

**BEFORE THE ENVIRONMENT COURT
AT WELLINGTON**

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

Decision No. [2021] NZEnvC 13

IN THE MATTER of an appeal under Clause 14 of the First
Schedule to the Resource Management
Act 1991

BETWEEN EAST HARBOUR
ENVIRONMENTAL ASSOCIATION
INCORPORATED

(ENV-2016-WLG-000030)

Appellant

AND HUTT CITY COUNCIL

Respondent

Court: Environment Judge B P Dwyer
Environment Commissioner K A Edmonds
Environment Commissioner D J Bunting

Date of Decision: 23 February 2021

Date of Issue: 23 February 2021

DECISION OF THE ENVIRONMENT COURT

A: Changes to Proposed Plan Change 36 to the Hutt City District Plan contained
in Appendix 1 are confirmed.

B: The appeal is otherwise dismissed.



REASONS

Introduction

[1] The Court issued a decision in this matter on 25 May 2020, making amendments to the GRAA zone provisions for vegetation clearance.¹ The Council, EHEA and Forest and Bird had previously agreed a set of provisions that would resolve the appeal by EHEA, but as the appeal was limited to the SRAA, HRAA and LPRAA provisions, there was no scope to amend the GRAA provisions through the appeal. The parties wished to amend the vegetation clearance provisions in all four zones in a similar manner, and the Court approved a s 293 process to enable the proposed amendments to the GRAA provisions to be considered at the same time.

[2] The Court did not make changes to the SRAA, HRAA and LPRAA provisions in its 25 May 2020 decision. That decision resolved the s 293 RMA application only. The Court issued a minute on 29 June 2020, noting some inconsistencies between the provisions for the GRAA chapter and the other chapters. The Council lodged a memorandum on 10 July 2020, with amended SRAA, HRAA and LPRAA provisions, in response. The Court issued a final minute giving parties an opportunity to comment on the Council's memorandum and final amendments. No responses were received.

[3] The Court has already approved very similar amendments to the GRAA provisions. To the extent necessary, the Court now approves the application of the new definitions to the GRAA provisions under s 293 RMA. The amendments to the SRAA, HRAA and LPRAA provisions were agreed between the Council, EHEA and Forest and Bird. The changes are either within scope, or fall into the consequential category, ensuring consistency in the proposed plan.

[4] The Court notes that under the "Matters in which Council has Restricted its Discretion and Standards and Terms", under "The removal of vegetation", matter (i)

¹ [2020] NZEnvC 69 *East Harbour Environmental Association Inc v Hutt City Council*.

“Amenity values” in all zones (except in Chapter 4E, LPRAA) is worded as follows:

The adverse effects upon the visual amenity values of the site and surrounding area caused by the removal of vegetation. Consideration shall be had to the visual prominence of the vegetation, and any replacement planting to be undertaken.

[5] In Chapter 4E, this matter is worded:

The adverse effects upon the visual amenity values of the site and surrounding area caused by the removal of vegetation. The visual prominence of the vegetation and any replacement planting to be undertaken will be taken into consideration.

[6] The Court has amended the “Amenity Values” matter in Chapter 4E to make it consistent with the “Amenity Values” matter in the other Chapters.

Outcome

[7] The Court hereby confirms the attached changes to the Hutt City Council District Plan. The EHEA appeal is otherwise dismissed.

For the Court:



B P Dwyer
Environment Judge



APPENDIX 1 - Planning provisions to be inserted (all zones)

Chapter 3 Definitions

Exotic vegetation	means vegetation or trees not occurring naturally in New Zealand
Indigenous vegetation	means vegetation or trees that occur naturally in New Zealand or arrived in New Zealand without human assistance
Tree	Means, for the purpose of the rules 4A2.1(xxx), 4B 2.1(g), 4D 2.1(k) and 4E 2.1(h), a perennial woody plant species that is at least 3 metres in height or 300mm diameter at breast height.
Trimming of Vegetation	means for the purpose of the rules in Chapters 4A, 4B, 4D, 4E the pruning of vegetation and trees including: <ul style="list-style-type: none"> (i) the removal of broken branches, deadwood or diseased vegetation, and (ii) selective branch removal to increase light and air movement or to improve health.
Urban Environment Allotment	Has the same meaning as in section 76(4C) of the RMA as set out below: an allotment within the meaning of section 218— <ul style="list-style-type: none"> (a) that is no greater than 4 000 m²; and (b) that is connected to a reticulated water supply system and a reticulated sewerage system; and (c) on which there is a building used for industrial or commercial purposes or as a dwellinghouse; and (d) that is not reserve (within the meaning of section 2(1) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.
Vegetation removal	means for the purpose of the rules in Chapters 4A, 4B, 4D, 4E the felling, clearing or destruction of vegetation by cutting, crushing, chemical application or burning but excludes trimming
Vegetation	means exotic and/or indigenous vegetation

Chapter 4 General Residential Activity Area

4A 2.1 Permitted Activities

- (x) The removal of indigenous vegetation:
 - (i) That was planted within a domestic garden for amenity purposes and/or the use of amenity or screening.
 - (ii) Within 5 metres of a lawfully established dwelling.
 - (iii) Within 3 metres of a lawfully established accessory building with a gross floor area greater than 10m².
 - (iv) To maintain existing open areas, tracks, accessways, fences and onsite services.
 - (v) To maintain existing network utilities.
 - (vi) To prevent loss of life, injury or damage to property.
 - (vii) To remove dead or diseased vegetation.
 - (viii) In accordance with Tikanga Māori.
- (xx) The removal of exotic vegetation.
- (xxx) The removal of trees on an Urban Environment Allotment.
- (xxxx) The trimming of vegetation.

(Rules 4A2.1(x) to A2.1(xxxx) do not apply to trees identified as Notable Trees in Chapter 14G. The provisions of Chapter 14G apply to Notable Trees)

4A 2.1.1 Permitted Activities – Conditions

- (x) The removal of exotic vegetation:
 - (i) The area from which vegetation was removed must be stabilised against erosion by vegetation cover or other methods.

4A 2.2 Restricted Discretionary Activities

- (x) The removal of vegetation not otherwise provided for as a permitted activity.

(Rule 4A2.2(x) does not apply to trees identified as Notable Trees in Chapter 14G. The provisions of Chapter 14G apply to Notable Trees)

4A 2.2.1 Matters in which Council has Restricted its Discretion and Standards and Terms

- (x) The removal of vegetation
 - (i) Amenity Values:

The adverse effects upon the visual amenity values of the site and surrounding area caused by the removal of vegetation. Consideration shall be had to the visual prominence of the vegetation, and any replacement planting to be undertaken.
 - (ii) Site Stability:

The adverse effects upon the stability of the site caused by the removal of vegetation.
 - (iii) Indigenous Biodiversity and the Intrinsic Values of Ecosystems:
 - (a) The extent to which the proposal will adversely affect the indigenous biodiversity and intrinsic value of ecosystems on the site and surrounding area.
 - (b) Applying the criteria in Policy 23 of the RPS.

4A 3 Anticipated Environmental Results

- (x) retention of indigenous vegetation.

Chapter 4B Special Residential Activity Area

Policy

...

- (b) That vegetation and trees which add to the particular indigenous biodiversity or amenity values of the area be retained, and landscaping be included where practicable where such vegetation is removed as part of any development proposal.

...

4B 2.1 Permitted Activities

...

- (e) The removal of indigenous vegetation:
 - (i) That was planted within a domestic garden for amenity purposes and/or the use of amenity or screening.
 - (ii) Within 5 metres of a lawfully established dwelling.
 - (iii) Within 3 metres of a lawfully established accessory building with a gross floor area greater than 10m².
 - (iv) To maintain existing open areas, tracks, accessways, fences and onsite services.
 - (v) To maintain existing network utilities.
 - (vi) To prevent loss of life, injury or damage to property.
 - (vii) To remove dead or diseased vegetation.
 - (viii) In accordance with Tikanga Māori.
- (f) The removal of exotic vegetation.
- (g) The removal of trees on an Urban Environment Allotment.
- (h) The trimming of vegetation.

(Rules 4B2.1(e), 4B2.1(f), 4B2.1(g) and 4B2.1(h) do not apply to trees identified as Notable Trees in Chapter 14G. The provisions of Chapter 14G apply to Notable Trees)

4B 2.1.1 Permitted Activities – Conditions

...

- (d) The removal of exotic vegetation:
 - (i) The area from which vegetation was removed must be stabilised against erosion by vegetation cover or other methods.

4B 2.2 Restricted Discretionary Activities

...

- (b) The removal of vegetation not otherwise provided for as a permitted activity.

(Rule 4B2.2(b) does not apply to trees identified as Notable Trees in Chapter 14G. The provisions of Chapter 14G apply to Notable Trees)

4B 2.2.1 Matters in which Council has Restricted its Discretion and Standards and Terms

...

- (b) The removal of vegetation
 - (i) Amenity Values:

The adverse effects upon the visual amenity values of the site and surrounding area caused by the removal of vegetation. Consideration shall be had to the visual prominence of the vegetation, and any replacement planting to be undertaken.

(ii) Site Stability:

The adverse effects upon the stability of the site caused by the removal of vegetation.

(iii) Indigenous Biodiversity and the Intrinsic Values of Ecosystems:

(a) The extent to which the proposal will adversely affect the indigenous biodiversity and intrinsic value of ecosystems on the site and surrounding area.

(b) Applying the criteria in Policy 23 of the RPS.

4B 3 Anticipated Environmental Results

...

(b) retention of indigenous vegetation.

Chapter 4D Hill Residential Activity Area

Policy

...

- (b) That the clearance of vegetation be managed to avoid, remedy or mitigate any adverse effect on the visual amenity values of the hillside environment, slope stability, indigenous biodiversity or the intrinsic values of ecosystems.

4D 2.1 Permitted Activities

...

- (i) The removal of indigenous vegetation:
 - (i) That was planted within a domestic garden for amenity purposes and/or the use of amenity or screening.
 - (ii) Within 5 metres of a lawfully established dwelling.
 - (iii) Within 3 metres of a lawfully established accessory building with a gross floor area greater than 10m².
 - (iv) To maintain existing open areas, tracks, accessways, fences and onsite services.
 - (v) To maintain existing network utilities.
 - (vi) To prevent loss of life, injury or damage to property.
 - (vii) To remove dead or diseased vegetation.
 - (viii) In accordance with Tikanga Māori.
- (j) The removal of exotic vegetation.
- (k) The removal of trees on an Urban Environment Allotment.
- (h) The trimming of vegetation.

(Rules 4D2.1(i), 4D2.1(j), 4D2.1(k) and 4D2.1(h) do not apply to trees identified as Notable Trees in Chapter 14G. The provisions of Chapter 14G apply to Notable Trees)

(Rules 4D2.1(i), (j) do not apply to the identified part of 76 Normandale Road, Pt Lot 1 DP 7984, identified in Appendix Hill Residential 2, where vegetation removal is a Discretionary Activity).

4D 2.1.1 Permitted Activities – Conditions

...

- (g) The removal of exotic vegetation:
 - (i) The area from which vegetation was removed must be stabilised against erosion by vegetation cover or other methods

4D 2.2 Restricted Discretionary Activities

- (b) The removal of vegetation not otherwise provided for as a permitted activity. (This rule does not apply to the identified part of 76 Normandale Road, Pt Lot 1 DP 7984, identified in Appendix Hill Residential 2, where vegetation removal is a Discretionary Activity).

(Rule 4D2.2(b) does not apply to trees identified as Notable Trees in Chapter 14G. The provisions of Chapter 14G apply to Notable Trees)

4D 2.2.1 Matters in which Council has Restricted its Discretion and Standards and Terms

...

- (b) The removal of vegetation
 - (i) Amenity Values:

The adverse effects upon the visual amenity values of the site and surrounding area caused by the removal of vegetation. Consideration shall be had to the visual prominence of the vegetation, and any replacement planting to be undertaken.

(ii) Site Stability:

The adverse effects upon the stability of the site caused by the removal of vegetation.

(iii) Indigenous Biodiversity and the Intrinsic Values of Ecosystems:

(a) The extent to which the proposal will adversely affect the indigenous biodiversity and intrinsic value of ecosystems on the site and surrounding area.

(b) Applying the criteria in Policy 23 of the RPS.

4D Anticipated Environmental Results

...

(c) Retention of indigenous vegetation

Chapter 4E Landscape Protection Residential Activity Area

Policies

...

- (b) That the clearance of vegetation be managed to avoid, remedy or mitigate any adverse effects on the visual amenity values of the hillside environment, slope stability, indigenous biodiversity or the intrinsic values of ecosystems.

4E 2.1 Permitted Activities

...

- (f) The removal of indigenous vegetation:
 - (i) That was planted within a domestic garden for amenity purposes and/or the use of amenity or screening.
 - (ii) Within 5 metres of a lawfully established dwelling.
 - (iii) Within 3 metres of a lawfully established accessory building with a gross floor area greater than 10m².
 - (iv) To maintain existing open areas, tracks, accessways, fences and onsite services.
 - (v) To maintain existing network utilities.
 - (vi) To prevent loss of life, injury or damage to property.
 - (vii) To remove dead or diseased vegetation.
 - (viii) In accordance with Tikanga Māori.
- (g) The removal of exotic vegetation.
- (h) The removal of trees on an Urban Environment Allotment.
- (i) The trimming of vegetation.

(Rules 4E2.1(f), 4E2.1(g), 4E2.1(h) and 4E2.1(i) do not apply to trees identified as Notable Trees in Chapter 14G. The provisions of Chapter 14G apply to Notable Trees)

4E 2.1.1 Permitted Activities – Conditions

...

- (f) The removal of exotic vegetation:
 - (i) The area from which vegetation was removed must be stabilised against erosion by vegetation cover or other methods.

4E 2.2 Restricted Discretionary Activities

...

- (b) The removal of vegetation not otherwise provided for as a permitted activity.

(Rule 4E2.2(b) does not apply to trees identified as Notable Trees in Chapter 14G. The provisions of Chapter 14G apply to Notable Trees)

4E 2.2.1 Matters in which Council has restricted its discretion and standards and terms

...

- (b) The removal of vegetation.

- (i) Amenity Values:
The adverse effects upon the visual amenity values of the site and surrounding area caused by the removal of vegetation. Consideration shall be had to the visual prominence of the vegetation, and any replacement planting to be undertaken.
- (ii) Site Stability:
The adverse effects upon the stability of the site caused by the removal of vegetation.
- (iii) Indigenous Biodiversity and The Intrinsic Values of Ecosystems:
 - (a) The extent to which the proposal will adversely affect the indigenous biodiversity and intrinsic value of ecosystems on the site and surrounding area.
 - (b) Applying the criteria in Policy 23 of the RPS.

4E Anticipated Environmental Results

...

- (c) Retention of indigenous vegetation