

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

ENV-2024-WGN-

UNDER The Resource Management Act 1991

AND

IN THE MATTER OF An appeal against decisions by the Whanganui District Council on Plan Change 60 to the Whanganui District Plan – Miscellaneous Matters

BETWEEN **POWERCO LIMITED**

Appellant

AND **WHANGANUI DISTRICT COUNCIL**

Respondent

NOTICE OF APPEAL

22 FEBRUARY 2024

Form 7

Notice of appeal to Environment Court against decision on plan change
Clause 14(1) of Schedule 1, Resource Management Act 1991

To: The Registrar
Environment Court
Wellington

1. Powerco Limited (**Powerco**) appeals against part of a decision of the Whanganui District Council on Plan Change 60 – Miscellaneous Matters (**PC60**)
2. Powerco made a submission on PC60.
3. Powerco is not a trade competitor for the purposes of section 308D of the Act.
4. Powerco received notice of the decision on 20 December 2023.
5. The decision was made by Whanganui District Council.

Decision being appealed

6. The parts of the decision that Powerco is appealing against relate to the rules and standards applying to Protected Trees. Specifically, the changes made to the following rules and standard insofar as they relate to pruning or works within the dripline of Protected Trees for network utilities:
 - Rule NFL-PT-R1;
 - Rule NFL-PT-R2; and
 - Standard NFL-PT-S3 (Powerco submitted on NFL-PT-S2 as notified, which become NFL-PT-S3 in the decisions).

Reasons for the appeal

7. The reasons for the appeal are that the decisions fail to adequately respond to the issues raised within the Powerco submissions. Specifically:
 - The rules and standard would unduly restrict the ability for Powerco to undertake routine tree trimming around its networks. The ability to trim vegetation is paramount, regardless of the thickness of a branch. Larger branches falling on to our networks is a primary area of concern – including situations where delamination of branches could result in contact with our networks. Tree branches coming into contact with electricity networks can result in electrocution, fire, damage or electricity outages (or a combination of these).
 - To ensure a safe and efficient network, Powerco requires the ability to trim vegetation as required under the Electricity (Hazards from Trees) Regulations 2003.

- As a lifeline utility under the Civil Defence Emergency Management Act 2002, Powerco seeks to take all reasonable steps to ensure vegetation does not interfere with its networks, including protected trees.
- With appropriate standards such as arborist oversight, hand-digging or hydrovac excavation techniques (where applicable for earthworks), network utility work within the dripline of a protected tree (particularly existing works) could appropriately be dealt with as permitted activities as opposed to requiring resource consent as a discretionary activity.
- Submitting detailed arborist reports to Council (under NFL-PT-S3) 10 working days before clearance of foliage occurs is unnecessary, particularly when the works are required to be undertaken by a qualified arborist in any event (as required under NFL-PT-R2).

8. In addition to the matters set out above, the general reasons for the appeal are that the decisions:

- Do not promote the sustainable management of natural and physical resources of the Whanganui District;
- Do not result in the most appropriate plan provisions in terms of section 32 of the RMA;
- Do not promote the efficient use and development of natural and physical resources within Whanganui;
- Do not recognise the regional importance of Powerco's networks as required under the Manawatū-Whanganui Regional Policy Statement; and
- Are contrary to sound resource management practice.

Relief Sought

9. Powerco seeks the following relief:

- That rule NFL-PT-R1 is amended so as to remove the 50mm restriction on trimming of branches around network utilities. Powerco considers a 'carve out' for network utilities could address the concerns noted at paragraph 24 of the decision report that the rule has general application that could have widespread applications for land encroachments;
- That rule Rule NFL-PT-R2 is amended to exclude activities undertaken by network utility operators;
- That standard NFL-PT-S3 is amended to exclude activities undertaken by network utility operators;
- Any other, consequential or alternative relief as may be necessary or appropriate to address Powerco's concerns as outlined in this appeal and to give full and proper effect to the relief sought.

Documents attached to this notice

10. Copies of the following documents are attached to this notice of appeal:

- A. A copy of Powerco's submission on PC60.
- B. A copy of the Whanganui District Council decisions on PC60.
- C. A list of persons to be served with a copy of this notice.

Signature of person authorised to sign on behalf of Powerco Limited:



Gary Scholfield

Senior Environmental Planner

POWERCO

Dated at Tauranga this 22nd day of February 2024.

Address for Service:

Powerco Limited

PO Box 13 075

Tauranga 3141

Attention: Gary Scholfield

Phone: (07) 928 5659

Email: planning@powerco.co.nz

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

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) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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 Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (see form 38).

Advice

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

ATTACHMENT A – POWERCO’S SUBMISSION ON PC60

ATTACHMENT B – WHANGANUI DISTRICT COUNCIL DECISIONS ON PC60

ATTACHMENT C – LIST OF PERSONS TO BE SERVED

McDonald's Restaurant (New Zealand) Limited	oliviae@barker.co.nz hannahh@barker.co.nz
Horizons Regional Council	ellie.shokri@horizons.govt.nz
Whanganui District Council	PlanningPolicy@whanganui.govt.nz Leayne.Huirua@whanganui.govt.nz