearance is for the establishment of a building platform, driveway or infrastructure and provided further that cutting and clearance on any site or proposed site does not increase the total cleared area of the net site area to more than 300m².
- (b) vegetation alteration associated with a subdivision being a Controlled Activity or a Limited Discretionary Activity in Subdivision Rule 4 (Greenfields Subdivision) which is necessary to provide for roads, public accessways or shared driveways, provided that the area of vegetation alteration is no more than 300m².
- (c) any vegetation alteration of native vegetation which is more than 6m high or more than 600mm in girth (measured at 1.4m above the ground) provided that the vegetation alteration is within an area 3m from the edge of a dwelling (as measured along the ground from the eaves of the building excluding any uncovered decks).
- (d) any vegetation alteration for Parks Maintenance in the Open Space Environment not meeting the performance standards in Rule 2.1(e) or the enhancement/improvement to a foot bridge, boardwalk or culvert exceeds 40%.
- (e) any vegetation alteration for Parks Infrastructure where a foot bridge or boardwalk is greater than 15m in length, or for culverts

over 10m in length, or for car parks with more than 5 car parking spaces in the Open Space Environment.

(vii) Rule 2.4 Discretionary Activities – Managed Natural Area

“Activities meeting the following Performance Standard are Discretionary Activities:

- (a) clearance of native vegetation not meeting the standards in Rules 2.1, 2.2 and 2.3 provided that the clearance is for the establishment of a building platform, driveway or infrastructure and provided further that clearance on any site or proposed site does not increase the total cleared area of the net site area to more than 500m²*
- (b) vegetation alternation associated with a subdivision requiring a resource consent pursuant to Subdivision Rule 4 (Greenfields Subdivision) not meeting the standards in Rule 2.3(b).*
- (c) Discretionary Activity Applications will be assessed having regard to Assessment Criteria 2(a)-2(u) and any other matters which are relevant under section 104 of the Act.”*

(viii) Rule 2.5 Non-Complying Activities – Managed Natural Area

“Any Activity to which these rules apply which is not a Permitted Activity, a Limited Discretionary Activity or a Discretionary Activity under the above rules shall be deemed to contravene a rule in this Plan and shall be a Non-Complying Activity.

Provided that, in the case of Controlled Activities and Limited Discretionary Activities, conditions may only be imposed in respect of the matters specified above to which the Council has restricted the exercise of its discretion.”

(ix) Rule 2.2 Controlled Activities – Coastal Natural Area

“Activities meeting the following Performance Standards are Controlled Activities:

- (a) *any vegetation alteration of exotic vegetation less than 6 metres in height (as measured at 1.4m above the ground) and less than 600mm in girth or vegetation listed in the Environmentally Damaging Plants Appendix and the Removable Vegetation Appendix, to a total cleared area greater than 500m².*
 - (b) *any pruning of native vegetation not meeting the standards of Rule 2.1(a).*
 - (c) *any work within the dripline of native vegetation and of exotic vegetation more than 6m high or more than 600mm girth (as measured at any point higher than 1.4m above the ground).*
 - (d) *any vegetation alteration not meeting the standards in Rule 2.1 undertaken or required by a network utility operator 2(m) necessary for the maintenance of that operator's works.*
 - (e) *Parks Infrastructure in the Open Space Environment.*
- Assessment of Controlled Activities Applications will be limited to the matters of landscape treatment, scale, method indication and will be considered in accordance with Assessment Criteria 2(a)- 2 (r)."*

(x) Rule 2.3 Limited Discretionary Activities – Coastal Natural Area

"Activities meeting the following Performance Standard are Limited Discretionary Activities:

- (a) *the clearance of any vegetation not meeting the standards in Rules 2.1 and 2.2 for the establishment of a building platform, driveway or infrastructure provided that clearance on any site or proposed site does not increase the total cleared area (including any existing cleared area) of the net site area to more than 300m².*
- (b) *any vegetation alteration of native vegetation which is more than 6m high or more than 600mm in girth (measured at 1.4m above the ground) provided that the vegetation alteration is within an area 3m from the edge of a dwelling (as measured along the ground from the eaves of the building excluding any uncovered decks).*

- (c) *any vegetation alteration for Parks Maintenance in the Open Space Environment not meeting the performance standards in Rule 2.1(d) or the enhancement/improvement to a foot bridge, boardwalk or culvert exceeds 40%.*
- (d) *any vegetation alteration for Parks Infrastructure where a foot bridge or boardwalk is greater than 15m in length, or for culverts over 10m in length, or for car parks with more than 5 car parking spaces in the Open Space Environment.*

Assessment of Limited Discretionary Activity applications will be limited to the matters of scale, method, landscape treatment, planting and location and will be considered in accordance with Assessment Criteria 2(a)- 2(r)."

(xi) Rule 2.4 Discretionary Activity – Coastal Natural Area

"Activities meeting the following Performance Standard are Discretionary Activities:

- *the clearance of any vegetation not meeting the standards in Rules 2.1, 2.2 and 2.3 for the establishment of a building platform, driveway or infrastructure provided that clearance on any site or proposed site does not increase the total cleared area (including any existing cleared area) of the net site area to more than 500m².*

Discretionary Activities applications will be assessed having regard to Assessment Criteria 2(a)-2(r) and any other matters which are relevant under section 104 of the Act."

(xii) Rule 2.5 Non-Complying Activities – Coastal Natural Area

"Any Activity and any Temporary Activity to which these rules apply which is not a Permitted Activity, a Limited Discretionary Activity or a Discretionary Activity under the above rules shall be deemed to contravene a rule in this Plan and shall be a Non-Complying Activity."

(xiii) Rule 2.2 Controlled Activities – Protected Natural Area

“Activities meeting the following performance Standards are Controlled Activities:

- (a) any clearance of exotic vegetation and vegetation appearing in the Environmentally Damaging Plants Appendix.*
- (b) any pruning of native vegetation not meeting the standards of Rule 2.1.*
- (c) any vegetation alteration not meeting the standards in Rule 2.1 undertaken or required by a network utility operator necessary for the maintenance of that operator's works.*
- (d) Assessment of Controlled Activity applications will be limited to the matters of landscape treatment, scale, method, planting and location and will be considered in accordance with Assessment Criteria 2(a)- 2(s).”*

(xiv) Rule 2.3 Limited Discretionary Activities – Protected Natural Area

- *“Parks Infrastructure in the Open Space Environment*
Assessment of Limited Discretionary Activity applications will be limited to the matters of landscape treatment, scale, method, planting and location and will be considered in accordance with Assessment Criteria 2(a) - 2(s).”

(xv) Rule 2.4 Discretionary Activities – Protected Natural Area

“Activities meeting the following Performance Standard are Discretionary

- *any clearance of any vegetation for a building platform, driveway or infrastructure provided that clearance does not increase the total cleared area (including any existing cleared area) of the net site area to more than 300m².*
- *any vegetation alteration of native vegetation which is more than 6m high or more than 600mm in girth (measured at 1.4m above the ground) provided that the vegetation alteration is within an area 3m from the edge of a dwelling (as measured along the*

ground from the eaves of the building excluding any uncovered decks).

- *any vegetation alteration for Parks Maintenance in the Open Space Environment not meeting the performance standards in Rule 2.1(d) or where the enhancement/improvement to a foot bridge, boardwalk or culvert exceeds 40%.*
- *any vegetation alteration for Parks Infrastructure where a foot bridge or boardwalk is greater than 15m in length, or for culverts over 10m in length, or for car parks with more than 8 car parking spaces or for parks access roads in the Open Space Environment.*

Discretionary Activity applications will be assessed having regard to Assessment Criteria 2(a)-2(q) and any other matters which are relevant under section 104 of the Act."

(xvi) Rule 2.5 Non-Complying Activities – Protected Natural Area

"Any Activity and any Temporary Activity to which these rules apply which is not a Permitted Activity or a Discretionary Activity under the above rules shall be deemed to contravene a rule in this Plan and shall be a Non-Complying Activity."

(xvii) Rule 2.2 Controlled Activities – Riparian Margins/Coastal Edges Natural Area

"Activities meeting the following performance Standards are Controlled Activities:

- (a) Any clearance of:*
 - (i) exotic vegetation less than 6.0 metres in height and less than 600mm in girth (measured 1.4 metres above the ground)*
 - (ii) vegetation listed in the Environmentally Damaging Plants Appendix,*
- beyond 10% of the Riparian Margin/Coastal Edge on the site.*

- (b) *vegetation alteration not meeting the standards in Rule 2.1 undertaken or required by a network utility operator necessary for the maintenance of that operator's works.*
- (c) *pruning of native vegetation not meeting the standards of Rule 2.1.*

Assessment of Controlled Activity Applications will be limited to the matters of landscape treatment, scale, method and location and will be considered in accordance with Assessment Criteria 2(a)-2(u)."

(xviii) Rule 2.3 Limited Discretionary Activities – Riparian Margins/Coastal Edges Natural Area

"Activities meeting the following Performance Standard are Limited Discretionary Activities:

- (a) *clearance of exotic vegetation greater than 6.0 metres in height or greater than 600mm in girth (as measured at any point higher than 1.4 metres above the ground).*
- (b) *vegetation alteration associated with a subdivision being a Controlled Activity or a Limited Discretionary Activity in Subdivision Rule 4 (Greenfields Subdivision) which is necessary to provide for infrastructure or stream crossing, provided that the Riparian Margins/ Coastal Edges Natural Area does not exceed 7.0m as marked on the Natural Areas Maps.*
- (c) *vegetation alteration for Parks Infrastructure in the Open Space Environment.*

Assessment of Limited Discretionary Activity applications will be limited to the matters of scale, method, landscape treatment and location and will be considered in accordance with Assessment Criteria 2(a)- 2(v)."

(xix) Rule 2.4 Discretionary Activities - Riparian Margins/Coastal Edges Natural Area

"Activities meeting the following Performance Standard are Discretionary Activities:

- *the clearance of native vegetation for the purposes of establishing driveways, roads or infrastructure not meeting the standards in Rule 2.3(b);*
- *any vegetation alteration requiring a resource consent pursuant to Subdivision Rule 4 (Greenfields Subdivision) which is necessary to provide for infrastructure or stream crossing, and does not otherwise meet the standards in Rule 2.3(b).*
- *any vegetation alteration for Parks Maintenance in the Open Space Environment not meeting the performance standards in Rule 2.1(d) or the enhancement/improvement to a footbridge, boardwalk or culvert exceeds 400/o,*
- *any vegetation alteration for Parks Infrastructure where a foot bridge or boardwalk is greater than 15m in length, or for culverts over 10m in length, or for car parks with more than 8 car parking spaces, or for parks access roads in the Open Space Environment.*

Discretionary Activity applications will be assessed having regard to Assessment Criteria 2(a)- 2(y) and any other matters which are relevant under section 104 of the Act."

(xx) Rule 2.5 Non-Complying Activities - Riparian Margins/Coastal Edges Natural Area

"Any Activity and any Temporary Activity to which these rules apply which is not a Permitted Activity or a Limited Discretionary Activity or a Discretionary Activity, shall be deemed to contravene a rule in this Plan and shall be a Non-Complying Activity."

UPON THE GROUNDS that the Rules quoted above:

- (1) Do not specifically identify any tree or group of trees; and
- (2) Do not invoke the exceptions provided for in section 152(3) of the Act.

4. AUCKLAND COUNCIL DISTRICT PLAN (ISTHMUS SECTION)

That section 152(1) and section 152(2) of the Resource Management (Simplifying and Streamlining) Act 2009 revoke the following general tree protection rules.

(i) Rule 5B.7.2A(iii) General Provisions

“(iii) No person shall cut, damage, alter, injure, destroy or partially destroy:

(a) any indigenous tree or vegetation;

(b) any exotic tree greater than 6m in height or 600mm in girth (measured at 500mm above ground level).

This rule does not preclude trimming of the canopy (excluding the roots) of any tree which does not damage its health. Such works shall be limited to no more than 20% of live growth removal in any one year and must be in accordance with currently accepted arboricultural practice, ensuring that the natural form and branch habit of the tree species is maintained.

If the trimming is undertaken by a qualified arborist or arboriculturalist, such works shall be limited to no more than 30% of live growth removal in any one year and must be in accordance with currently accepted arboricultural practice, ensuring that the natural form and branch habit of the tree species is maintained.

The Council may grant an application for a discretionary activity resource consent to remove or pollard such vegetation or trees, or undertake works in excess of the permitted trimming controls if it is satisfied that such consent is justified by circumstances which include dangerous, diseased, or damaged conditions, compliance with any statutory or legal obligation or hardship, or any other cogent reason. Consent will not be granted where an improvement in view is sought unless the Council is satisfied that the natural character, of the coastal environment, the ecological amenity of the site and the health of the tree will not be affected.”

(ii) Rule 5B.7.2B Additional Tree Protection

"The following tree protection rule shall apply in the areas defined below, except where permission has been granted.

i) No person shall cut, damage, alter, injure, destroy or partially destroy:

(a) any indigenous tree or vegetation;

(b) any exotic tree greater than 6m in height or 600mm in girth (measured at 500mm above ground level).

The Council may grant an application for a discretionary activity resource consent to remove or pollard such vegetation or trees, or any substantial part thereof if it is satisfied that such consent is justified by circumstances which include dangerous, diseased, or damaged conditions, compliance with any statutory or legal obligation or hardship, or any other cogent reason. Consent will not be granted where an improvement in view is sought unless the Council is satisfied that the natural character, of the coastal environment, the ecological amenity of the site and the health of the tree will not be affected.

St Marys Bay to Coxs Bay Cliffline

20m either side of the seaward boundary of those sites situated along the original cliff face and shoreline of St Marys Bay and the Herne Bay foreshore between the Harbour Bridge off-ramp (to Ponsonby) and the eastern boundary of the site at 16 Harbour Street, and from the western side of Curran Street to the point where West End Road first abuts Coxs Bay. This area is identified on the Planning Maps.

Tamaki Drive Cliffline

30m inland from the seaward boundary of the sites adjacent to Tamaki Drive, as identified on the Planning Maps.

Glendowie Cliffline

30 metres landward from the mean high water spring tide mark as identified on the Planning Maps.

Parnell Cliffline

30 metres landward from the mean high water spring tide mark as identified on the Planning Maps.

Hillsborough Cliffline

30 metres landward from the mean high water spring tide mark as identified on the Planning Maps.

Coxs Bay to Pt Chevalier Cliffline

30 metres landward from the mean high water spring tide mark as identified on the Planning Maps.

Explanation

The coast is an environmentally and visually sensitive interface between the land and the sea. Any development which takes place in close proximity to the foreshore has potential to impact on visual amenity and on marine ecosystems. The imposition of a Coastal Protection Yard with strict limits on activities which can take place within that yard, ensures that the environmental and visual values of the coastal edge are conserved.

Mature trees and indigenous vegetation particularly pohutukawa, are an integral part of the coastal landscape of the City. Those which line the coastal cliffs have an important role in maintaining the stability of those cliffs and in reducing erosion. They also make a significant contribution to the visual amenity of these landforms. Therefore removal of indigenous vegetation or mature trees within the Coastal Protection Yard is strictly controlled in order to maintain the visual amenity of the coastline and, in certain locations, reduce the risk of erosion."

(iii) Rule 5C.7.3.3 C. General Tree Protection

"The follow rule applies to every site on the Isthmus.

No person shall, without a resource consent (except as provided for below) -

- i) *Cut, damage, alter, injure, destroy or partially destroy the following trees.*

In the Residential 1, 3a, 5, 6 and 7 zones:

- *indigenous trees (including the roots) over 6m in height or with a girth (measured at 1.4m above the ground) greater than 600mm;*
- *exotic trees (including the roots) over 8m in height or with a girth (measured at 1.4m above the ground) greater than 800mm except for Araucaria heterophylla (Norfolk Island pine);*
- *Araucaria heterophylla (Norfolk Island pine) (including the roots) over 10m in height or with a girth (measured at 1.4m above the ground) greater than 800mm.*

In all other zones throughout the Isthmus:

- *indigenous and exotic trees (including the roots) over 6m in height or with a girth (measured at 1.4m above the ground) greater than 600mm except for Araucaria heterophylla (Norfolk Island pine);*
- *Araucaria heterophylla (Norfolk Island pine) (including the roots) over 10m in height or with a girth (measured at 1.4m above the ground) greater than 800mm.*

Note: *In the case of a tree with multiple trunks (such as Pohutukawa) the girth measurement shall be the aggregate or collective measurement of all trunks which have a circumference of 250mm or more.*

- ii) *Carry on, conduct or undertake any use, excavation, deposition of material, construction, work, emplacement of services, storage or other activity in, on, above or under, the dripline (branch spread) of any tree described in (i) above, which in the opinion of Council endangers or is likely to endanger that tree."*

UPON THE GROUNDS that the Rules quoted above:

- (1) Do not specifically identify any tree or group of trees; and
- (2) Do not invoke the exceptions provided for in section 152(3) of the Act.

5. AUCKLAND COUNCIL DISTRICT PLAN (MANUKAU SECTION)

That section 152(1) and section 152(2) of the Resource Management (Simplifying and Streamlining) Act 2009 revoke the general tree protection Rule 6.9.2 – Activity Table: Trees

“Restricted Discretionary Activities

Any trimming or maintenance of any tree specified on the list of species in Schedule 6C standing over 6m in height which is not a permitted activity.

Any works or activity, which is proposed within the dripline of any, scheduled tree or which may impact on the root system of the tree.

Discretionary Activities

Removal of any scheduled tree.

Any works or activity, which may have an adverse effect on any Scheduled Tree.”

(Schedule 6C lists 44 species of exotic trees and 59 native tree species.)

UPON THE GROUNDS that the Rule:

- (1) Does not specifically identify any tree or group of trees; and
- (2) Does not invoke the exceptions provided for in section 152(3) of the Act.

6. AUCKLAND COUNCIL DISTRICT PLAN (PAPAKURA SECTION)

That section 152(1) and section 152(2) of the Resource Management (Simplifying and Streamlining) Act 2009 revoke the following general tree protection rules.

(i) Rule 2.10.2.1:

“Subject to Rule 2.10.2.2 below, no alteration shall be made to any tree or bush or any physical feature which involves:

- (a) the destruction of or irreparable damage to any native or exotic trees specified in Schedule 3E appended to Part 3 standing higher than 6 metres or having a trunk circumference of more than 0.5 metres when measured 0.5 metres from the ground; or*
- (b) the destruction of or irreparable damage to any tree, bush, plant or landscape specified in Schedule 3B appended to Part 3; or*
- (c) the destruction of or irreparable damage to any tree, bush, plant or landscape within a Site of Special Wildlife Interest specified in Schedule 2A appended to this Section of the Plan.*

This rule shall not limit:

- (a) the trimming and pruning of a tree in accordance with recognised arboricultural practice, which is not likely to result in the death or destruction of the tree or cause irreparable damage to it.*
- (b) the treatment and removal of dead, damaged or diseased trees or other works relating to trees, earthworks or landform features which are immediately necessary to avoid any actual or potential damage to the life, health or property of the people of any area.*
- (c) the establishment, management and harvesting of indigenous forests planted for that purpose.*
- (d) the management and harvesting of trees planted for that purpose.*
- (e) the powers of any statutory authority to carry out work authorised by any statutory provision.*
- (f) the power of the Council in terms of this District Plan to approve a plan of subdivision and set conditions as to the preservation of natural landscape, trees or areas of trees or bush.*

- (g) *the operation of any Statute or delegated legislation which may conflict with this ordinance or to which this ordinance is subordinate.*
- (h) *the operation of Rule 3.8.11 relating to deletion of scheduled items."*

(ii) Rule 3.8.1(e):

"Interpretation

For the purpose of this rule, "scheduled item" means any:

- (e) *species of trees to be protected as listed in Schedule 3E."*

(iii) Rule 3.8.2:

"Schedule 3E items:

The protection in relation to the species of trees listed extends to all parts of the tree, including the root system."

(iv) Rule 3.8.4 – Scheduled Items to be Protected

"To the extent that a scheduled item is protected by Rule 3.8.2, no person or body shall, without the Council's written consent under this Ordinance, wilfully destroy, remove, damage, alter, repair, add to or reconstruct any scheduled item provided that the Council's consent shall not be required in the following instances:

- (a) *For the re-decoration, restoration, repair or minor alteration of any original fabric or detailing thereof, faithfully carried out in the same manner and design and with similar materials as those originally used and which does not detract from those features for the protection of which the item has been scheduled.*
- (b) *For any change or use permitted on the site but which is unrelated to the purpose for which the item was scheduled or to the extent to which it is protected in terms of Rule 3.8.2 and which does not detract from the features for the protection of which it was scheduled.*

- (c) *For any trimming or pruning of any tree, bush or plant which will not significantly alter that item and which is not likely to result in the death, destruction or irreparable damage of that item, or for the treatment and/or removal of dead, damaged or diseased items.*
- (d) *Where exceptions are provided for in Schedules 3A, B, C, D of this Part of the Plan."*

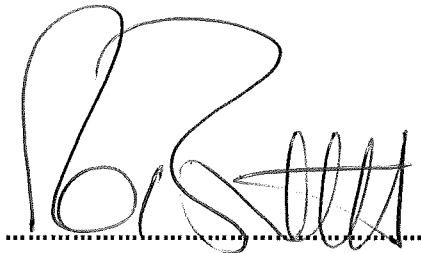
(Schedule 3E lists 26 native tree species and 12 exotic tree species.)

UPON THE GROUNDS that the Rules quoted above:

- (1) Do not specifically identify any tree or group of trees; and
- (2) Do not invoke the exceptions provided for in section 152(3) of the amending Act.

IN RESPECT OF ALL DECLARATIONS SOUGHT ABOVE, to the extent that material extraneous to the Auckland Council District Plan may be of assistance to the Court in reaching its conclusions, the following material will be provided to the Court by the applicant:

- (i) Technical Advisory Group report, February 2009;
- (ii) Reports of Parliamentary Select Committee considering 2009 amendments bill;
- (iii) Relevant extracts from Hansard.



R E Bartlett

Counsel for Property Council New Zealand Incorporated

28 February 2012

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BEFORE THE ENVIRONMENT COURT**ENV-2012-AKL- 000039****IN THE MATTER**of the Resource Management Act
1991**AND****IN THE MATTER**of an application by **PROPERTY
COUNCIL OF NEW ZEALAND
INCORPORATED** for
declarations under section 311 of
the Act

**MEMORANDUM OF COUNSEL IN SUPPORT OF APPLICATION FOR DECLARATIONS
UNDER SECTION 311 OF THE RESOURCE MANAGEMENT ACT 1991
CONCERNING GENERAL TREE PROTECTION PROVISIONS
IN THE AUCKLAND COUNCIL DISTRICT PLAN**

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MAY IT PLEASE THE COURT:

1. This memorandum accompanies an application for declarations lodged on behalf of **PROPERTY COUNCIL OF NEW ZEALAND INCORPORATED** concerning the application of section 152 of the Resource Management (Simplifying & Streamlining) Amendment Act 2009 to parts of six former District Plans which now comprise sections of the Auckland Council District Plan.

Format of the Application

2. The rules in respect of which declarations are sought are fully quoted within the body of the application document.
3. Given that the matter is expected to proceed by way of legal argument, no affidavit is filed at this stage. In the event that the status of the applicant or the importance of the subject matter were to be put in issue, such questions could be addressed by way of affidavit.

Anticipated Further Documentation

4. At the very least, the following matters of public record will be put before the Court, I anticipate by consent:
 - (i) Technical Advisory Group report, February 2009;
 - (ii) Reports of Parliamentary Select Committee considering 2009 Amendment Bill;
 - (iii) Relevant extracts from Hansard;
 - (iv) Full chapters of relevant District Plan provisions including planning maps.
5. Inevitably, other participants will wish to bring additional documentation to the Court's attention. Some may seek to produce affidavit evidence.

6. An agreed bundle of documents, indexed and paginated, is considered the best method of presentation for the matters of record. This can be subject to discussion and to the Court's direction in due course.

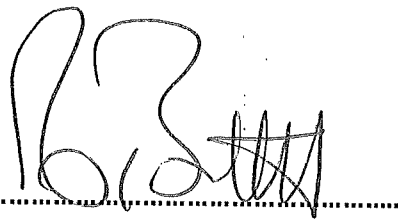
Parties to be Served

7. Auckland Council is being served with a copy of the application and of this memorandum contemporaneously with the material being filed in Court.
8. Directions are sought from the Court that there be further notification to:
 - (i) The Minister for the Environment;
 - (ii) Local Government New Zealand;
 - (iii) All other participants in the application for declarations under section 311 of the Resource Management Act by Auckland Council (ENV-2010-AKL-000241) being:
 - Upper Hutt City Council;
 - Waitakere Ranges Protection Society Incorporated;
 - Environmental Defence Society Incorporated;
 - The Tree Council Incorporated;
 - Vector Limited;
 - Stephen Havill;
 - Stephen Mills QC.
9. The proceedings referred to above were also subject to notification in the New Zealand Herald. The Court may consider that the same course should be followed here.

Directions Conference

10. An initial conference is requested involving the Court, the applicant and Auckland Council to consider the following:

- (i) Parties to be served;
- (ii) The form of any public notice;
- (iii) An indication of which applications, if any, Auckland Council wishes to contest.
- (iv) Additional documentation considered appropriate (at this stage) by Auckland Council;
- (v) Indicative date for second conference including section 274 parties;
- (vi) Particular additional matters to be included in the notice of application to be served on other parties.
- (vii) The appropriateness of the matter being determined by a full bench of the Court, given its significance, and the applicant's request for relief that differs from that granted in earlier proceedings.



R E Bartlett

Counsel for Property Council of New Zealand Incorporated

28 February 2012

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application by *Property Council of New Zealand Incorporated* for declarations under section 311 of the Act

ENV-2012-AKL-000039

BEFORE THE ENVIRONMENT COURT

Environment Judge L J Newhook sitting alone under s279 of the Act

APPEARANCES

Russell Bartlett and Bronwyn Carruthers for the applicant
Brigid McDonald for the Auckland Council

**MINUTE OF THE COURT FOLLOWING A JUDICIAL TELEPHONE
CONFERENCE HELD 7 MARCH 2012**

- (1) This telephone conference was convened to discuss the extent and form of service on other parties.
- (2) I began the conference by referring to Mr Bartlett's memorandum of 28 February, in particular paragraph 10 which contained suggestions for matters to be considered in the conference. Ms McDonald advised she was concerned to keep things as straight-forward as possible pointing out some of these matters have been litigated before. Ms McDonald also indicated that some of the rules that had been listed in the application are now to be revoked, and that parties were still in the process of working through these matters.



- (3) Discussion turned to the extent of the evidence that might be offered by the parties. I indicated that I wanted to be clear on the extent of pleadings before any public notice is given. Also that there is a need to manage this matter within the context of the declaration proceeding. Ms McDonald agreed that this matter was largely a matter of legal interpretation however the Council might wish to give evidence as to how the council is treating these rules. I directed the present parties to talk and endeavour to agree the extent of evidence that might be necessary, and suggested that a memorandum of counsel should be sufficient on this.
- (4) Mr Bartlett advised there has been discussion with the council regarding a single map to be produced, possibly alongside other agreed materials in a bundle. I confirmed this would be helpful in order to refine the information from the 7 or more District Plans.
- (5) Mr Bartlett raised the point that it might be necessary for the Court to make a some limited value judgments around the definition of "groups of trees", as it had been raised that an eco system might constitute a "group".
- (6) Ms McDonald indicated she consented to Mr Bartlett's suggested list of parties to be served in his memorandum of 28 February (para 8).
- (7) We then proceeded to discuss the draft public notice. Mr Bartlett advised that he had sent such to the council last week and it was agreed that it should be put before the Court before publication. It was suggested that the notice could be published on 24 March 2012 and that it would be helpful to hold a Conference in Court after the close of the s274 period. It was also agreed that the s274 period should run for 15 working days from the publication of the notice. Therefore a suitable date for the Conference in Court might be around 26 or 27 April. I indicated I would not commit to exactly when the hearing would be held but indicated I would be aiming for about June.
- (8) I raised the issue that should there be modifications to the rules, either volunteered by Auckland Council or by order of the Court, it was desirable in the public interest to alleviate the need for parties to prepare material about the allegedly general tree rules for Council hearings. Ms McDonald advised that the first such hearing was due to start tomorrow. I requested the council to provide the Court with a memorandum containing the schedule of hearing dates set by it in the



meantime, as the extent to which such council hearings were foreshadowed might dictate to some degree of urgency in setting a Court hearing date in these proceedings.

(9) I directed a further **Judicial Telephone Conference for 20 March 2012 at 9:15am.**

(10) Summary of directions:

- An update on the modification/revocation of some of the rules by the council.
- Parties to discuss, agree and then advise the Court in a preliminary way the extent of evidence they suggest be filed in this matter.
- A copy of the draft public notice to be lodged.
- Ms McDonald to provide a schedule of council hearing dates regarding these plan changes.

A joint memorandum is to be filed by 19 March.

DATED at Auckland this *24* day of March 2012



L J Newhook
Environment Judge



BEFORE THE ENVIRONMENT COURT

ENV-2012-AKL-000039

IN THE MATTER OF

of an application by Property Council of New Zealand Incorporated for declarations under section 311 of the Resource Management Act 1991

BETWEEN

**PROPERTY COUNCIL OF NEW ZEALAND
INCORPORATED**

Applicant

AND

AUCKLAND COUNCIL

Respondent

MEMORANDUM OF COUNSEL FOR THE RESPONDENT

Dated 19 March 2012

Auckland Council
Legal Services
Private Bag 92300, Victoria Street
AUCKLAND 1142

Tel: 366 2521
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Solicitor: Brigid McDonald / Daniel Sadlier
Phone: (09) 366 2523 / 366 2524
Email: brigid.mcdonald@aucklandcouncil.govt.nz /
daniel.sadlier@aucklandcouncil.govt.nz

MAY IT PLEASE THE COURT

Introduction

1. The Court has directed, by minute dated 7 March 2012, that a joint memorandum be filed today, including:
 - An update on the modification/revocation of some of the rules by the council.
 - Parties to discuss, agree and then advise the Court in a preliminary way the extent of evidence they suggest be filed in this matter
 - A copy of the draft public notice to be lodged.
 - Ms McDonald to provide a schedule of council hearing dates regarding these plan changes.
2. Mr Bartlett is not available to sign a joint memorandum today, but has confirmed to the Court that counsel for the Respondent may confirm the relevant matters by way of this memorandum of counsel.

Modification/revocation of rules

3. Counsel has been liaising with Council officers to confirm the extent to which the district plan rules ("**Tree Rules**") raised in the Applicant's application for declarations ("**Application**") are being treated by the Council as having been revoked, or to continue in force, after 1 January 2012.
4. Counsel can confirm that while a number of the Tree Rules are being treated as being revoked within certain zones of the district plan none of the Tree Rules that are the subject of the Application are being treated as having been revoked in their entirety from 1 January 2012.

Extent of evidence to be filed

5. While this proceeding is largely a matter of legal interpretation, the Application effectively challenges the Respondent's application of the Act and the decision of the Environment Court in [2011] EnvC 127 ("**May 2011 Decision**"). To that end, the Respondent does not intend to take an active role in "defending" the Tree Rules, but considers it necessary and appropriate to file affidavit evidence from a Council planning officer, setting out, by way of summary:
 - a. The Respondent's understanding of the effect of the declarations made by the Court in the May 2011 Decision.

- b. How the Respondent has applied the principles of the May 2011 Decision to the remaining Tree Rules that were not expressly subject to that decision.
- 6. Counsel for the Applicant has asked us to convey to the Court that:
 - a. He does not object to the evidence that Counsel for the Respondent seeks to file, but reserves the right to challenge it on relevance.
 - b. He does not propose to lead evidence but wishes to reserve the right to do so in rebuttal if relevant factual contests emerge.

Draft public notice

- 7. The agreed form of the public notice was filed by counsel for the Applicant on Friday, 16 March 2012.

Council hearing dates for Notable Tree Schedule Plan Changes

- 8. A number of plan changes that the Respondent is currently processing seek to schedule individual “notable” trees for protection (together the **“Notable Tree Plan Changes”**). The status and relevant timeframes for the Notable Tree Plan Changes are as follows:
 - a. Plan Change 36 to the Auckland Council District Plan (North Shore Section) was first notified on 15 April 2010 but was placed on-hold pending the May 2011 Decision. The hearing of submissions was completed this month; a decision has not yet been made or notified.
 - b. The other notable tree plan changes¹ were all notified in January 2012 and the submission period closed on 17 February 2012. Summaries of the decisions requested by submitters are yet to be notified (the intention is to notify the summaries in late April/May, with hearings likely to be scheduled for June-July 2012).

¹ Plan Change 149 to the Auckland Council District Plan (Rodney Section), Plan Change 4 to the Auckland Council District Plan (Waitakere Section), Plan Change 305 to the Auckland Council District Plan (Auckland City Isthmus Section), Plan Change 37 to the Auckland Council District Plan (Manukau Section), Plan Change 16 to the Auckland Council District Plan (Papakura Section), and Plan Change 39 to the Auckland Council District Plan (Franklin Section).

9. The Notable Tree Plan Changes deal with the addition of individual trees to the schedules of notable trees within each section of the Auckland Council District Plan.
10. The criteria for scheduling the relevant trees are set out in the respective sections of the Auckland Council District Plan and are not dependent on whether or not the Tree Rules are applicable or not.
11. Accordingly, the Respondent's view is that the processing of the Notable Tree Plan Changes will neither influence, nor be influenced by, whether the declarations sought by the Applicant are granted or refused.

Directions

12. A further judicial telephone conference has been scheduled for tomorrow, 20 March 2012, to discuss what further directions might be appropriate

Dated 19 March 2012



Brigid McDonald/Daniel Sadlier
Counsel for the respondent