BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No: [2018] NZEnvC 191

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under Clause 14 of the 1st Schedule to the Act
BETWEEN	EAST HARBOUR ENVIRONMENTAL ASSOCIATION INCORPORATED (EHEA)
	(ENV-2016-WLG-000030)
	Appellant
AND	HUTT CITY COUNCIL
	Respondent

Court: Environment Judge B P Dwyer
Environment Commissioner K A Edmonds

Date of Decision: - 3 OCT 2018

Date of Issue: - 4 OCT 2018

DECISION OF THE ENVIRONMENT COURT

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Background

[1] On 24 May 2018, the Court commenced hearing an appeal by East Harbour Environmental Association Incorporated (EHEA) against a decision by Hutt City Council (Council) related to changes to rules for the Landscape Protection Residential Activity Area (LPRAA) and the Hill Residential Activity Area (HRAA) on Proposed Plan Change 36 (PC36) to the Hutt City District Plan. At an early stage in the hearing and in response to a question to the Council's planning witness from the Court it became clear that the rule framework of the district plan under PC36, and as it was prior to the notification of PC36, did not do what the Council thought that it did.

[2] In brief, the Council had advanced its Plan Change on the basis that vegetation clearance (indigenous or exotic) would be a permitted activity (subject to requirements including a site size threshold of 4000m^2 for LPRAA and HRAA), although the amendments to the rules did not do that, with vegetation clearance remaining a non-complying activity under the 'catch all' rules. The catch-all rules apply to vegetation clearance (whether exotic or indigenous) regardless of site size under PC36.

[3] Opening submissions (a synopsis of which had been pre-circulated prior to the hearing) and the evidence for both parties did not pick up on this point. Mr Cumming, the Council's planning witness, conceded the point at the conclusion of cross-examination by Mr Bennion, legal counsel for EHEA, in response to questions from the Court. Mr Quinn, legal counsel for the Council, also accepted that the district plan rules were a problem.

[4] The Court then had a brief exchange with the parties as to whether it had the powers to fix the problem, particularly through the use of section 293. The Court then adjourned the hearing and indicated its preliminary views on an approach to dealing with the problem.

[5] In a Minute of 24 May 2018 the Court directed the parties to file a joint memorandum addressing the following matters:

- Considerations as to possible application of s 293 in respect of sites under 4000m^2.
- The parties should endeavour to reach a common position as to possible changes to PC36 to address the "gap" in the plan change relating to sites under 4000m^2, or otherwise to identify their respective positions.

- The Council will need to reconsider all 21 submissions on PC36 and identify any other possible interested parties that may have an interest in this particular issue who should be consulted pursuant to s 293(1)(a). Affidavit evidence to be provided in that regard.
- Nothing in the minute should be taken as confirmation on the part of the Court that it is appropriate to exercise its powers under s 293.

The Court also indicated that after the receipt of the memorandum the Court may convene a judicial conference.

[6] In response to the Court's directions, the parties lodged a joint memorandum of counsel (Council and EHEA) on 15 June 2018. That joint memorandum is in two parts covering firstly the Council's position and then EHEA's position.

[7] The Council makes an application for the Court to exercise its powers under section 293, giving reasons. The Council's application is not only to amend the rules for the two residential activity areas under appeal (4D: HRAA and 4E: LPRAA) but also two other residential activity areas which are not under appeal and which were the subject of PC36 – 4A: General Residential Activity Area (GRAA) and 4B: Special Residential Activity Area (SRAA). In the GRAA and SRAA, the non-complying activity 'catch all' rules similarly apply to vegetation clearance (whether exotic or indigenous) regardless of site size under PC36.

[8] The Council filed affidavits by Mr Cumming and Mr Johnstone in support of its position concerning section 293 directions. The affidavit of Mr Cumming addressed the submissions on PC36 and any other possible interested parties which may be relevant to consultation under section 293(1)(b) of the RMA.

[9] EHEA takes no position on the section 293 application by the Council, and accordingly leaves that matter for the Court to determine. However, EHEA has a position on the affidavits. It objects to the filing of Mr Johnstone's affidavit as it does not consider that the past practice of the Council in relation to the rules should inform the section 293 analysis. EHEA also objects to parts of Mr Cumming's affidavit as not relevant to the section 293 assessment. The Council did not agree with these points and submitted these affidavits in support of the section 293 application.

[10] EHEA states that although it advocated for the removal of vegetation *excluding trees* to be controlled through resource consents on sites less than 4,000m^2 in the LPRAA and HRAA ie, sites that are not an Urban Environment Allotment (**UEA**) as defined in the RMA, the EHEA submissions and appeal did not identify the error in

the rules that was identified by the Court. EHEA submitted on the basis and understanding that the effect of PC36 was that vegetation removal for sites under 4000m^2 would be permitted.

The Issue

[11] The Council submits that the district plan amended by PC36 inadvertently makes:

- all vegetation removal on sites less than 4,000m^2 (regardless of the amount of clearance, and whether it is exotic or indigenous), a non-complying activity in the HRAA and LPRAA; and
- all vegetation removal (regardless of the amount of clearance, and whether it is exotic or indigenous) a non-complying activity in the GRAA and SRAA.

The Council's submission is that this was not the Council's intention or the basis for PC36.

[12] The Council submits that this issue is created by:

- Rules 4A 2.5, 4B 2.4, 4D 2.4, 4 E2.4 of the district plan which state that all other activities not listed as a Permitted, Controlled, Restricted Discretionary, or Discretionary Activity are Non-Complying Activities.
- Lack of listing of clearance of vegetation on sites less than 4000m^2 as a Permitted Activity in the LPRAA or HRAA (Rules 4D 2.1, 4E 2.1).
- Lack of listing of clearance of vegetation (on any site size) as a Permitted Activity in the GRAA and SRAA (Rules 4A 2.1, 4B 2.1), nor in any other Activity rule in these zones.
- PC36 introduces the following to the list of Permitted Activities in the LPRAA and HRAA (4D 2.1(i) and (j), 4E 2.1 (f) and (g)):
  (x) On sites more than 4000m^2, the removal of exotic vegetation.
  (x) On sites more than 4000m^2, the removal up to 500m^2 of indigenous vegetation, in any 12 month period.
- PC36 introduces permitted activity conditions and a Restricted Discretionary Activity for the clearance of indigenous vegetation in the LPRAA and HRAA (Rule 4D 2.2, 4E 2.2), but both only apply to sites of more than 4000m^2.
- The definition of 'vegetation' (both exotic and indigenous) introduced by PC36 includes trees.

[13] The Council submits that this was not the intention of PC36. That error in the rules means that PC36 does not achieve its stated intention to amend the provisions for vegetation removal in the Residential Activity Areas to achieve compliance with section 76 of the RMA. The Council says that PC36 was triggered by the introduction of section 76(4A)-(4D) of the RMA by the Resource Management Amendment Act 2013.[1] Section 76(4A) of the RMA provides that a rule in a district plan may prohibit or restrict the felling, damaging, or removal of a tree or trees on a single Urban Environment Allotment (UEA) only if, in a schedule to the plan, the tree or trees are described and the allotment is specifically identified. Section 76(4C) of the RMA provides the definition of an UEA which includes allotments no greater than than 4,000m^2 that meet certain other requirements.[2]

[14] The Council further submits that the structure of the rules of the Residential Activity Areas of the district plan prior to PC36 contravened section 76(4A) of the RMA. The error in the rules results in the structure of the rules continuing to contravene section 76(4A) post PC36. This is because the district plan at present under PC36 contains prohibited 'blanket' tree protection rules, as 'vegetation' as defined by PC36 includes trees, and its removal from UEAs would be a non-complying activity.

[15] In order to remedy the errors in the district plan which were the subject of PC36, the Council suggests that the following changes would be required:

> The insertion of the following into the Permitted Activity Rules of the LPRAA and HRAA (4D 2.1, 4E 2.1):
>
> (x) On sites less than 4,000m^2 the removal of vegetation (whether indigenous or exotic).
>
> The insertion of the following into the Permitted Activity Rules of the GRAA and SRAA (4A 2.1, 4B 2.1):
>
> (x) The removal of vegetation (whether indigenous or exotic).

Application of Section 293 RMA

[16] Section 293 of the RMA provides:

> **293 Environment Court may order change to proposed policy statements and plans**
>
> (1) After hearing an appeal against, or an inquiry into, the provisions of any proposed ... plan that is before the Environment Court, the Court may direct the local authority to -

[1] The Resource Management (Simplifying and Streamlining) Amendment Act 2009 introduced s 76(4A)-(4B) and the 2013 Resource Management Amendment Act added s 76 (4C)-(4D).

[2] These also include that the allotment is connected to a reticulated water supply system and a reticulated sewerage system, have a building used for industrial or commercial purposes or as a dwelling house and is not reserve.

(a) prepare changes to the proposed ... plan to address any matters identified by the court:

(b) consult the parties and other persons that the Court directs about the changes:

(c) submit the changes to the Court for confirmation.

(2) The Court -

(a) must state its reasons for giving a direction under subsection (1); and

(b) may give directions under subsection (1) relating to a matter that it directs to be addressed.

[17] Determining whether or not the Court will exercise its section 293 powers requires consideration at two levels.[3] First, does the Court have jurisdiction to exercise the powers in question? Second, if the Court does have jurisdiction, should it exercise its discretion to do so on the merits?

[18] In *Federated Farmers of New Zealand (Inc) MacKenzie Branch v MacKenzie District Council*, the High Court held that the 'orthodox' jurisdictional test is:[4]

> ... that the matter sought to be addressed must be 'on' the plan change, within the scope of submissions to the council, and be within the scope of the appeals to the Environment Court and the relief there sought. However, this orthodox position is not without exception.

[19] The High Court held that there may be some narrow exceptions to this general approach in circumstances including (but not limited to) situations where there is:

(a) an inadequate section 32 report;

(b) a failure to comply with section 74; or

(c) a more than minor deviation from one of the matters referred to in s 293(3), whether or not raised on appeal.[5]

Other cases have identified other exceptions to the orthodox position.

Jurisdiction for LPRAA and HRAA

[20] We now deal with the LPRAA and HRAA provisions which are directly before us on appeal.

[21] The Council submits that the Court has the jurisdiction to direct the amendment of permitted activity rules in the LPRAA and HRAA (4D 2.1, 4E 2.1) to

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Friends of Nelson Haven and Tasman Bay (Inc) v Tasman District Council EC Wellington W013/08, 13 March 2008 ***(Nelson Haven)*** at [22].
Federated Farmers New Zealand (Inc) Mackenzie Branch v Mackenzie District Council [2014] NZHC 2616, (2014) 18 ELRNZ 2712, [2015] NZRMA 52 (***Federated Farmers***) at [156]. Also see [147].
Federated Farmers at [148].

address the 'gap' in the rules for sites less than 4,000m^2. We accept that submission for the reasons we now address.

[22] We accept that this change is clearly 'on' PC36. PC36 reviewed the blanket vegetation clearance rules of these Residential Activity Areas and sought to make vegetation clearance on sites less than 4000m^2 a permitted activity in the LPRAA and HRAA.

[23] We also accept that this change is within the scope of the present appeal. EHEA's appeal relates to the vegetation clearance rules of the LPRAA and HRAA.[6] EHEA seeks that the rules be amended to what they were prior to PC36. The same error in the structure of the rules existed prior to PC36, so if the relief sought by EHEA was granted then that error would continue. All tree and vegetation clearance on any site less than the threshold stated in the restricted discretionary activity rules would be a non-complying activity (contrary to section 76 of the RMA).

Other Activity Areas

[24] We now deal with the question of jurisdiction in relation to the rules of the GRAA and SRAA (Rules 4A 2.1, 4B 2.1) which were not the subject of the appeal by EHEA.

[25] The Council also submits that the Court has jurisdiction to direct change to the rules of the GRAA, and SRAA (Rules 4A 2.1, 4B 2.1). However, the Council accepts that EHEA's appeal does not relate to the GRAA and SRAA, so this change would be outside of the scope of the relief sought by the appeal.

[26] The Council submits that the error identified at the hearing of this appeal equally applies to all vegetation removal (which includes trees) in the GRAA and SRAA, making it non-complying rather than permitted. PC36 amended the vegetation clearance rules of the GRAA and the SRAA with the intention of making all vegetation clearance permitted. This is because these zones contain almost entirely UEAs. The Council submits that the direction of a change to Permitted Activity Rules 4A 2.1 and 4B 2.1 of the district plan would clearly be 'on' PC36.

[27] Section 293 does not give the Environment Court the ability to change part of an operative plan that is not the subject of, affected by, or within the scope of, a publicly notified proposed plan change. That power lies in section 292 of the RMA.

[6] EHEA's notice of appeal at [8a].

[28] The Council submits that in order to direct the change to the GRAA and SRAA there must be a sufficient nexus between the change and the matters before the Court.[7]

[29] The Council relies on the High Court in *Canterbury Regional Council v Apple Fields Ltd*[8] that considered whether section 293 entitled the Court to grant relief beyond the scope of the appeal under consideration. The High Court found that section 293 *did* permit the Environment Court to grant relief beyond the contentions made by the parties, but that this power should only be used on rare occasions. In comparing Schedule 1 of the RMA (which contains the process to be followed in making or changing plans) and the powers available to the Court under sections 290 and 292-294, Chisholm J stated that these sections 'obviously [extend] the powers of the Court beyond those available under the First Schedule',[9] and noted in terms of policy:[10]

> Despite the best efforts of everyone involved in the process of preparing or changing a plan, the reality is that unforeseen issues or proposals beyond the scope of the reference can arise and that in some cases it will be more appropriate for the matter to be resolved at the Environment Court level than by referring it back so that the territorial authority can initiate a variation.

The High Court considered that the jurisdictional test for section 293 is:[11]

> ... simply whether the proposed remedy outside the scope amendment is, objectively, potentially the best option for achieving the purpose of the Act which is open to the Court on the evidence it has read and heard.

[30] The Council submits that section 293 should also be read together with the powers granted by sections 290 and 292.[12] Those provisions are:

> **290 Powers of court in regard to appeals and inquiries**

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7 *Canterbury Regional Council v Apple Fields Ltd* [2003] NZRMA 508 (***Apple Fields***) at [56].

8 *Apple Fields*: While this case occurred pre-2005, the Environment Court has confirmed that the 2005 amendments were essentially procedural and do not alter the application of the rationale in the *Apple Fields* cases (see *Remarkables Park Ltd v Queenstown Lakes District Council* (2006) 13 ELRNZ 21).

9 *Apple Fields* at [35].

10 *Apple Fields* at [37].

11 *Apple Fields* at [12], [45].

12 *Auckland Council v Byerley Park Ltd* [2013] NZHC 3402, (2013) 17 ELRNZ 358, [2014] NZRMA 124.

(1) The Environment Court has the same power, duty, and discretion in respect of a decision appealed against, or to which an inquiry relates, as the person against whose decision the appeal or inquiry is brought.

(2) The Environment Court may confirm, amend, or cancel a decision to which an appeal relates.

(3) The Environment Court may recommend the confirmation, amendment, or cancellation of a decision to which an inquiry relates.

(4) Nothing in this section affects any specific power or duty the Environment Court has under this Act or under any other Act or regulation.

292 Remedying defects in plans

(1) The Environment Court may, in any proceedings before it, direct a local authority to amend a ... district plan to which the proceedings relate for the purpose of—

(a) Remedying any mistake, defect, or uncertainty; or

(b) Giving full effect to the plan.

(2) The local authority to whom a direction is made under subsection (1) shall comply with the direction without using the process in Schedule 1.

[31] We also note:

Section 43AAC Meaning of proposed plan[13]

(1) In this Act, unless the context otherwise requires, **proposed plan** –

(a) means a proposed plan, a variation to a proposed plan or change, or a change to a plan proposed by a local authority that has been notified under clause 5 of Schedule 1 but has not become operative in terms of clause 20 of Schedule 1; ...

(2) Subsection (1) is subject to section 86B and clause 10(5) of Schedule 1.

[32] Section 86B is a deeming provision covering when rules in proposed plans and changes have legal effect rather than have been made operative in accordance with clause 20 of Schedule 1 which requires public notification of the date on which the plan (or part of one) becomes operative. We note that the Council's website specifies that PC36 is a proposed plan change, and not a completed or partly operative plan change, and we were not advised to the contrary.

[33] The Council submits that in this case the Court does have jurisdiction to direct a change to the rules of the GRAA and SRAA as the change is required to ensure consistency with section 76 of the RMA, is within the scope of PC36 and is an example of a 'rare occasion' where it is appropriate for section 293 to be applied. The Council

[13] 1 October 2009 to 18 April 2017.

submits that there is a logical nexus between PC36 and the proposed change now sought which was identified at the hearing of the appeal.

[34] The Council submits that if the Court holds that it does not have jurisdiction in relation to the GRAA and SRAA blanket tree protection rules on UEAs will exist in the two primary residential chapters of the district plan in contravention of section 76 of the RMA. The Council would be required to initiate a new plan change for these two Activity Areas to fix the same error which would have already been remedied for the LPRAA and HRAA if the Court exercises its discretion as requested. This would take time (in accordance with the Schedule 1 process) and there would be a delay before the error is remedied.[14]

[35] The Council emphasises the substantial difficulty in the fact that the Council would be required. It argues that this would be a disproportionate and illogical result given that the intention of PC36 in relation to the GRAA and SRAA is the same as the intention in relation to the HRAA and LPRAA.

[36] We concur with the reasons advanced by the Council for a finding that the Court has jurisdiction to direct a change to the rules of the GRAA and SRAA. While there is no appeal in front of us in relation to the rules for the two zones, we conclude that looking at PC36 in the round, it clearly deals with rules for the removal of vegetation (whether indigenous or exotic) in all four zones. We find that we have scope to exercise our powers to take section 293 action for the provisions of GRAA and SRAA.

[37] We now consider whether we should exercise our discretion on the merits.

Should the Court exercise its discretion on the merits?

[38] The Council submits that the factors which weigh in favour of the Court exercising its discretion to direct the change to PC36 in the LPRAA, HRAA, GRAA and SRAA in this case are:

- The change would ensure that PC36 does not contravene section 76(4A) of the RMA, which does not allow for blanket tree clearance rules on any single Urban Environment Allotment (UEA).
- The change would reflect the intention of PC36.

[14] Which is a relevant factor to take into account when exercising the discretion under section 293: *Invercargill Airport Limited v Invercargill City Council* [2018] NZEnvC 9 at [33].

- The error in PC36 was not identified by any party, member of the public or the Council until the hearing of EHEA's appeal. No person would be prejudiced as the change simply achieves what all parties understood to already be the case.
- Without the change in place, PC36 would create an illogical and absurd result not anticipated by the Council or the public generally.
- The change is relatively simple to achieve.
- It is not possible to consider EHEA's appeal (or the relief it seeks) logically without fixing the issue.
- The change is proposed on a joint basis with the appellant.

[39] The Council also refers to the relief sought by EHEA's Notice of Appeal, which at [8a] is:

> Reinstating the existing rules relating to the protection of vegetation in the Hill Residential Activity Area and the Landscape Protection Residential Activity Areas, exclusive of trees.

[40] Further, the Council submits that if this relief was granted without the section 293 order sought, the error in the rules of the district plan would remain. The rules of the residential chapters would contravene section 76 of the RMA in terms of trees on UEAs. It is necessary in order to consider EHEA's appeal on the merits, for the error in the rules discussed above to be remedied. Otherwise by allowing EHEA's appeal the Court would be allowing rules in PC36 which contravene the RMA to continue.

[41] EHEA objects to the filing of Mr Johnstone's affidavit as it does not consider that the past practice of the Council in relation to the rules should inform the section 293 analysis. We agree with EHEA and accordingly disregard Mr Johnstone's affidavit and the reference of Mr Cumming to it. EHEA also objects to paragraphs 56-59 of Mr Cumming's affidavit, which purports to represent the general view of landowners that vegetation clearance has always been a permitted activity in the residential zones, as not relevant to the section 293 assessment. We concur with EHEA and take no account of these paragraphs in Mr Cumming's affidavit.

[42] For the remaining reasons advanced by the Council we conclude that we should exercise our discretion to use section 293 on the merits for the amendments suggested by the Council to make vegetation clearance (whether indigenous or exotic) a permitted activity for sites less than 4,000m^2 in LPRAA and HRAA and for all sites in GRAA and SRAA.

Consultation (public participation)

[43] We now turn to our consideration of the consultation process to be followed through the section 293 process.

[44] The affidavit of Mr Cumming provides an analysis of all submissions on PC36 and whether there are any other possible interested parties. The Council had not identified any person who it considers is required to be consulted.

[45] The Council submission sets out the conclusions of the analysis by Mr Cumming as:

- 10 submissions on PC36 related only to Chapter 14G Notable Trees and not the blanket vegetation clearance rules of the residential chapters of the district plan. The Council's position is that these submitters would not be interested in this issue as they chose not to submit on it when lodging a submission on PC36.
- All of the 17 submissions on PC36 which related to the blanket vegetation clearance rules of the residential chapters of the district plan did not interpret PC36 as resulting in more restrictive rules but understood Council's intention to provide for vegetation clearance as a permitted activity. The Council's position is that all submitters had the same understanding about the effect of PC36 as the Council did, specifically that PC36 was removing blanket vegetation protection so that vegetation removal would be permitted on all sites in the GRAA and SRAA and on all sites less than 4,000m^2 in the HRAA and LPRAA. The submitters did not make any comment on the rule structure issue which the section 293 application seeks to address.
- It is unlikely that any potential submitters (ie, a member of the public) would have read PC36 in light of the flawed rules structure and concluded that despite the publicly stated approach and intention of PC36 vegetation clearance would be a non-complying activity under PC36. Further, as set out in the affidavit of Mr Johnstone, the longstanding practice of the Council and the public generally regarding the blanket tree protection rules supports this conclusion.[15]

[46] We do not accept the Council's arguments that no other person needs to be consulted. We find its proposition and reasoning an unsound basis on which to proceed under an Act with a public participation focus. The Council made a

[15] Affidavit of Mr Johnstone at [29]-[31].

fundamental error in the drafting of the rules. That error cannot be corrected by referring to documents such as the section 32 analysis. The public are entitled to rely on the district plan provisions as they are stated in the primary document. This is particularly important where rules, which set out rights and responsibilities and are the basis of enforcement action, are concerned. There may have been members of the public who did not submit on PC36 after reading the rules in full. Not all members of the public would necessarily understand the legal position with blanket vegetation protection that the Council implies in its submissions. We cannot assume, as the Council does, that all submitters had the same understanding about the effect of PC36 as the Council did.

[47] As we have already said, we also accept the point raised by EHEA that the longstanding practice of the Council and the public generally, which involved not following the district plan rules, cannot be a consideration which weighs with us.

[48] We find that the only sound way to proceed is to require full public notification, along with notification of potentially affected parties being landowners (whether public or private entities) directly affected by the change as well as those already involved in the appeal proceedings before the Court initiated by EHEA. There is to be a period of 20 working days (as there would be for a proposed plan change or variation) after notification for submissions to be filed by any person.

[49] HCC is to then summarise all submissions filed with it and provide a copy of that summary and HCC's response to the matters raised in submissions to those submitters, all parties to the EHEA appeal and to the Court no later than 30 working days after the closing of the period for submissions.

[50] The Court will then use this information to determine the process that will follow, including in respect of representation at proceedings under s 274 of the RMA.

[51] Once the summary of submissions and responses has been filed a pre-hearing conference will be convened, if required, to address any issues that may arise and make any directions necessary or desirable in relation to the section 293 application and the further conduct of the appeal by EHEA. Detailed directions to that effect now follow.

Outcome and Directions

[52] The Court accepts the Council's request for a direction to prepare amendments to Proposed PC36 to address the issue identified by the Court, and submit the changes to the Court for confirmation under section 293 of the RMA. We make some minor amendments, in the form of reordering, to improve the clarity of the Council's suggested amendment to PC36 so "the proposal" would read:

> The insertion of the following into the Permitted Activity Rules of 4D 2.1 Hill Residential Activity Area (HRAA) and 4E 2.1 Landscape Protection Residential Activity Area (LPRAA):
> (x) On sites less than 4,000m^2 the removal of vegetation (whether indigenous or exotic).
> The insertion of the following into the Permitted Activity Rules of 4A 2.1 General Residential Activity Area (GRAA) and 4B 2.1 Special Residential Activity Area (SRAA):
> (x) The removal of vegetation (whether indigenous or exotic).

[53] For those reasons, and subject to those drafting clarity refinements, the Council's wording of the proposal for amended rules in Proposed Plan Change 36 is accepted for the purposes of our directions under section 293 of the Resource Management Act 1991.

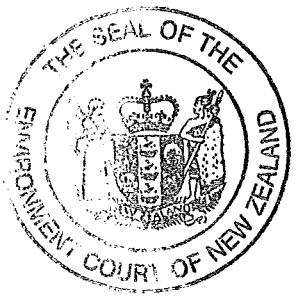
[54] Subject to considering any comments made in accordance with our following directions, the court's preliminary view is to make the following directions to provide for public participation on the proposal:

(a) Public notification of the process being undertaken shall be given by Hutt City Council (HCC) in accordance with the attached draft public notice in the Dominion Post and on Hutt City Council's website.

(b) HCC is also to notify potentially affected parties of the proposed amendments, being all landowners (whether public or private entities) directly affected by the proposed amendments, the East Harbour Environmental Association and parties to the appeal by EHEA.

(c) The appeal notice from East Harbour Environmental Association Incorporated (EHEA) dated 12 July 2016 and which seeks amendments to specific provisions in the Hill Residential Activity Area (HRAA) and the Landscape Protection Residential Activity Area (LPRAA) in Proposed Plan Change 36 is to be drawn to the attention of potential submitters. That appeal notice is available on HCC's website.

(d) Notification is to occur no later than 15 working days after the date of this decision.



(e) Any person shall have until 5 pm on the 20th working day after notification to file a submission with the Council supporting or opposing the proposed amendments.

(f) HCC shall summarise all submissions filed with it and provide a copy of that summary and HCC's response to the matters raised in submissions to those submitters, all parties to the appeal by EHEA and to the Court no later than 30 working days after the submission period has ended.

(g) The Environment Court will then use this information to determine the process that will follow, including in respect of representation at proceedings under s 274 of the RMA.

(h) Once the summary of submissions and responses has been filed a pre-hearing conference will be convened, if required, to address any issues that may arise and make any directions necessary or desirable for consideration of the submissions. At that stage the Court will also make any directions necessary or desirable for progressing the hearing of the appeal by EHEA.

[55] Hutt City Council and EHEA are to respond in 5 working days with any comments on the Court's proposed directions for the wording of the proposal and its notification under section 293 of the RMA.

Dated at WELLINGTON this 3rd day of October 2018

In the absence of Judge Dwyer on sabbatical leave, for and on behalf of the Court:

K A Edmonds

K A Edmonds
Environment Commissioner

Section 293 proposal – Draft Public Notice

The Environment Court has directed the Hutt City Council ("HCC") (at HCC's request) to consult on proposed amendments to Proposed Plan Change 36 to the District Plan. Those proposed amendments, described as "**the proposal**" are:

> The insertion of the following into the Permitted Activity Rules of 4D 2.1 Hill Residential Activity Area (HRAA) and 4E 2.1 Landscape Protection Residential Activity Area (LPRAA):
>
> (x) On sites less than 4,000m^2 the removal of vegetation (whether indigenous or exotic).
>
> The insertion of the following into the Permitted Activity Rules of 4A 2.1 General Residential Activity Area (GRAA) and 4B 2.1 Special Residential Activity Area (SRAA):
>
> (x) The removal of vegetation (whether indigenous or exotic).

Documentation for Proposed Plan Change 36 can be inspected at:

- at all Hutt City Council Libraries;
- at the Customer Services Counter, Council Administration Building, 531 High Street, Lower Hutt; and
- on the Council's website: huttcity.govt.nz/district-plan-change-36.

That documentation includes an appeal lodged by East Harbour Environmental Association Incorporated (EHEA) on 12 July 2016 on other provisions of PC36 for LPRAA and HRAA.

Copies of the documentation can also be requested by contacting Hutt City Council:

- Phone: 04 570 6666
- Email: district.plan@huttcity.govt.nz

Submissions close on [*day and date to be inserted*] at 5pm

Any person may make a submission on the proposal. Submissions may be lodged in any of the following ways:

- Post: Environmental Policy Division, Hutt City Council, Private Bag 31912, Lower Hutt 5040
- In Person: Council Administration Building, 531 High Street, Lower Hutt
- Email: submissions@huttcity.govt.nz
- Online: huttcity.govt.nz/district-plan-change-36

Submissions must be written in accordance with RMA Form 5 and must state whether or not you wish to be heard in respect of your submission on the proposal. Copies of Form 5 are available from all of the above locations and on the Council's website.

The process for public participation in the consideration of this proposal under the RMA is as follows:

- after the closing date for submissions, HCC must prepare a summary of the submissions and its response to the submissions and to provide this to all submitters, the appellant and all parties to the EHEA appeal, and the Environment Court within 30 working days; and
- the Environment Court will then use this information to determine the process that will follow.