

**BEFORE THE HEARINGS PANEL**

**UNDER THE**

Resource Management Act 1991

**IN THE MATTER OF**

the Proposed Far North District Plan

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**STATEMENT OF EVIDENCE OF DAVID ERIC BADHAM AND  
MELISSA IVY MCGRATH ON BEHALF OF TOP ENERGY**

**HEARING STREAM 12 (Historic and Cultural Values)**

Planning

12 May 2025

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**GREENWOOD ROCHE**

LAWYERS

AUCKLAND

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## **1 INTRODUCTION**

- 1.1 This evidence has been co-authored by David Eric Badham and Melissa Ivy McGrath. This is because Mr Badham will be on leave overseas when Hearing 12 is scheduled, and consequently Ms McGrath will be available for questioning from the Panel as required on this evidence.

### **David Eric Badham**

- 1.2 My full name is David Eric Badham. I am a Partner and Northland Manager of Barker and Associates, a planning and urban design consultancy with offices across New Zealand. I am based in the Whangārei office, but undertake planning work throughout the country, although primarily in Te Tai Tokerau / Northland.
- 1.3 My qualifications, experience and involvement with Top Energy Limited (*Top Energy*) on the Proposed Far North District Plan (*PDP*) are set out in Attachment 1 to my evidence filed on 13 May 2024 which addressed planning matters in relation to Hearing Stream 1 – Strategic Direction. I also filed planning evidence on behalf of Top Energy on 22 July 2024 for Hearing Stream 4 – Natural Environment Values and Coastal Environment; on 7 October 2024 for Hearing Streams 6 and 7 – General District-Wide Matters and Genetically Modified Organisms; and on 14 April 2025 for Hearing Stream 11 – Energy, Infrastructure and Transport.

### **Melissa Ivy McGrath**

- 1.4 My full name is Melissa Ivy McGrath. I am a Senior Associate with Barker & Associates.
- 1.5 I am a qualified planner with a Master of Resource Management from Massey University and am a Full Member of the New Zealand Planning Institute. I have 20 years' experience as a planner. During this time, I have been employed in various resource management positions in local government and private companies including experience with:
- (a) Statutory resource consent planning in the Northland and Auckland regions, including an extensive range of work in the

Whangārei, Kaipara and Far North Districts. Of particular note, I worked for Far North District Council as a consent planner for 5 years, working with the operative Far North District Plan.

- (b) Consideration of submissions and formulation of policy and policy advice for Council's throughout New Zealand including, Whangārei District Council, Kaipara District Council, Far North District Council, and private clients, including as the District Plan Manager for Whangārei District Council.

### **Code of conduct**

- 1.6 Although this is not an Environment Court proceeding, we<sup>1</sup> have read and are familiar with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2023, and agree to comply with it. Other than where we state that we are relying on the advice of another person, we confirm that the issues addressed in this statement of evidence are within our area of expertise. We have not omitted to consider material facts known to us that might alter or detract from the opinions that we express. We have no conflict of interest to declare in response to the hearing or this evidence.

## **2 SCOPE OF EVIDENCE**

- 2.1 Our evidence addresses submission (#483) and further submission (#FS369) by Top Energy on the PDP, as relevant to Hearing Stream 12 and in particular, it addresses the following:
  - (a) Supported recommendations of the Hearing 12 Section 42A Reports (*S42A Reports*) (Section 3).
  - (b) Heritage Area Overlay provisions (Section 4).
  - (c) Historic Heritage provisions (Section 5).
  - (d) Sites and Areas of Significance to Māori provisions (Section 6).
  - (e) Notable Trees provisions (Section 7).

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<sup>1</sup> We and our is used throughout this evidence to reflect the views of both authors.

(f) Section 32AA evaluation (Section 8).

(g) Concluding comments (Section 9).

2.2 We confirm that we have also reviewed and considered the expert electrical engineering evidence of Mr Nishan Sooknandan on behalf of Top Energy in preparing this evidence statement.

### **3 SUPPORTED RECOMMENDATIONS OF THE S42A REPORTS**

3.1 Across the four topics that are the subject of this Hearing Stream, the S42A Reporting Officers have recommended the acceptance of several of Top Energy's submission points or have recommended amendments which are consistent with the relief sought by Top Energy. For some of those, Top Energy has confirmed that it is satisfied with the recommendations. We briefly outline these submission points in **Attachment 1** and do not address them further within our evidence.

3.2 The remainder of our evidence below focuses on the areas in contention where we have a different opinion to that of the relevant Reporting Officers.

### **4 HERITAGE AREA OVERLAY**

#### **Rule HA-R5**

4.1 Top Energy sought the following amendments to PER-2 and PER-3 to exempt earthworks associated with the undergrounding of cables from the volume and area thresholds:<sup>2</sup>

PER-2

1. The earthworks are associated with new underground network utilities; and

a. Are not within 20m of a scheduled Heritage Resource; and

b. Comply with standard HA-S3 Accidental Discovery Protocol.

2. For all other earthworks:

a. Do not exceed 2m<sup>3</sup> in volume over an area of 5m<sup>2</sup>;

b. Is not within 20m of a scheduled Heritage Resource;

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<sup>2</sup> Submission 483.121.

c. Complies with standard HA-S3 Accidental Discovery Protocol.

4.2 The Reporting Officer has recommended the following amendment to this HA-R5 in response:

PER-1

The earthworks:

1. Are setback a minimum of 20m from a scheduled Heritage Resource;
2. Comply with standard HA-S3 Accidental Discovery Protocol; and
3. Do not result in disturbance of sub-soils below a depth of 500mm.
4. ~~Comply with the relevant permitted activity rules within the Earthworks chapter; and~~
5. ~~Are not within 20m of a scheduled Heritage Resource.~~

Note 1: When applying PER-1(1), the 20m distance must be measured from the edge of the footprint of any building, site or structure as described in Schedule 2 – Schedule of historic sites, buildings and objects.

Note 2: The Heritage New Zealand Pouhere Taonga Act 2014 requires all applicants to obtain an authority from Heritage New Zealand Pouhere Taonga before an archaeological site is modified or destroyed. This is the case regardless of whether the land on which the site is located, is designated, or whether the activity is permitted under the District Plan or a resource or building consent has been granted.

- 4.3 Essentially, the Reporting Officer has recommended replacing the volume and area thresholds in PER-2 and PER-3 with a depth of excavation threshold of 500mm.
- 4.4 We agree with the deletion of PER-2 and PER-3, and the amendment of PER-1 to simply apply to earthworks within all Heritage Area Overlays. We consider that this provides a clearer pathway for earthworks activities within these Heritage Area Overlays.
- 4.5 While we consider that the removal of volume and area thresholds proposed through the notified rule is an improvement, we disagree with the Reporting Officer's recommendation that a network utility proposal needs to go through a consenting process if an excavation exceeds a depth of 500mm. The Reporting Officer's justification for this amendment is that the impact of this type of excavation on potential archaeological features should be considered via a restricted discretionary consenting process.

- 4.6 It is our opinion that the undergrounding of cables should be encouraged in these sensitive environments because overhead cables are more likely to detract from heritage values. Furthermore, we consider that the depth threshold (and the resulting requirement to obtain resource consent where that threshold cannot be met) as recommended will not facilitate this. PER-1 already requires compliance with standard HA-S3 Accidental Discovery Protocol which we consider is sufficient in managing any effects on potential archaeological features. The requirement to obtain an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 provides a further level of protection for those features.
- 4.7 Further, if the requirement for resource consent is triggered, the relevant matters of discretion are largely focused on assessing adverse effects on the heritage values of Heritage Area Overlays or any adjacent scheduled Heritage Resources. Given the earthworks themselves will not have any permanent visual or character impact, and the earthworks are subject to a minimum setback from scheduled Heritage Resources, we consider it appropriate to exclude earthworks associated with new underground infrastructure from this resource consent requirement under Rule HA-R5.
- 4.8 Therefore, we consider that HA-R5 should be redrafted as per **Attachment 2** to reflect Top Energy's submission, while incorporating the elements from the Reporting Officer's amendments that we agree with, as identified above.

#### **Rule HA-R6 & HA-R10**

- 4.9 Top Energy sought to include a new permitted activity rule for the maintenance, upgrade, and repair of existing network utilities, buildings and structures in all Heritage Area Overlays. Top Energy also sought to include a new permitted activity rule for new network utilities in all Heritage Area Overlays.<sup>3</sup>
- 4.10 Although the Reporting Officer has not recommended new permitted activity rules as requested by Top Energy, she has agreed that Rule HA-

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<sup>3</sup> Submissions 483.123 & 483.124.

R10 as notified is overly onerous in requiring a full discretionary consent for all infrastructure in the Part A HA overlays.<sup>4</sup>

4.11 The Reporting Officer has therefore recommended that there should be two different permitted pathways for infrastructure under Rule HA-R6, depending on whether the HA Overlay already has a permitted pathway under Rule HA-R6 as notified or whether the HA Overlay was subject to a full discretionary activity pathway under Rule HA-R10.<sup>5</sup>

4.12 The Reporting Officer has subsequently recommended that Rule HA-R6 and Rule HA-R10 be restructured so that there are two rules as follows:<sup>6</sup>

- a. Permitted Rule HA-R6 that manages all infrastructure in a HA Overlay that is not within a site containing a Scheduled Heritage Resource; and
- b. Discretionary Rule HA-R10 that manages all infrastructure in a HA Overlay within a site containing a scheduled Heritage Resource.

4.13 We agree with a number of these proposed amendments, including:

- (a) The two different permitted pathways for infrastructure, including for infrastructure located within Heritage Area Overlays that were previously subject to a full discretionary activity pathway under Rule HA-R10.
- (b) The provision for underground infrastructure, connections to buildings for network utilities and new above-ground infrastructure that is wholly located in the road reserve (and not located within a site containing a scheduled Heritage Resource) as a permitted activity under Rule HA-R6 PER-1.1, 2 and 4.
- (c) The provision for maintenance, repair or upgrading of any existing above-ground infrastructure that is located near the original alignment in H-R6 PER-3 as a permitted activity and a

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<sup>4</sup> Paragraph 318 of the Section 42A Report for the Heritage Area Overlay and Historic Heritage Chapters.

<sup>5</sup> Paragraph 317 of the Section 42A Report for the Heritage Area Overlay and Historic Heritage Chapters.

<sup>6</sup> Paragraph 316 of the Section 42A Report for the Heritage Area Overlay and Historic Heritage Chapters.

similar exclusion in HA-R10 PER-1. As discussed further below, based on the evidence of Mr Sooknandan we consider that the proposed 1m limit on the location of these activities from the original alignment of the infrastructure should be increased to 3m.

- (d) The subsequent deletion of Rule HA-R11, removing the discretionary activity status for all activities not otherwise listed in the Chapter.

4.14 Notwithstanding the recommendations we have supported above, we consider that the following additional amendments are required to ensure the most appropriate planning outcome for these activities:

- (a) First, Mr Sooknandan considers that the proposed 1m limit on the location of these activities from the original alignment in HA-R6 and HA-R10 is inappropriate from an engineering perspective, particularly when considering Top Energy's operational and functional needs. In short, Mr Sooknandan considers that Top Energy typically needs more flexibility to accommodate replacement assets and therefore supports this being increased to 3m. We rely on Mr Sooknandan's evidence and consider that the applicable provisions should be updated accordingly.
- (b) Secondly, with how HA-R6 is redrafted, the reference to "all zones" in the left hand column (see screenshot below) is now confusing and will likely lead to unintended consequences.

HA-R6	Infrastructure <u>not located within a site containing a scheduled Heritage Resource and renewable electricity generation infrastructure</u> <sup>56</sup>	
<u>All zones</u>	<u>Activity status: Permitted</u>	<u>Activity status where compliance with PER-1 is not achieved: Restricted Discretionary</u>
<u>Heritage Area</u>	<u>Where:</u>	
<u>Overlays:</u>	<u>PER-1</u>	
<u>Kerikeri —</u>	<u>The infrastructure is:</u>	<u>Matters of discretion are restricted to:</u>
<u>Part A —</u>	1. <u>Located underground;</u>	a. whether the proposed infrastructure will adversely affect the heritage values of the Heritage Area Overlay;
<u>Kohukohu</u>	2. <u>Maintenance, repair or upgrading of any existing above ground infrastructure that is located within 1m either side of the original location or where the alignment is wholly located within the road reserve;</u>	b. whether the proposed infrastructure will adversely affect the heritage values of any nearby adjacent Scheduled Heritage Resource;
<u>Kororāreka</u>	3. <u>Connections to buildings or structures for network utilities; or</u>	c. whether there is a practicable reason why the infrastructure needs to be located within the Heritage Area Overlay or an a site that contains a Scheduled
<u>Russell —</u>	4. <u>New above ground infrastructure that is wholly located within the road reserve.</u>	
<u>Part A —</u>		
<u>The Strand,</u>		
<u>Part B —</u>		
<u>Wellington Street and</u>		
<u>Part C —</u>		
<u>Christ</u>		



- (c) Based on our reading of the rule, including “all zones” alongside the Reporting Officer’s redrafting means that technically any “infrastructure not located within a site containing a scheduled Heritage Resource” across any zone (i.e. virtually all other land in the district) would technically be captured by the requirements of this rule. We do not consider that to be the intention of the rule, which we understand to be focussed specifically on appropriately managing infrastructure within the Heritage Area Overlays listed within the rule (not infrastructure outside of those areas). We therefore recommend deleting the reference to “all zones” within this rule.<sup>7</sup>
- (d) Thirdly, we consider that there should be the same exemptions in HA-R10 as is proposed for HA-R6 for any underground infrastructure and above ground infrastructure located within the road reserve. The justification for these exclusions is for the same reasons already outlined by the Reporting Officer for their inclusion in HA-R6.
- (e) Finally, we do not consider that a full discretionary activity status is required in HA-R10, as the potential effects of those activities for the purpose of that rule can be readily identified and captured within the relevant matters of discretion. Those effects relate to effects of that infrastructure on the relevant heritage values having regard to the operational and functional needs of the infrastructure to be located within a site containing a scheduled Heritage Resource. In that context, we consider that a restricted discretionary status is more appropriate.

4.15 For these reasons, we consider that Rules HA-R6 and HA-R10 should be redrafted as per **Attachment 2** in alignment with Top Energy’s submission, while incorporating the elements from the Reporting Officer’s amendments that we agree with, as identified above.

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<sup>7</sup> We have also recommended the same change to HA-R5 and HA-R10 for the same reason. We have not reviewed this across the HA chapter, noting the limited scope of Top Energy’s submission and interests, however consider that a similar issue could apply, and a more comprehensive review from the Reporting Officer to the inclusion of “All Zones” would be beneficial to address any further instances.

## 5 HISTORIC HERITAGE

### Rule HH-R6

- 5.1 Top Energy made a submission seeking to delete or amend Rule HH-R6 to exclude network utilities.<sup>8</sup>
- 5.2 The Reporting Officer has recommended accepting in part this submission point, and has amended Rule HH-R6 as follows:

~~Infrastructure and renewable electricity generation infrastructure~~  
within a site containing a scheduled Heritage Resource

Activity status: Discretionary

This rule shall not apply to ~~domestic small scale renewable electricity generation, and~~

1. Maintenance, repair or upgrading of any existing above ground infrastructure that is located within 1m either side of the original location; or
2. Connections to buildings or structures for network utilities.

- 5.3 The Reporting Officer considers that requiring a discretionary activity consent under HH-R6 for renewable electricity generation infrastructure is both an effective way to protect the scheduled Heritage Resource and achieves alignment between HH-R6 and HA-R10.<sup>9</sup> The inclusion of “renewable electricity generation infrastructure” in this rule is not a key focus for Top Energy’s submission on the HH Chapter. Irrespective of that, we agree generally with the Reporting Officer’s recommendation to separate “renewable electricity generation infrastructure” out from the rule.
- 5.4 As set out in Section 4 above, we support the Reporting Officer’s recommendation in respect of Rule HH-R6 to exclude the maintenance, repair or upgrading of any existing above-ground infrastructure that is located within proximity to the original location. However, consistent with our recommendations under Rule HA-R6 and HA-R10 outlined above, we consider that:

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<sup>8</sup> Submission 483.127.

<sup>9</sup> Section 42A Report for Heritage Area Overlays and Historic Heritage, paragraph 381.

- (a) Infrastructure located underground should be excluded from this rule.
- (b) Relying on the evidence of Mr Sooknandan and for the reasons expressed in Section 4, we consider that the 1m limit on the location of those activities from the original alignment of that infrastructure should be increased to 3m.
- (c) There should be a similar exclusion for new above ground infrastructure located solely in the road reserve.
- (d) A full discretionary activity status where compliance is not achieved is inappropriate. A restricted discretionary activity with the matters of discretion outlined in **Attachment 2** provides the necessary discretion for a decision maker should Rule HH-R6 be otherwise triggered.

5.5 For these reasons, we consider that Rule HH-R6 should be redrafted as per **Attachment 2** to reflect Top Energy's submission, while incorporating the elements from the Reporting Officer's amendments that we agree with as identified above.

## **6 SITES AND AREAS OF SIGNIFICANCE TO MĀORI**

### **Objectives, Policies and Rules**

6.1 Top Energy sought the inclusion of additional objectives and policies that recognise the need for the location of new infrastructure within Sites and Areas of Significance to Māori where:

- (a) there is an operational and functional need for that infrastructure; and
- (b) any adverse effects of that infrastructure are adequately managed.<sup>10</sup>

6.2 Top Energy also sought the inclusion of an additional objective and policy that provides for the operation, maintenance, repair and

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<sup>10</sup> Submissions 483.140 & 483.141.

upgrading of infrastructure within Sites and Areas of Significance to Māori.<sup>11</sup>

6.3 Further, Top Energy also sought amendments to the notified rules to allow for the suitable provision of new infrastructure where there is an operational and functional need to locate in those areas, and to enable the ongoing operation, maintenance, repair and upgrading of infrastructure within Sites and Areas of Significance to Māori.<sup>12</sup>

6.4 The Reporting Officer has recommended the following in response to this:<sup>13</sup>

I consider that these matters are addressed in the Section 42A Report Infrastructure, by the report writer, Jerome Wyeth. The Infrastructure chapter in the PDP provides the provisions on a District Wide basis and therefore it is appropriate that the specific relief sought regarding objectives, policies and rules relating to infrastructure, be provided for in the Infrastructure chapter. Accordingly, I recommend that these submission points be rejected.

6.5 Despite the Reporting Officer's recommendation above, we note that these submission points were not explicitly addressed in the Infrastructure Section 42A Report or in the recent Hearing 11. As such, the Infrastructure Chapter (as notified and as subject to the relevant Reporting Officer's recommendations) is currently silent on objectives, policies and rules for infrastructure within Sites and Areas of Significance to Māori.

6.6 We also refer to the Infrastructure Chapter overview which states:

In addition to the provisions in this Chapter, there are provisions in other Part 2: District Wide Matters that may be relevant for infrastructure, including the Historic Heritage, Heritage Area Overlays, Sites and Areas of Significance to Māori, Ecosystems and Indigenous Biodiversity, Natural Character, Natural Features and Landscapes, and Coastal Environment chapters.

6.7 In the absence of any specific provisions in the Infrastructure Chapter, we consider that provisions should be included within the Sites of Significance Māori Chapter as outlined in **Attachment 2**, including:

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<sup>11</sup> Submissions 483.142 & 483.143.

<sup>12</sup> Submission 483.144.

<sup>13</sup> Section 42A Report for Sites and Areas of Significance to Māori, paragraph 329.

- (a) A new objective regarding managing the effects and development of new infrastructure and upgrading existing infrastructure within Sites and Areas of Significance to Māori. There may be an operational and functional need for new infrastructure and upgrades to existing infrastructure within Sites and Areas of Significance to Māori. In that context, there should be a pathway for consideration of those activities that accounts for that need alongside careful consideration of the need to protect, and manage effects on, the Sites and Areas of Significance to Māori. This new objective is linked to a policy which provides clear requirements for when the establishment of new infrastructure or upgrading of existing infrastructure may be acceptable. We consider that these activities should be subject to a more restrictive threshold compared to operation, maintenance and repair of existing infrastructure, and that is reflected in that policy drafting.
- (b) A new objective and policy enabling the safe and efficient use, operation, maintenance and repair of existing infrastructure within Sites and Areas of Significance to Māori. This acknowledges that where there is existing infrastructure within a Site of Significance to Māori, it is important that is enabled to be operated, maintained and repaired.
- (c) A new permitted activity status for the operation, maintenance or repair of existing above ground infrastructure undertaken by a network utility provider. This links to the objective and policy and provides specific recognition and provision for existing infrastructure to be able to be operated, maintained and repaired when located within a Site of Significance to Māori.

6.8 In our opinion, to achieve consistency across the PDP, this signifies that the Sites and Areas of Significance to Māori Chapter should provide for objectives, policies and rules specific to infrastructure locating within Sites and Areas of Significance to Māori, where there is an operational and functional need to locate in those areas and any adverse effects are adequately managed.

- 6.9 For these reasons, we have recommended wording for new infrastructure specific objectives, policies, and a new rule, consistent with Top Energy's submission in **Attachment 2**.

## **7 NOTABLE TREES**

### **Objective NT-O1**

- 7.1 Top Energy made a submission seeking to amend Objective NT-O1 as follows:<sup>14</sup>

Notable Trees and groups of trees which contribute to the botanical, ecological, historical, cultural or amenity value of the District are identified and protected, while enabling the safe and efficient use, development, maintenance, operation, repair and upgrading of infrastructure and network utilities.

- 7.2 The Reporting Officer has recommended retaining Objective NT-O1 as notified, stating:

I consider it unnecessary to include the additional sentence within the objectives as it is already sufficiently addressed in NT-P4. NT-P4 widely covers the maintenance, repair and upgrading of infrastructure and incorporating these provisions within NT-O1 would result in unnecessary duplication within the plan.<sup>15</sup>

- 7.3 We disagree with this recommendation. The notified Objective NT-O1 only provides for the identification and protection of Notable Trees. It does not reference infrastructure.
- 7.4 Given that Policy NT-P4 enables the trimming, pruning of trees and groups of trees and activities within the root zone area of a notable tree for the purpose of operating, maintaining, repairing, upgrading or removing infrastructure, we consider it important that there is an objective which this policy implements as policies essentially provide the practical means for achieving the goals set out in the objectives.
- 7.5 As such, we recommend the amendment sought by Top Energy which has been outlined in **Attachment 2**.

### **Policy NT-P2**

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<sup>14</sup> Submission 483.128.

<sup>15</sup> Section 42A Report for Notable Trees, paragraph 59.

7.6 Top Energy made a submission seeking to amend Policy NT-P2 as follows:<sup>16</sup>

Enable the pruning and trimming of branches on Notable Trees where the works will:

- a. Retain or improve the health of the notable tree; and
- b. Allow the regular ~~maintenance~~ pruning of the notable tree; or
- c. Will improve public safety, or prevent damage to property or infrastructure; or
- d. Enable the safe and efficient use and operation of infrastructure or network utilities.
- e. Control any other maintenance works to ensure that the works will:
  - i. Maintain the health, form and shape of the tree; and
  - ii. Be supervised or undertaken by a suitably qualified and experienced arborist.

7.7 The Reporting Officer has recommended accepting this submission in part, noting the following in response:<sup>17</sup>

Enable the pruning and trimming of branches on notable trees where the works ~~will~~:

- a. Will retain or improve the health, form and shape of the notable tree;
- ~~b. allow the regular maintenance of the notable tree;~~
- b. ~~will~~ may improve public safety, or prevent damage to property or infrastructure; and
- ~~c. control any other maintenance works to ensure that the works will;~~<sup>5</sup>
- ~~i. maintain the health, form and shape of the tree; and~~<sup>5</sup>
- c. will be supervised or undertaken by a suitably qualified and experienced arborist.

7.8 We agree with the following elements of the Reporting Officer's recommendations:

- (a) The inclusion of "on notable trees" within the opening sentence.

<sup>16</sup> Submission 483.129.

<sup>17</sup> Section 42A Report for Notable Trees, paragraphs 75, 76 & 78.

- (b) The deletion of original clause b. We agree that this was unnecessarily repetitive.

- 7.9 We do not otherwise support the Reporting Officer's revised wording. In our opinion, the revised wording has lost the original intent of the policy and has resulted in the list of a. – c. now being an all-inclusive list with the inclusion of "and" meaning that all requirements would need to be achieved in order to met the policy. We do not consider this was the original intent of the policy, nor do we consider that to be an appropriate policy outcome.
- 7.10 That policy as amended by the Reporting Officer would now require a suitably qualified and experienced arborist to supervise all pruning and trimming of branches on notable trees. We do not consider that is realistic or reasonable, especially as it relates to pruning and trimming of branches to improve public safety, or prevent damage to property or infrastructure, or to enable the safe and efficient use and operation of infrastructure or network utilities.
- 7.11 Regarding the additional clause which enables the safe and efficient use and operation of infrastructure or network utilities, we disagree with the Reporting Officer that Policy NT-P4 already provides for the trimming and pruning of notable trees to facilitate the use and operation of infrastructure.
- 7.12 We note that as Policy NT-P4 currently reads, it only enables the trimming and pruning of trees generally. We therefore recommend an amendment to the wording of Policy NT-P4 as follows to improve clarity that this policy enables trimming and pruning of 'notable trees':

Allow the trimming, pruning of notable trees and groups of trees and activities within the root zone area of notable tree or group of trees for the purpose of operating, maintaining, repairing, upgrading or removing infrastructure where:

- a. For existing infrastructure, the work is required to comply with the Electricity (Hazards from Trees) Regulations 2003 or the Telecommunications Act 2001; or
- b. For new infrastructure, there is an operational need or functional need to be located within the root zone area and there are no other practicable alternative locations; and



- c. For both existing and new infrastructure, the work will not compromise the long-term health, natural life or values of the notable tree or groups of trees.

7.13 Subject to Policy NT-P4 being amended as sought by Top Energy above, we support Policy NT-P2 as recommended by the Reporting Officer.

### **Policy NT-P3**

7.14 Top Energy made a submission seeking to amend Policy NT-P3 as follows:<sup>18</sup>

Only allow activity, infrastructure and or development within the root zone area of a notable tree or group of trees where:

- a. It is demonstrated that the activity, infrastructure and or development will not be detrimental to the long-term health and significance of the tree or group of trees; ~~and or~~
- b. There is a functional or operational need for the activity, infrastructure or development to occur within the root protection area and there are no other practical alternative locations.

7.15 The Reporting Officer has recommended rejecting this submission and retaining Policy NT-P3 as notified, stating that:<sup>19</sup>

The inclusion of Top Energy Limited's request for infrastructure within the policy is unnecessary as any works relating to infrastructure would be considered 'activity' or 'development' and a specific reference to infrastructure is not required. The matters are already comprehensively addressed in NT-P4. NT-P4 covers the trimming and pruning of notable trees, activities within the rootzone area, and the requirements related to operating, maintaining, repairing, upgrading and removing infrastructure. Given this, it seems irrelevant to also incorporated similar provisions under NT-P3 as NT-P4 sufficiently captures infrastructure.

7.16 We disagree with the Reporting Officer's recommendation because:

- (a) The term "infrastructure", a defined term consistent with the definition in the RMA definition, is used throughout the PDP provisions. "Activity" and "development" are not defined terms. In our view, it is clearer and more consistent to refer to "infrastructure" within this policy.

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<sup>18</sup> Submission 483.130.

<sup>19</sup> Section 42A Report for Notable Trees, paragraph 86.

- (b) The Reporting Officer has not specifically addressed Top Energy's submission point regarding the inclusion of "or" within the policy. We consider that this is an appropriate change. In our opinion, activity, infrastructure or development should be able to take place in the root zone area in either of the circumstances in Policy NT-P3(a) or (b). Those circumstances respectively offer a reasonably narrow pathway for those works to be carried out. That is appropriate given the values of notable trees. However, the requirement for both 'limbs' of that policy to be met is, in our opinion, overly restrictive.
- (c) Finally, we recommend changing "activity" to "activities" within the policy to make it grammatically correct.

#### **Policy NT-P4**

7.17 We are supportive of the recommendation to retain this policy as notified, which reflects Top Energy's submission; however we have recommended a minor amendment to reference "notable trees" within the policy so that it is consistent with the references within other policies. This will also avoid this policy potentially being misinterpreted as applying more broadly to trees and groups of trees that are not scheduled as notable trees.

#### **Policy NT-P5**

7.18 Top Energy sought to amend NT-P5 as follows:<sup>20</sup>

Avoid the destruction or removal of a notable tree or trees unless:

- a. there is an imminent threat to the safety of people and property, or to the safe and efficient use and operation of infrastructure or network utilities; or
- b. it is necessary to maintain infrastructure and pruning or relocation of the tree is not possible; or
- c. the use and enjoyment of a property and surrounds is significantly compromised or diminished; or
- d. it is dead, or is in terminal decline; and

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<sup>20</sup> S483.132.

- e. it has been assessed by a suitably qualified and experienced arborist as being suitable for destruction or removal.

7.19 The Reporting Officer has accepted this in part, recommending the following wording:

Avoid the destruction or removal of a notable tree or trees unless:

- a. there is an imminent threat to the safety of people and property; ~~or~~
- b. it is necessary ~~to maintain~~ for the safe and efficient use, operation, maintenance and repair of infrastructure and pruning or relocation of the tree is not possible;
- c. the use and enjoyment of a property and surrounds is significantly compromised or diminished; or
- d. it is dead, or is in terminal decline; and
- e. For all scenarios described in a-d above, it has been assessed by a suitably qualified and experienced arborist as being suitable for destruction or removal.

7.20 We disagree with the Reporting Officer's wording because:

- (a) For "imminent threats to the safety of people and property" and the "safe and efficient use, operation, maintenance and repair of infrastructure" it is not practical nor reasonable in all scenarios to require an assessment from an arborist. In these scenarios, immediate removal may be necessary to avoid risks to people, property and infrastructure, and it is unrealistic and unreasonable to expect an assessment from an arborist to determine this in advance.
- (b) For clause (b), it should be drafted as "pruning or relocation of the tree is not feasible", rather than "not possible". In most cases the *possibility* of pruning or relocation could be established, no matter how small, and feasibility is a more realistic and reasonable test.

### **Rule NT-R2 and NT-R8**

7.21 Top Energy made a submission seeking to amend Rule NT-R2 as follows:<sup>21</sup>

Activity status: Permitted

Where:

PER-1

The maximum branch diameter must not exceed 5200mm at severance.

PER-2

No more than 10% of live growth of the tree may be moved in any one calendar year.

PER-3

The works must be undertaken by a person that is a suitably qualified person as per NT-S1 Qualified Arborist – Level 4

PER-4

Council is advised 14 days prior to the work commencing and is provided with written documentation by the arborist undertaking or supervising work confirming that they have the qualifications required by NT-S1 Qualified Arborist – Level 4.

PER-5

All trimming or alteration must retain the natural shape, form and branch habit of the tree.

PER-6

All pruning and trimming shall adhere to the Minimum Industry Standards: MIS308- Tree Pruning, as per the arboriculture Australia and New Zealand Arboriculture standards.

PER-X

If the pruning or trimming is required as emergency tree works, PER-1-6 above do not apply.

7.22 Top Energy also made a submission seeking to amend Rule NT-R8 as follows:<sup>22</sup>

Permitted

Where:

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<sup>21</sup> Submission 483.135.

<sup>22</sup> Submission 483.139.

PER-1

The removal is required as emergency tree works.

Activity status where compliance not achieved: Discretionary.

7.23 The Reporting Officer has recommended the following in response to Top Energy's submission on NT-R2<sup>23</sup>:

I support the request to amend the maximum branch diameter to 200mm at severance as this number aligns with other district plans, including Whangarei District Council, and is a more appropriate measurement as it's not too restrictive.

7.24 The Reporting Officer also noted<sup>24</sup>:

I understand the submitters request to permit emergency tree works but the lack of a clear definition for '*emergency tree works*', makes it challenging to recognise what qualifies as an emergency.

I encourage the submitter to provide additional clarification on what constitutes '*emergency tree works*' at Hearing 12. Given the current lack of clarity, I do not believe it is necessary to amend NT-R2 at this time, however we will review any evidence presented at the hearing.

7.25 The Reporting Officer has recommended rejecting this submission, and retaining Rule NT-R8 as notified given the lack of definition for "emergency tree works" discussed above.

7.26 The Reporting Officer noted:<sup>25</sup>

I acknowledge the submitters request to amend NT-R8 to a permitted activity for emergency tree works. However, similar to Key Issue 10, the lack of a clear definition for '*emergency works*' makes it difficult to determine what qualifies as an emergency outside of the circumstances set out in s330 of the RMA, as noted above. NT-R3 already covers the removal of unsafe or dead notable trees and the 14-day notification requirement for both NT-R3 and NT-R4 is reasonable for standard cases. This time frame allows sufficient planning and ensures proper management of works while accommodating urgent, non-emergency situations. The scope of what '*emergency works*' is, remains unclear. I invite the submitter to provide further evidence at Hearing 12, to clarify the definition and activities surrounding emergency works. Given the current lack of clarity, I do not believe amending NT-R8 to a permitted activity

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<sup>23</sup> Section 42A Report for Notable Trees, paragraph 124.

<sup>24</sup> Section 42A Report for Notable Trees, paragraphs 125 & 126.

<sup>25</sup> Section 42A Report for Notable Trees, paragraph 148.

is necessary at this time, however we will review any evidence presented at the hearing.

7.27 We support the Reporting Officer's recommendation to increase the maximum branch diameter to 200mm at severance in NT-R2 in accordance with Top Energy's submission.

7.28 With regard to the Reporting Officer's rejection of Top Energy's recommendations regarding the inclusion of "emergency tree works", Top Energy did in fact seek a definition within its original submission as follows:<sup>26</sup>

Means the pruning or maintenance or removal of any tree or vegetation immediately necessary to avoid any actual and imminent threat to the safety of persons or of damage to property, or to maintain or restore power or telecommunications infrastructure.

7.29 This submission point has not been addressed within the Notable Tree Section 42A Report by the Reporting Officer, and therefore has led to Top Energy's submission point being rejected as it relates to NT-R2 and NT-R8.<sup>27</sup> In our opinion, the proposed definition sought by Top Energy above appropriately provides the clarity sought by the Reporting Officer to a plan user as to what constitutes "emergency tree works." We therefore recommend that this definition is included within the PDP.

7.30 With regard to the reference to "emergency tree works" in NT-R2, we consider that this is necessary to ensure that such works are not unnecessarily and unreasonably constrained by the requirements in PER-1 – PER-6. Similarly, we consider that removal of a notable tree that constitutes "emergency tree works" should be enabled in NT-R8. While section 330 of the RMA allows for certain emergency works to be undertaken without needing to obtain prior resource consent, that does not eliminate the need to apply for a retrospective resource consent if the activity would otherwise have required a resource consent.

<sup>26</sup> S483.022 – This is consistent with the definition used in the operative Whangārei District Plan Notable Trees Chapter.

<sup>27</sup> This omission was raised by Mr Badham in questioning for Top Energy's evidence and presentation for Hearing 11. Council staff acknowledged that this was likely a submission coding error, and that it would be addressed prior to Hearing 12. At the time of preparing this evidence, we are aware of no further action on this from the Reporting Officer or Council.

- 7.31 Given this, we consider that a new definition for “emergency tree works” should be included, and that Rule NT-R2 and NT-R8 should be amended in the manner proposed in Top Energy’s submission, as outlined in **Attachment 2**.

#### **Rule NT-R4**

- 7.32 Top Energy made a submission seeking to amend Rule NT-R4 to delete PER-2 and PER-3 as follows<sup>28</sup>

Activity status: Permitted

Where:

PER-1

The works are required to provide for safe and reasonable clearance and is carried out in accordance with clause 14 of the Electricity (Hazards from Trees) Regulations 2003 or clause 128 of the Telecommunications Act 2001.

~~PER-2~~

~~The works must be undertaken or supervised by a person that complies with NT S1 Qualified Arborist Level 4.~~

~~PER-3~~

~~Council is advised 14 days prior to the work commencing and is provided with written documentation by the arborist undertaking or supervising that they have the qualifications required by NT S2 NT-S1 Qualified Arborist Level 6 4.~~

PER-4

The health and integrity of the tree is retained and the pruning will not result in its decline.

- 7.33 The Reporting Officer has recommended the retention of PER-2 based on guidance from their technical expert, Jon Refern, who advised that a Level 4 Arborist qualification is appropriate for the purpose of trimming notable trees in accordance with the applicable electricity regulations.<sup>29</sup>

- 7.34 The Reporting Officer has also recommended that PER-3 is revised to replace the Level 6 qualification with a Level 4 qualification due to

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<sup>28</sup> Submission 483.137.

<sup>29</sup> Section 42A Report for Notable Trees, paragraph 131.

guidance from their technical expert, Jon Refern, who noted that a Level 6 qualification is relatively rare.

7.35 In relation to the requested removal of PER-3, the Reporting Officer further considers that:<sup>30</sup>

The submitters request to remove the 14-day notification requirement prior to commencing work unnecessary. In non-emergency situations, the 14-day period is a reasonable and practical timeframe, allowing for adequate communication with Council regarding tree works. The 14-day notice outlined in NT-R3 and NT-R4 is well-suited for standard scenarios, providing enough time for proper planning and assessment. This approach ensures that works are managed effectively, and provides flexibility for urgent, non-emergency situations where timely action may be required, therefore We don't consider it appropriate to remove from the rule.

7.36 We disagree with Reporting Officer's recommendations to retain PER-2 and PER-3 for the reasons outlined below.

7.37 PER-1 relates to the works being in accordance with the Electricity (Hazards from Trees) Regulations 2003. The purpose of those Regulations is to protect the security of electricity and the safety of the public by prescribing spaces around electrical conductors that trees must not encroach on, and by setting rules around who has responsibility for cutting or trimming trees that encroach on electrical conductors. Based on our review and understanding of the regulations, there is no specific requirement for such works to be supervised by an arborist with the qualifications specified by PER-2, nor is there any requirement for Council to be notified of the works where they are required to take place.

7.38 In our opinion, as long as the works are undertaken in accordance with the Regulations, then PER-2 and PER-3 are unnecessary and redundant. Furthermore, those tree works can be extensive and/or complex, and imposing an arbitrary 14-day notification period will create an unnecessary and ultimately unhelpful administrative burden for Top Energy and Council alike.

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<sup>30</sup> Section 42A Report for Notable Trees, paragraph 134.



7.39 Regarding the “guidance” from Mr Redfern referenced and relied on by the Reporting Officer, there is no written statement from Mr Redfern that we are aware of which indicates that a Level 4 Arborist qualification is appropriate for the purpose of trimming notable trees in accordance with the Regulations. An Arboriculture Report is included in Appendix 3 of the Section 42A Report, but this focuses on responses to removing existing or adding new trees to the Notable Tree Schedule, with no specific written response to Top Energy’s submission on NT-R4. As such, we cannot confirm Mr Redfern’s advice or the basis on which he has provided it, and therefore have not relied on it in reaching our position above.

7.40 Given this, we consider that Rule NT-R4 should be amended in the manner proposed in Top Energy’s submission as outlined in **Attachment 2**.

## **8 SECTION 32AA EVALUATION**

8.1 Section 32AA of the RMA requires further evaluation where changes to provisions are proposed since the original section 32 evaluation was undertaken. We have recommended a number of amendments to the Heritage Area Overlay, Historic Heritage, Sites and Areas of Significance to Māori and Notable Trees chapters, which are outlined in **Attachment 2**.

8.2 By way of summary, we consider that the recommended amendments to the provisions that we have proposed will be the most appropriate way to achieve the purpose of the RMA in accordance with section 32(1)(a) for the following reasons:

- (a) **Sustainable Management (Section 5):** The recommended amendments will better enable the use and development of infrastructure, both of which are critical to the health, safety, and social, cultural and economic well-being of people and communities within the Far North District. The changes also provide for environmental protection by recognising the operational and locational constraints associated with these activities, and managing potential adverse effects on sensitive

heritage, notable trees and Sites and Areas of Significance to Māori accordingly.

- (b) **Efficient Use and Development of Resources (Section 7(b)):** By more appropriately enabling and providing for existing and new infrastructure where these resources are relevant, the proposed amendments support the efficient use and development of natural and physical resources, including the electricity distribution network.
- (c) **Enabling Functional and Operational Needs:** The recommended amendments better recognise and provide for the functional and operational needs of Top Energy's infrastructure, including flexibility for operation, maintenance, repair and upgrading, and appropriate pathways for new infrastructure. These are essential to supporting the growth and resilience of electricity supply in the district.
- (d) **Appropriate Management of Effects:** The recommended provisions provide an improved framework for managing the adverse effects of infrastructure, with appropriate thresholds, matters of discretion, and rule triggers. These recognise the need for both robust environmental outcomes and the efficient operation of essential infrastructure.
- (e) **Costs and Benefits:** We consider that the benefits of the recommended amendments will outweigh the potential costs. This is because the operational and functional needs of infrastructure within the district (and the benefits they provide) will be better provided for through those amendments, while also ensuring that any adverse effects of that infrastructure that may eventuate on sensitive heritage, notable trees and Sites and Areas of Significance to Māori are appropriately managed.

## 9 CONCLUDING COMMENTS

- 9.1 Overall, we consider that there are a number of issues outstanding from Top Energy's submission relating to the Heritage Area Overlay, Historic Heritage, Sites and Areas of Significance to Māori, and Notable Trees

that need to be addressed by the Hearings Panel. These primarily relate to ensuring that new infrastructure and the operation, maintenance, repair and upgrading of existing infrastructure is recognised and provided for within these particularly sensitive resources and the provisions that apply to them.

- 9.2 While the Reporting Officers have made a number of amendments to assist with achieving these outcomes, we consider that further changes are required as we have outlined in **Attachment 2** of this evidence statement.

**David Eric Badham and Melissa Ivy McGrath**  
**12 May 2025**

**Attachment 1 – Areas of Agreement with the Reporting Officers /  
S42A**

**Heritage Area Overlay & Notable Trees**

These include the following submission points:

- (a) S483.122 – support the Reporting Officer’s recommended amendments to restructure Rule HA-R6 and Rule HA-R10, and delete HA-R11; and
- (b) S483.138 – support the Reporting Officer’s recommended amendment to Rule NT-R5 which allows infrastructure to be located 700mm below ground level.

**Attachment 2 – Track Change Version of Provisions**

S42A recommended wording = additions underlined text deletions ~~strikethrough text~~

David Badham and Melissa McGrath recommended wording = additions underlined text deletions ~~strikethrough text~~

## Heritage Area Overlay

### Rule HA-R5

...

#### All zones

...

#### PER-1

#### Earthworks associated with new underground network utilities:

1. Are setback a minimum of 20m from a scheduled Heritage Resource; and

2. Comply with standard HA-S3 Accidental Discovery Protocol.

PER-~~21~~

~~The~~ All other earthworks:

1. Are setback a minimum of 20m from a scheduled Heritage Resource;

2. Comply with standard HA-S3 Accidental Discovery Protocol; and

3. Do not result in disturbance of sub-soils below a depth of 500mm.

4. ~~Comply with the relevant permitted activity rules within the Earthworks chapter; and~~

5. ~~Are not within 20m of a scheduled Heritage Resource.~~

Note 1: When applying PER-1(1), the 20m distance must be measured from the edge of the footprint of any building, site or structure as described in Schedule 2 – Schedule of historic sites, buildings and objects.

**Note 2: The Heritage New Zealand Pouhere Taonga Act 2014 requires all applicants to obtain an authority from Heritage New Zealand Pouhere Taonga before any archaeological site is modified or destroyed. This is the case regardless of whether the land on which the site is located is designated, or whether the activity is permitted under the District Plan or a resource or building consent has been granted.**

## **Rule HA-R6**

...

**All-zones**

...

### **PER-1**

**The infrastructure is:**

- 1. Located underground;**
- 2. Maintenance, repair or upgrading of any existing above ground infrastructure that is located within 13m either side of the original location or where the alignment is wholly located within the road reserve;**
- 3. Connections to buildings or structures for network utilities; or**
- 4. New above ground infrastructure that is wholly located within the road reserve.**

## **Rule HA-R10**

...

**All-zones**

...

Activity status: **Discretionary** ~~**Restricted**~~ **Discretionary**

**This rule shall not apply to:**

- 1. Infrastructure that is located underground;**



2. Maintenance, repair or upgrading of any existing above ground infrastructure that is located within 1m either side of the original location; or
3. Connections to buildings or structures for network utilities; or
4. New above ground infrastructure that is wholly located within the road reserve.

**Matters of discretion are restricted to:**

- a. The operational and functional needs of the infrastructure to be located within the site containing the scheduled Heritage Resource;
- b. Whether a scheduled Heritage Resource will be adversely affected by the proposed works;
- c. Location, scale, design of the proposed works;
- d. Any adverse effects on any archaeological site;
- e. Any landscaping or fencing to maintain heritage boundary treatments and curtilage;
- f. The location and relationship of works in relation to adjoining sites and the road;
- g. Any assessments or advice from a suitably qualified and experienced heritage or cultural expert (where provided); and
- h. Any consultation with Heritage New Zealand Pouhere Taonga, Department of Conservation and tangata whenua (where provided).

## Historic Heritage

### Rule HH-R6

Activity status: ~~Discretionary~~ **Restricted Discretionary**

This rule shall not apply to ~~domestic small scale renewable electricity generation, and~~

1. Infrastructure that is located underground;
2. Maintenance, repair or upgrading of any existing above ground infrastructure that is located within ~~1~~3m either side of the original location; or
3. Connections to buildings or structures for network utilities; or
4. New above ground infrastructure that is wholly located within the road reserve.

**Matters of discretion are restricted to:**

- a. The operational and functional needs of the infrastructure to be located within the site containing the scheduled Heritage Resource;

- b. Whether a scheduled Heritage Resource will be adversely affected by the proposed works;**
- c. Location, scale, design of the proposed works;**
- d. Any adverse effects on any archaeological site;**
- e. Any landscaping or fencing to maintain heritage boundary treatments and curtilage;**
- f. The location and relationship of works in relation to adjoining sites and the road;**
- g. Any assessments or advice from a suitably qualified and experienced heritage or cultural expert (where provided); and**
- h. Any consultation with Heritage New Zealand Pouhere Taonga, Department of Conservation and tangata whenua (where provided).**

## Sites and Areas of Significance to Māori

### New Objective SASM-OX

**Manage the adverse effects of the development of new infrastructure and upgrading of existing infrastructure within Sites and Areas of Significance to Māori.**

### New Objective SASM-OX

**Enable the safe and efficient use, operation, maintenance and repair of existing infrastructure within Sites and Areas of Significance to Māori.**

### New Policy SASM-PX

**Provide for the establishment of new infrastructure and upgrading of existing infrastructure within Sites and Areas of Significance to Māori, where the following apply:**

- a. There is a functional need or operational need for its establishment;**
- b. There is no practicable alternative;**
- c. The infrastructure will provide a public benefit that could not otherwise be achieved; and**
- d. The significant adverse effects are avoided, and any other adverse effects are avoided, remedied or mitigated on the cultural values of the Site and Area of Significance to Māori.**

### New Policy SASM-PX

**Provide for the operation, maintenance, and repair of existing infrastructure within Sites and Areas of Significance to Māori in a manner that avoids, remedies or mitigates adverse effects on the cultural values of these sites and areas.**

### Rule SASM-R1

"Activity status: Permitted

Where:

PER-1

The activity is undertaken by the requesting party listed in Schedule 3.

PER-2:

Any indigenous vegetation clearance is for customary purposes.

**PER-3:**

**The activity is undertaken by a network utility provider for the operation, maintenance or repair of existing above ground infrastructure**

## Notable Trees

### Objective NT-O1

Notable Trees and groups of trees which contribute to the botanical, ecological, historical, cultural or amenity value of the District are identified and protected, **while enabling the safe and efficient use, development, maintenance, operation, repair and upgrading of infrastructure and network utilities.**

### Policy NT-P2

Enable the pruning and trimming of branches **on notable trees** where the works **will**:

- a. **Will** retain or improve the health, **form and shape** of the notable tree **and will be supervised or undertaken by a suitably qualified and experienced arborist**;
- b. ~~Allow the regular maintenance of the notable tree;~~
- b. ~~Will may~~ improve public safety, or prevent damage to property or infrastructure; ~~and/or~~
- c. **Will enable the safe and efficient use, operation, repair or upgrading of infrastructure or network utilities.**
- d. ~~Control any other maintenance works to ensure that the works will:~~
  - i. ~~Maintain the health, form and shape of the tree; and~~
  - e. ~~Will be supervised or undertaken by a suitably qualified and experienced arborist.~~

### Policy NT-P3

Only allow activity **ies, infrastructure and or** development within the root zone area of a notable tree or group of trees where:

- a. It is demonstrated that the activity **ies, infrastructure and or** development will not be detrimental to the long-term health and significance of the tree or group of trees; ~~and/or~~

- b. There is a functional or operational need for the **activities, infrastructure or** development to occur within the root zone area and there are no other practical alternative locations.

#### **Policy NT-P4**

Allow the trimming, pruning of **notable** trees and groups of trees and activities within the root zone area of notable trees or group of trees for the purpose of operating, maintaining, repairing, upgrading or removing infrastructure where:

- a. for existing infrastructure, the work is required to comply with the Electricity (Hazards from Trees) Regulations 2003 or the Telecommunications Act 2001; or
- b. for new infrastructure, there is an operational need or functional need to be located within the root zone area and there are no other practicable alternative locations; and
- c. for both existing and new infrastructure, the work will not compromise the long-term health, natural life or values of the notable tree or groups of trees.

#### **NT-P5**

Avoid the destruction or removal of a notable tree or trees unless:

- a. there is an imminent threat to the safety of people and property; ~~or~~
- b. ~~it is necessary to maintain for the safe and efficient use, operation, maintenance and repair of infrastructure and pruning or relocation of the tree is not~~ **feasible** possible;
- c. the use and enjoyment of a property and surrounds is significantly compromised or diminished; or
- d. it is dead, or is in terminal decline; and
- e. For **all** scenarios described in **ac**-d above, it has been assessed by a suitably qualified and experienced arborist as being suitable for destruction or removal.

#### **Rule NT-R2**

Activity status: Permitted

Where:

PER-1

The maximum branch diameter must not exceed ~~50mm~~ **200mm** at severance.

PER-2

No more than 10% of live growth of the tree may be removed in any one calendar year.

**PER-3**

The works must be undertaken by a person that is a suitably qualified person as per NT-S1 Qualified Arborist – Level 4

**PER-4**

Council is advised 14 days prior to the work commencing and is provided with written documentation by the arborist undertaking or supervising work confirming that they have the qualifications required by NT-S1 Qualified Arborist – Level 4.

**PER-5**

All trimming or alteration must retain the natural shape, form and branch habit of the tree.

**PER-6**

All pruning and trimming shall adhere to the Minimum Industry Standards: MIS308- Tree Pruning, as per the Arboriculture Australia and New Zealand Arboriculture standards.

**PER-X**

**If the pruning or trimming is required as emergency tree works, PER-1-6 above do not apply.**

**Rule NT-R4**

Activity status: Permitted

Where:

**PER-1**

The works are required to provide for safe and reasonable clearance and is carried out in accordance with clause 14 of the Electricity (Hazards from Trees) Regulations 2003 or clause 128 of the Telecommunications Act 2001.

**PER-2**

**The works must be undertaken or supervised by a person that complies with NT-S1 Qualified Arborist – Level 4.**

**PER-3**

**Council is advised 14 days prior to the work commencing and is provided with written documentation by the arborist undertaking or supervising that they have the qualifications required by NT-S2 NT-S1 Qualified Arborist – Level 4.**

**PER-4**

The health and integrity of the tree is retained and the pruning will not result in its decline.

**Rule NT-R8**

**Activity status: Discretionary Permitted**

**Where:**

**PER-1**

**The removal is required as emergency tree works.**

**Activity status where compliance not achieved: Discretionary**

**New Definition – Emergency Tree Works**

**Means the pruning or maintenance or removal of any tree or vegetation immediately necessary to avoid any actual and imminent threat to the safety of persons or of damage to property, or to maintain or restore power or telecommunications infrastructure.**