

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2016-AKL-

IN THE MATTER of the Local Government (Auckland Transitional Provisions) Act 2010 ("**LGATPA**") and the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER of an appeal under section 156(1) of the LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearing Panel ("**Hearing Panel**") on the proposed Auckland Unitary Plan ("**Proposed Plan**")

AND

IN THE MATTER of Proposed Plan Hearing Topic 041 – Earthworks

BETWEEN **THE NATIONAL TRADING COMPANY OF NEW ZEALAND LIMITED** (Submitter 2632; Further Submitter FS2963)

Appellant

A N D

AUCKLAND COUNCIL

Respondent

NOTICE OF APPEAL

RE PROPOSED PLAN TOPIC 041 – KAURI DIEBACK

DATED: 12 September 2016

**ELLIS GOULD
SOLICITORS
AUCKLAND**

REF: Douglas Allan

**Level 17 Vero Centre
48 Shortland Street, Auckland
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TO: The Registrar
Environment Court
AUCKLAND

1. **The National Trading Company of New Zealand Limited (“the Appellant”)** appeals against part of a decision of **Auckland Council (“the Council”)** on the proposed Auckland Unitary Plan (“**Proposed Plan**”).
2. The Appellant has the right to appeal the Council's decision to the Environment Court under section 156(1) of the LGATPA because the Council rejected recommendations of the Hearings Panel in relation to provisions or matters relating to the Proposed Plan:
 - (a) That the Appellant addressed in its submission relating to the earthworks provisions in the Proposed Plan (submission number 2632); and
 - (b) That resulted in alternative solutions being included in the Proposed Plan.
3. The Appellant provides further details of the reasons for its Appeal below.
4. The Appellant is not a trade competitor for the purposes of section 308D of the RMA. In any event, the Appellant is directly affected by effects of the subject of the Appeal that:
 - (a) Adversely affect the environment; and
 - (b) Do not relate to trade competition or the effects of trade competition.
5. Notice of the decision that is being appealed, being the decision on Proposed Plan Hearing Topic 041 (Earthworks) (“**the Decision**”), was received by the Appellant on or about 19 August 2016.
6. The Decision was made by the Council.
7. The provisions and parts of the Decision that are being appealed are the rejection by the Council of the Hearing Panel's recommendations pursuant to Hearing Topic 041, summarised by Council as “*the deletion of kauri dieback controls*”.
8. The reasons for this Appeal are:
 - (a) The National Trading Company of New Zealand Limited (submitter 2632; further submitter FS2963) lodged original submissions dated 26 February 2014 and further submissions dated 22 July 2014

(collectively, “**the Submissions**”) which sought, amongst other things, amendments to the provisions addressing kauri dieback disease so that, if they are retained, any such controls apply only “*in areas where kauri dieback disease has been identified*” rather than being applied throughout the Region.

- (b) The Hearing Panel’s recommendations upheld the Submissions and deleted the provisions relating to kauri dieback disease in their entirety.
- (c) The Decision rejected the Hearing Panel’s recommendations and reinstated kauri dieback disease controls as regional rules in part E11 - Land Disturbance.
- (d) Auckland Council has argued that it is lawful and appropriate for the Proposed Plan to address the issue of kauri dieback disease in the context of the provisions in the RMA that address biodiversity. In contrast, the Appellant considers that:
 - (i) While provisions that, for example, prevent the clearance of vegetation from forested areas are enabled by the RMA, the provisions with respect to kauri dieback disease are of a different character:
 - Prohibitions on clearance endeavour to retain areas of vegetation and in doing so to promote the retention of biodiversity either directly (by ensuring that the flora in those protected areas remain intact) or indirectly (by ensuring retention of the ecological conditions that promote biodiversity in terms of fauna).
 - In contrast, the controls relating to kauri dieback disease endeavour to stop the spread of pathogens with respect to a particular disease which affects a particular species of tree. There is little connection between that provision and the retention of biodiversity.
 - (ii) The Council’s proposed provisions address matters relating to plant pathology rather than planning. There is no greater rationale or legal basis for these controls than there would be

for district plan provisions that endeavoured to control the spread of disease in native animals or humans. These matters relate not to resource management but to ecological and public health.

- (e) Proposed Plan provisions are a blunt instrument for addressing a problem as specific as a single disease affecting a single species of plant. Proposed Plan provisions tend to deal with generalities and must apply to a large number and wide variety of properties throughout a district. Accordingly, the courses of action required in a regional or district plan necessarily lack nuance and subtlety.
- (f) Incorporating a single provision governing kauri dieback disease into the Proposed Plan is likely to be of little benefit in practice:
 - (i) The provisions apply to works in proximity to kauri trees and hence apply across site boundaries and potentially will affect remote sites (ie: sites that are not adjacent to the site that contains the relevant tree).
 - (ii) The owners of properties that contain kauri trees and their neighbours are unlikely to find, read and comply with the provision. In the absence of a comprehensive education programme there is, therefore, little benefit likely to result from its incorporation into the Proposed Plan.
 - (iii) It is not reasonable to expect landowners to be aware that gardening or other works in the vicinity of one species of tree imposes additional constraints in terms of the Proposed Plan.
 - (iv) The effect of the provision will be, however, to render relatively minor activities such as gardening unlawful in terms of the RMA. The proposed provision will therefore place members of the public at risk of committing offences under the RMA in circumstances where they could not reasonably have been aware that their conduct would be unlawful.
- (g) The proposed provisions are unlikely to provide a bio-security benefit but potentially impose significant costs on members of the public.

- (h) In practice, the control of kauri dieback disease will require education of the public, a societal appreciation of the problem and acceptance of the measures needed to respond to it. That will, in turn, require a positive campaign from the central and local government entities responsible for managing the disease. That is the antithesis of the regulatory and potentially punitive approach adopted by Council and the government agencies in terms of the kauri dieback provisions.
- (i) There is a danger that Council and relevant central government agencies will assume that, through placing the provisions in the Proposed Plan, they will absolve themselves of further responsibility to control kauri dieback disease. It is preferable for any regulation in response to the disease to be focused on and clearly directed at the disease either by way of national regulations or through bylaws. Central and local government should identify the most efficient and effective means of regulating and adopt that means in preference to a plethora of potentially competing controls.
- (j) Unless and until the Proposed Plan provisions regarding kauri dieback disease are deleted in their entirety or limited in their application to areas where kauri dieback disease has been identified, they will not:
 - (i) Promote the sustainable management of resources;
 - (ii) Otherwise be consistent with Part 2 of the RMA;
 - (iii) Be appropriate in terms of section 32 of the RMA; or
 - (iv) Be consistent with the balance of the provisions of the Proposed Plan.

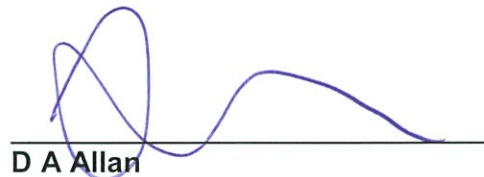
9. The Appellant seeks the following relief:

- (a) That the Decision subject to this Appeal be disallowed.
- (b) Reinstatement of the Hearing Panel's recommendation pursuant to Hearing Topic 041 regarding the deletion of the provisions regarding kauri dieback disease control in their entirety.
- (c) In the event that the relief sought in paragraph (b) above is not implemented, that the kauri dieback disease control provisions apply only to areas where kauri dieback disease has been identified and not to the balance of the region.

- (d) Such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this Appeal.
 - (e) Costs of and incidental to the Appeal.
10. The Appellant **attaches** the following documents to this Notice of Appeal:
- (a) Copies of the Appellant's original submission relating to the provisions governing kauri dieback disease controls (**Annexure A**).
 - (b) A copy of the relevant parts of the Decision (**Annexure B**).
 - (c) A record that Auckland Council will be served with a copy of this Notice in accordance with the decision of the Environment Court granting waivers (Refer: [2016] NZ EnvC 153) concerning the service of notices of appeal on the Proposed Plan (**Annexure C**).

DATED at Auckland this 12th day of September 2016

The National Trading Company of New Zealand Limited by its solicitors and duly authorised agents Ellis Gould



D A Allan

ADDRESS FOR SERVICE: The offices of Ellis Gould, Solicitors, Level 17 Vero Centre, 48 Shortland Street, PO Box 1509, Auckland, DX CP22003, Auckland, Telephone: (09) 307-2172, Facsimile: (09) 358-5215.

ANNEXURE A

Copies of the Appellant's original and further submissions

Submission on Proposed Auckland Unitary Plan

Section 123 of the Local Government (Auckland Transitional Provisions) Act 2010 and
Clause 6 of Schedule 1 to the Resource Management Act 1991

The National Trading Company of New Zealand Limited Submission 6 – General Matters

To: Auckland Council

Name of Submitter: The National Trading Company of New Zealand Limited (“NTC”),
c/- Support Centre, 60 Roma Road, Mt Roskill, Auckland 1440, New Zealand
DX Box CX 15021 or PO Box 27480 Mount Roskill, Auckland 1440, New Zealand (For:
Angela Bull).

1. This is a submission on the proposed Auckland Combined Plan (“**the Unitary Plan**”).
2. The specific provisions of the Unitary Plan that this submission relates to are:
 - (a) The various General Definitions addressed in **Annexure 1**.
 - (b) The various Natural Resources Definitions addressed in **Annexure 2**.
 - (c) Part 3 Chapter H Section 6.2 Noise and Vibration.
 - (d) The various objectives, policies and rules concerning the Natural Resources sections in the Unitary Plan that are addressed in **Annexure 4**.
 - (e) Part 3 Chapter G Section 2.1.1 which states as a general rule that, “*The most restrictive activity status determines the overall activity status of the proposal.*”
 - (f) The notation in the Historic Heritage Overlay that identifies Places and Sites of Value to Mana Whenua and the adequacy of the assessment undertaken to identify those matters.
 - (g) Part 3 Chapter J Section 5.2.1 Activity Table which provides that earthworks within 50m of a Place or Site of Value to Mana Whenua is a Restricted Discretionary Activity
 - (h) All objectives, policies and explanatory passages on which the rules identified above are reliant or based.

3. NTC could not gain an advantage in trade competition through this submission. In any event, NTC is directly affected by effects of the subject matter of the submission that:
 - (a) Adversely affect the environment; and
 - (b) Do not relate to trade competition or the effects of trade competition.

4. NTC's submission is as follows:
 - (a) NTC is a property holding company of Foodstuffs (North Island) Limited ("**Foodstuffs**"). Foodstuffs is a 100% New Zealand owned co-operative company, which operates the PAK'nSAVE, New World and Four Square retail brands throughout the North Island and the Gilmours wholesale brand in the northern half of the North Island.
 - (b) As a property holding company, NTC participates actively in regional and local planning processes to provide for the sustainable growth and development of its retail and wholesale brands. The draft Unitary Plan is a key planning document for NTC in providing guidance for future investment and employment opportunities.
 - (c) NTC considers that the Unitary Plan provisions subject to this submission are variously unnecessary, overly onerous, counterproductive, unjustified or ultra vires Auckland Council's powers and obligations pursuant to the RMA, including for the more detailed reasons set out in the **Annexures** hereto.
 - (d) Unless and until the Unitary Plan provisions are amended in accordance with the relief sought below they will not:
 - (i) Promote the sustainable management of resources;
 - (ii) Otherwise be consistent with Part 2 of the Resource Management Act 1991 ("**RMA**"); or
 - (iii) Be appropriate in terms of section 32 of the RMA.

In particular but without derogating from the generality of the above:

- (e) The General Definitions of “*building suppliers*”, “*gross floor area*”, “*identified growth corridors*”, “*notional boundary*”, “*public places*”, and “*sign*” addressed in **Annexure 1** require amendment, including for the more detailed reasons specified in the annexure.
- (f) The Natural Resources Definitions of “*detailed site investigation (contaminated land)*”, “*diversion of stormwater*”, “*flood plain*”, “*groundwater diversion*”, “*high contaminant-generating areas*”, “*impervious area*” and “*sediment control*” addressed in **Annexure 2** require amendment, including for the more detailed reasons specified in the annexure.
- (g) The Natural Resources Definition of “*land containing elevated levels of contaminants*” addressed in **Annexure 2** requires replacement with a new definition for a new term, being “*contaminated land*”, including for the more detailed reasons specified in the annexure.
- (h) Part 3 Chapter G Section 2.1.1 states as a general rule, that “*The most restrictive activity status determines the overall activity status of the proposal.*” NTC seeks the addition of a Section 2.1.3 that promotes unbundling when it is appropriate. This amendment is required because:
 - (i) In practice, Council planning officers are often reluctant to unbundle application for consent regardless of whether they relate to independent matters.
 - (ii) As a result, the activity status applying to relatively straightforward proposals is often inappropriate, which results in increased costs and complexity for applicants because of the additional assessment that is required.
 - (iii) Although there are significant efficiency gains to be achieved by unbundling, there is no mention of this technique in the Unitary Plan. In practice, there are often obvious opportunities for unbundling and a specific statement in this regard will make it more likely that unbundling will be applied by processing planners.
- (i) Part 3 Chapter H Section 6.2 Noise and Vibration of the Unitary Plan requires amendment for clarification, completeness and consistency and to remedy errors and inaccuracies.

- (j) Part 3 Chapter I Section 3.4.1 – Business Zone Development Control Infringements provides that buildings that infringe three or more of the specified development controls are a discretionary activity. That provision is opposed. Applications to infringe each of the specified development controls are all subject to specific assessment criteria that enable Council to assess the identified potential effects of the infringement. There is no basis for elevating the planning status of such activities simply because a number of aspects require consent for infringements. The provision is arbitrary and inappropriate.
- (k) **Annexure 4** is a schedule of objectives, policies and rules concerning the Natural Resources sections in the Unitary Plan that require amendment or deletion, including for the reasons set out in the annexure.
- (l) The Historic Heritage Overlay identifies Places and Sites of Value to Mana Whenua. Those features are identified on the planning maps with an overlay consisting of a circle with a standard diameter of 200m. Part 3 Chapter J Section 5.2.1 Activity Table provides that earthworks within 50m of that circle is a Restricted Discretionary Activity. In that regard:
 - (i) The relationship between the controls is unclear. It is possible that Council will require a Restricted Discretionary Activity consent for any earthworks within 50m of the *edge* of the notation in the planning maps. That would affect all earthworks in a circular area with a diameter of 300m.
 - (ii) It is neither effective nor efficient to require consent when the sites or places of concern are not carefully identified and their value is unclear. For proposals affected by the rule consultation with iwi will be required and additional time and cost imposed on an applicant.
 - (iii) NTC is concerned that the proposed notations have not been subject to a comprehensive review. Given the scale of additional work likely to be required as a result of the operation of these rules, Council should review the necessity for the overlay to apply in each case and, for those sites or places for which the overlay is justified, the diameter of the overlay and of the area within which consent is needed for

earthworks should be explicitly reduced to 100m (ie: a 50m radius centred on the place or site of value).

- (iv) The provisions lack flexibility in that a cultural impact assessment is anticipated in all cases whereas the Council should reserve to itself flexibility as to the manner in which issue might be addressed (eg: via consultation).
- (v) The provisions provide no guidance as to the timeframe in which an applicant might expect to receive a cultural impact assessment in the event that one is required under the provisions. It is appropriate to ensure that any assessments are made available in a timely manner given that their preparation is not within an applicant's control.

5. The Submitter seeks the following relief from Auckland Council:

- (a) That the Unitary Plan General Definitions of "*building suppliers*", "*gross floor area*", "*identified growth corridors*", "*notional boundary*", "*public places*", and "*sign*" be amended in accordance with the wording set out in **Annexure 1**.
- (b) That the Unitary Plan Natural Resources Definitions of "*detailed site investigation (contaminated land)*", "*diversion of stormwater*", "*flood plain*", "*groundwater diversion*", "*high contaminant-generating areas*", "*impervious area*" and "*sediment control*" be amended in accordance with the wording set out in **Annexure 2**.
- (c) That the Unitary Plan Natural Resources Definition of "*land containing elevated levels of contaminants*" be replaced with a new definition for a new term, being "*contaminated land*", in accordance with the wording set out in **Annexure 2** and that all necessary consequential changes be made in the Unitary Plan to replace the term "*land containing elevated levels of contaminants*" with the term "*contaminated land*".
- (d) That Part 3 Chapter G Section 2.1 be amended by adding a new Section 2.1.3, as follows:

"Where there is more than one reason for consent being required, unbundling may be appropriate so that the overall activity status of the proposal is not unduly restrictive. In particular:

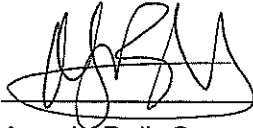
- *Matters identified as regional plan (rp) matters will generally be considered separately to district plan matters. For example stormwater matters will generally be considered separately to building design matters or development control infringements.*
 - *Where the effects of aspects of a proposal that may be considered separately do not overlap, the applications for consent in respect of those aspects will not be bundled. For example, building design and an infringement in relation to the size of apartments within the building should not be bundled.”*
- (e) That Part 3 Chapter H Section 6.2 Noise and Vibration of the Unitary Plan be amended, for example in accordance with **Annexure 3**.
- (f) That Part 3 Chapter I Section 3.4.1 – Business Zone Development Control Infringements which provides that buildings that infringe three or more of the specified development controls are a discretionary activity be deleted.
- (g) That the objectives, policies and rules concerning the Natural Resources sections in the Unitary Plan addressed in **Annexure 4** be amended or deleted in accordance with the relief specified in that annexure.
- (h) That with regard to the Historic Heritage Overlay regarding sites or places of value to Mana Whenua:
- (i) Council carry out a comprehensive review of the notation on the Historic Heritage Overlay regarding sites or places of value to Mana Whenua to ensure that only sites that warrant such protection are identified. In that regard it is suggested that:
- Further work be carried out to properly identify the sites that have such significance or value including an accurate assessment of the extent of each such site.
 - The identified sites be recorded in the Unitary Plan maps by way of a symbol delineating the location and extent of the site (together with an illustrative plan in the annexures if needed) rather than the extensive circular map notation currently used.

- The Unitary Plan identify the iwi group(s) to which the site has value or significance.
- (ii) The provisions take a more refined approach with respect to the implications arising from such a notation to the effect that a range of options including consultation are available in place of a blanket requirement to obtain a cultural impact assessment.
 - (iii) The provisions specify a timeframe within which a cultural impact assessment should be prepared in the event that one is required.
- (i) That Part 3 Chapter J Section 5.2.1 Activity Table which provides that earthworks within 50m of a site or place of value to Mana Whenua be amended to provide explicitly that the area within which consent is needed for earthworks is reduced to an area with a diameter of 100m (ie: a 50m radius centred on the place or site of value).
 - (j) That any objectives, policies or explanatory passages on which the rules identified above are reliant or based are deleted or amended to the extent necessary in order to enable the Council appropriately to make the amendments sought above.
 - (k) The above paragraphs and **Annexures 1 to 4** comprise examples of relief that would address appropriately matters raised in this submission. Other forms of relief may also be appropriate and within the scope of the matters raised in this submission. The Submitter therefore provides the above relief by way of example but not to the exclusion of other appropriate and effective methods of upholding this submission.
 - (l) Such other relief or other consequential amendments as are considered appropriate or necessary to address the concerns set out in this submission.
6. NTC wishes to be heard in support of this submission.
 7. If others make a similar submission NTC will consider presenting a joint case with them at the hearing.

Dated this 26th day of February 2014

The National Trading Company of New Zealand Limited

by its duly authorised agent:



Angela Bull, General Manager Property Development

c/- Support Centre, 60 Roma Road, Mt Roskill, Auckland 1440, New Zealand
DX Box CX 15021 or PO Box 27480 Mount Roskill, Auckland 1440, New Zealand (For:
Angela Bull).

ADDRESS FOR SERVICE: The offices of Ellis Gould, Solicitors, Level 17, Vero Centre, 48
Shortland Street, PO Box 1509, Auckland 1140, DX CP22003, Auckland, Telephone: (09)
307-2172, Facsimile: (09) 358-5215. Attention: Douglas Allan / Joanna van den Bergen.

ANNEXURE 4

5		<p>Delete; or amend as follows: The earthworks must not alter the configuration of an overland flow path (i.e. the works must maintain the same route of the overland flow path) <u>unless an appropriately designed alternative overland flow path is provided</u>, <u>must</u>, maintain the same entry and exit point at the site boundary, and <u>must</u> not alter the volume and velocity of water flow. Earth and other material stockpiles and must not be stored within an overland flow path.</p>	<p>implemented in accordance with ARC's TP90. This is required by control 2.1.1.2. This control is likely to affect a large proportion of developments. Appropriately designed alternative routes through the site could be utilised.</p>
6	2.1.1.16	<p>To prevent the spread of Kauri Dieback disease vehicle and equipment hygiene techniques must be adopted, <u>in areas where Kauri Dieback disease has been identified</u>, so that no soil from earthworks within 30m of a New Zealand kauri tree is transported off site.</p>	<p>This control is likely to have unintended adverse consequences, e.g. removal of trees that are not infected. The control should be deleted or amended so that it is limited to zones where Kauri Dieback is known to be a problem.</p>
7	<p>H.4.5 Contaminated Land 4.5</p>	<p>Remove reference to the 'Canadian Environmental Quality Guidelines' and insert reference to the Soil Contaminant Guidelines contained in the '<i>Resource Management (National Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011</i>' Remove all reference(s) to guidelines in Regional and District Rules for determining whether concentrations of contaminants in soil pose an unacceptable health risk for an existing or proposed land use. Instead, make reference to the '<i>Resource Management (National Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011</i>' as the required means of determining whether concentrations of contaminants in soil pose an unacceptable health risk for an existing or proposed land use except for contaminants not listed in the NES which should be assessed against criteria determined in accordance with Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values.</p>	<p>The introduction of the '<i>Resource Management (National Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011</i>' (NES) removed the discretion that regional councils had when determining whether contaminants in soil posed an unacceptable risk to human health for an existing or proposed land use by providing Soil Contaminant Guidelines for certain priority organic and inorganic contaminants and defined methods to determine whether non-priority contaminants in fact posed a risk to human health for an existing or proposed land use. It is accordingly inappropriate that Council undermine the use of these regulations by: (a) not deferring to these regulations when determining whether contaminants in soil pose an unacceptable risk to human health for an existing or proposed land use, and (b) deferring to international guidelines, such as the 'Canadian Environmental Quality Guidelines' when determining land is suitable for a particular land use rather than the NES.</p>

ANNEXURE B

Copy of the relevant parts of the Decision



**Decisions of the Auckland Council on
recommendations by the Auckland Unitary
Plan Independent Hearings Panel on
submissions and further submissions to the
Proposed Auckland Unitary Plan**

Decisions Report

19 August 2016

31. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing topic 041 (Earthworks and minerals), July 2016”

Panel recommendations accepted:

31.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 041 (Earthworks and minerals), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps, except as listed below at paragraph 31.2.

Panel recommendations rejected:

31.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 041 (Earthworks and minerals), as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) The deletion of kauri dieback provisions

Reasons	
(i) It is internationally recognised that pathogens responsible for kauri dieback are spread by movement of soil. It is important that there are clear standards for development and earthworks around kauri trees, and a mechanism for the Council to manage the spread of the disease.	
Alternative solution	See Attachment A



**Decisions of the Auckland Council on
recommendations by the Auckland Unitary
Plan Independent Hearings Panel on
submissions and further submissions to the
Proposed Auckland Unitary Plan**

Attachment A

The alternative solutions prepared by the Council for any rejected recommendations (which includes: text, diagram and map alternative solutions).

19 August 2016

Topic 041
E11 Land disturbance-
regional_kauri dieback

E11. Land disturbance – Regional

E11.1. Background

Land disturbance is ...

E11.6. Standards

E11.6.1. Accidental discovery rule

(1) Despite any other rule ...

E11.6.2. General standards

All activities (except ancillary farming earthworks, ancillary forestry earthworks and network utilities) listed as a permitted activity, controlled activity or restricted discretionary activity in Table E11.4.1, E11.4.2 or E11.4.3 must comply with the following permitted activity standards.

(1) Land disturbance must not ...

(6) To prevent the spread of contaminated soil and organic material with kauri dieback disease, vehicle and equipment hygiene procedures must be adopted when working within 3 times the radius of the canopy drip line of a New Zealand kauri tree. Soil and organic material from land disturbance within 3 times the radius of the canopy drip line must not be transported beyond that areas unless being transported to landfill for disposal.

~~(6)~~ (7) Earthworks for maintenance ...

~~(7)~~ (8) ...

E11.8. Assessment – restricted discretionary activities

E11.8.1. Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary resource consent application:

(1) All restricted discretionary activities:

(a) compliance with the standards ...

E11.8.2. Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities:

(1) All restricted discretionary activities:

(a) whether applicable standards are complied with ...

(g) the extent to which appropriate methods are used to prevent the spread of total control pest plants or unwanted organisms (as listed under the Biosecurity Act 1993), such as kauri dieback disease.

(2) Additional ...

E26. Infrastructure

E26.1. Introduction and other relevant regulatory requirements

E26.1.1. Introduction

Infrastructure is critical to ...

E26.5. Network utilities and electricity generation – Earthworks all zones and roads

E26.5.1 Objectives

The objectives for earthworks ...

E26.5.5. Standards

E26.5.5.1. Accidental discovery rule

(1) Despite any other rule ...

E26.5.5.2. General standards

All activities listed as permitted, controlled and restricted discretionary in Table E26.5.3.1 and E26.5.3.2 must comply with the following standards.

Regional [rp]

(1) Earthworks associated with...

(8) To prevent the spread of contaminated soil and organic material with kauri dieback disease, vehicle and equipment hygiene procedures must be adopted when working within 3 times the radius of the canopy drip line of a New Zealand kauri tree. Soil and organic material from land disturbance within 3 times the radius of the canopy drip line must not be transported beyond that areas unless being transported to landfill for disposal.

District [dp]

~~(8)~~(9) Earthworks associated...

~~(9)~~(10) ...

E26.5.7. Assessment – restricted discretionary activities

E26.5.7.1. Matters of discretion

The Council will reserve its discretion to all of the following matters when assessing a restricted discretionary resource consent application:

(1) all regional restricted discretionary activities [rp]:

(a) compliance with the standards; ...

E26.5.7.2. Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities:

(1) all regional restricted discretionary activities [rp]:

(a) whether applicable standards are complied with; ...

(h) the extent to which appropriate methods are used to prevent the spread of total control pest plants or unwanted organisms (as listed under the Biosecurity Act 1993), such as kauri dieback disease.

(2) general district assessment criteria [dp]:

(a) whether applicable standards are complied with; ...

E26.6. Network utilities and electricity generation – Earthworks overlays except Outstanding Natural Features Overlay

E26.6.1. Objectives

The objectives for earthworks ...

E26.6.5. Standards

E26.6.5.1. Accidental discovery rule

(1) Despite any other rule ...

E26.6.5.2. General standards

All activities listed as permitted, controlled or restricted discretionary in Table E26.6.3.1 Activity table must comply with the following standards.

Regional [rp]

Regional permitted activity standards for the Significant Ecological Areas Overlay and Water Supply Management Area Overlay

(1) Earthworks for network utilities outside...

(13) To prevent the spread of contaminated soil and organic material with kauri dieback disease, vehicle and equipment hygiene procedures must be adopted when working within 3 times the radius of the canopy drip line of a New Zealand kauri tree. Soil and organic material from land disturbance within 3 times the radius of the canopy drip line must not be transported beyond that areas unless being transported to landfill for disposal.

District [dp]

District permitted activity standards for the Outstanding Natural Features Overlay, Outstanding Natural Landscapes Overlay, Outstanding Natural Character and High Natural Character Overlay, Historic Heritage Overlay, Sites and Places of Significance to Mana Whenua Overlay and Special Character Areas Overlay – Residential and Business

~~(13)~~ (14) Earthworks for network utilities outside ...

~~(14)~~ (15) ...

E26.6.7. Assessment – restricted discretionary activities

E26.6.7.1. Matters of discretion

The Council will reserve its discretion to all of the following matters when assessing a restricted discretionary resource consent application:

(1) all regional restricted discretionary activities [rp]:

(a) the matters set out in E26.5.7.1(1); ...

E26.6.7.2. Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities:

(1) all regional restricted discretionary activities [rp]:

(a) the relevant assessment criteria in E26.5.7.2(1); ...

E15. Vegetation management and biodiversity

E15.1.1 Background

Vegetation contributes to ...

E15.3. Policies [rcp/rp/dp]

(1) Protect areas of contiguous indigenous vegetation cover and vegetation in sensitive environments including the coastal environment, riparian margins, wetlands, and areas prone to natural hazards.

(2) Manage the effects of activities to avoid significant adverse effects on biodiversity values as far as practicable, minimise significant adverse effects where avoidance is not practicable, and avoid, remedy or mitigate any other adverse effects on indigenous biological diversity and ecosystem services, including soil conservation, water quality and quantity management, and the mitigation of natural hazards.

(3) Encourage the offsetting of any significant residual adverse effects on indigenous vegetation and biodiversity values that cannot be avoided, remedied or mitigated, through protection, restoration and enhancement measures, having regard to Policy E15.3(4) below and Appendix 8 Biodiversity offsetting.

(4) Protect, restore, and enhance biodiversity when undertaking new use and development through any of the following:

(a) using transferable rural site subdivision to protect areas that meet the one or more of the factors referred to in B7.2.2(1) and in Schedule 3 Significant Ecological Areas -Terrestrial Schedule;

(b) requiring legal protection, ecological restoration and active management techniques in areas set aside for the purposes of mitigating or offsetting adverse effects on indigenous biodiversity; or

(c) linking biodiversity outcomes to other aspects of the development such as the provision of infrastructure and open space.

(5) Enable activities which enhance the ecological integrity and functioning of areas of vegetation, including for biosecurity, safety and pest management and to control kauri dieback.

(6) Enable vegetation management to provide for the operation and routine maintenance needs of activities.

(7) Manage any adverse effects from the use, maintenance, upgrading and development of infrastructure in accordance with the policies in E15.3, recognising that it is not always practicable to locate or design infrastructure to avoid areas with indigenous biodiversity values.

(8) Recognise and provide for the management and control of kauri dieback as a means of maintaining indigenous biodiversity.

~~(8)~~ (9) Avoid activities in the coastal environment ...

~~(9)-(10)~~...

ANNEXURE C

Names and addresses of persons to be served with a copy of this notice:

Name	Address for Service
Auckland Council	<u>unitaryplan@aucklandcouncil.govt.nz</u>

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Names and addresses of persons to be served with a copy of this notice:

Name	Address for Service
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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

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 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to unitaryplan.ecappeals@justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unitaryplan@aucklandcouncil.govt.nz) and the appellant.

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 RMA.

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 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.