

# Auckland tree protection in a muddle



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Submissions close on 17 February 2012 to 6 plan changes notified by Auckland Council which specify protected trees within each of its legacy areas, excluding the area of former North Shore City Council who had earlier notified a corresponding plan change. The plan changes seek to add additional trees to the schedules of notable trees or groups of trees in each of the sections of the Auckland Council District Plan. Altogether the plan changes add some 1800 additional listings to the notable trees schedules within the District Plan for Auckland. The plan changes have been given interim legal effect by decision of the Environment Court in December 2011.

“ Submissions close on 17 February 2012 to 6 plan changes as notified by Auckland Council which specify protected trees ”

The plan changes follow changes made to the RMA by section 152 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 which were intended to place reliance upon scheduling of vegetation to replace “blanket” general tree protection rules (which identify control of trees by general height and girth requirements), subject to limited exceptions for trees within reserves. The Minister for the Environment had clearly signalled in media statements at the time that the government intended to revoke general tree protection rules within urban areas.

The proposed plan changes for Auckland were prepared on the premise that the majority of the general tree rules in

the operative Isthmus District Plan would be revoked on 1 January 2012, and that only rules to survive this revocation would be if a rule “relates to a tree, or group of trees specifically identified” in a plan. However a subsequent Environment Court declaration in *Re Auckland Council* [2011] NZEnvC 129 (Judge Jackson presiding) in effect validated many of the types of general tree protection rules which the Government had intended to revoke. The Ministry for the Environment did not participate in the declaration proceedings. There was no appeal.

The apparent consequence of the Environment Court’s declaration is that many general tree protection tree rules have continued to remain in force after 1 January 2012. Exactly which general tree protection rules remain in force throughout the Auckland region is a matter of legal uncertainty, an issue not clarified by the plan changes. Under the law as declared by the Environment Court it is anticipated submitters who successfully challenge the plan change scheduling process will be met with a response by the local authority that resource consent continues to be required for felling of a tree due to the continued validity of general tree protection rules, as declared by the Environment Court. Meanwhile, Russell Bartlett, barrister, who acted as amicus curiae in the decision by the Environment Court to give interim effect to the plan changes, has advised he has clients who are considering a challenge to revisit the Environment Court’s earlier declaration and to obtain specific declarations on those district plans that were not subject to the 2011 declarations proceedings before Judge Jackson.

Unfortunately the uncertainty in the law as to which general tree protection rules continue in legal effect means there will likely be members of the public who will fell trees in the urban environment in the belief they are doing so lawfully, only to risk claims of contravening the RMA.

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