

BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC 82

IN THE MATTER of the Resource Management Act
1991

AND of an appeal under Clause 14 of the
First Schedule to the Act

BETWEEN POWERCO LIMITED
(ENV-2016-AKL-000123)

Appellant

AND THAMES-COROMANDEL DISTRICT
COUNCIL

Respondent

Environment Judge D A Kirkpatrick sitting alone under s 279 of the Act

Date of Decision: 14 JUN 2017

Date of Issue: 14 JUN 2017

DETERMINATION

- A: The appeal is allowed subject to the amendments set out in Annexure A and Annexure B to this determination.
- B: The appeal is otherwise dismissed.
- C: There is no order as to costs.



REASONS

Introduction

[1] This appeal relates to the proposed Thames-Coromandel District Plan. The appellant appealed a number of utilities provisions in the Proposed Plan, and sought that they be brought together in a separate, stand alone chapter. The appellant also sought a number of amendments to other provisions of the Proposed Plan, which essentially align with the relief sought in respect of a separate utilities chapter.

Progress towards settlement of the appeal

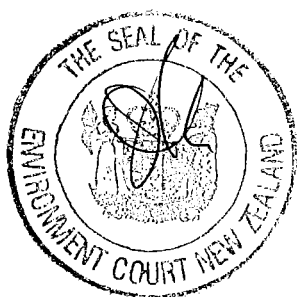
[2] After a process of mediation, in early March 2017 the solicitors for the Council filed a draft consent order and a memorandum of parties in support of it. The Memorandum provided for execution by eight persons, being Powerco as the Appellant, the Council as the Respondent, and six parties under s 274 of the Act including Northern Land Property Limited and Mr K Vernon. As filed, the memorandum was not signed by the latter two persons.

[3] In relation to Northern Land Property it transpired that it was more interested in an appeal by Powerco relating to biodiversity issues, rather than this appeal.

[4] In respect of Mr Vernon, it transpired that he did not consent to the resolution and disposal of the appeal in terms of the draft order. It followed that the Court could not make the order by consent.

[5] To progress matters, on 15 March 2017 the Court directed Mr Vernon to:

- (a) file and serve particulars of the issues he might have with the terms of the draft order proposed by other parties; and
- (b) identify any expert evidence he would propose to call in relation to those issues at a hearing of the appeal.



[6] The Appellant and the Respondent were directed to file and serve their responses to such particulars and identify any expert evidence they would call. The other parties under s 274 of the Act were given an opportunity to participate in the same way.

The Court's decision

[7] Having received the parties' responses, the Court issued decision [2017] NZEnvC 067 on 9 May 2017. The decision addressed the status of Mr Vernon in the proceeding and the proposed resolution of this appeal by way of consent order.

The standing issue

[8] The Court found that Mr Vernon's standing to be a party to this proceeding was limited to the extent of his submission on the provisions of the proposed Thames-Coromandel District Plan relating to solar panels.

Draft order

[9] In relation to the draft consent order filed, the Court made directions on the grounds that it could not be determined on the papers whether the parts of the draft order filed relating to solar panels included or omitted anything which Mr Vernon may take issue with, within the scope of his submission on the matter.

[10] Accordingly, Mr Vernon was directed to file a memorandum setting out any further amendments he might seek by 15 May 2017. The Appellant and the Council were directed to respond by 19 May 2017.

The parties' responses

[11] Mr Vernon filed a memorandum in response to the Court's decision dated 15 May 2017. His memorandum does not appear to identify any further amendments sought. At [20] he says:

With regard to my specific submissions I am of the view that the Residential Area control in Rule 4, 1(a) and (b) requiring compliance with underlying zone conditions and a maximum area of 50m² at least partially address the issues raised and therefore no additional provisions or amendments are sought.



[12] The Council and Appellant also responded, and are of the view that Mr Vernon has not requested any further amendments. They have requested that the Court make the draft consent order as sought.

Determination

[13] The Court is satisfied, having read Mr Vernon's memorandum, that no further amendments are sought. Accordingly, the amendments to the plan sought by the parties in the draft consent order are approved.

[14] The Court orders that the appeal is allowed to the extent that the Thames-Coromandel District Council is directed to:

- (a) Amend the Proposed Plan as shown in Annexure "A" (with additions underlined and deletions ~~struckthrough~~); and
- (b) Insert into Part VII of the Proposed Plan Part (District-wide rules), the separate utilities chapter titled 'Chapter 37A.1 Electricity and Telecommunication Distribution, Transmission and Generation' as shown in Annexure "B".

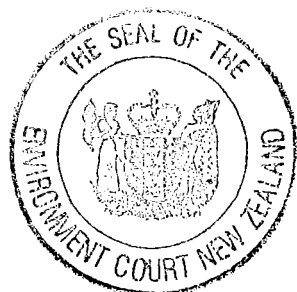
[15] This Order resolves the appeal and the section 274 interests in it in their entirety.

[16] There is no order as to costs in relation to this order.

DATED at Auckland this 14th day of June 2017



D A Kirkpatrick
Environment Judge



"A"

1) Amend Section 1.8 Activity Summary Table

...

COMMUNITY
<i>Amateur radio configuration</i>
Community Facility
...
...
ELECTRICITY AND TELECOMMUNICATION DISTRIBUTION, TRANSMISSION AND GENERATION
...
<i>Amateur radio configuration</i>
...
Operation, <u>maintenance</u> , minor upgrading or removal of an electricity or telecommunication line <u>or</u> facility
...

And make consequential changes to Part VIII Zone rules to reflect this.

2) Amend the definition of Minor upgrading of an Electricity or Telecommunication line in Section 3...

...

... The replacement of support structures using the same dimensions, or dimensions that are no more than 50% wider and 1 m higher and are located within the existing alignment of the line or within 5 m-2 m of the existing support structures being replaced ...

3) Amend Section 19 Network Utilities:

Objective 1

...

~~Policy 1c: New network utility infrastructure that is not linear may be located above ground where the adverse effects can be mitigated.~~

Policy 1d: Network utilities should be developed, operated, maintained and upgraded ~~and surrounding land uses managed to minimise nuisance effects such as noise, light, vibration, odour or hazardous substances.~~

Policy 1f: Recognise existing network utilities in overlay areas and provide for their on-going operation, maintenance and upgrading requirements.



Policy 1g: New network utilities shall not be located in areas of indigenous vegetation and habitats of indigenous fauna, the coastal environment, natural character areas or outstanding natural features and landscapes, unless:

- a) The infrastructure is subject to a significant technical or operational constraint and the adverse effects are outweighed by the overall economic, social and/or environmental benefits; and
- b) The route/site selection process had identified no feasible alternative.

Objective 2

...

Policy 2b: Subdivision, use and development shall be designed and located to avoid activities and vegetation close to network utilities where they may compromise the ability of the network utilities to be operated, maintained and upgraded safely and efficiently.

3) Amend Section 35 Significant Trees:

...

RULE 2 Maintenance or enhancement of a significant tree

...

- b) The Council-approved contractor carries out the work; and
- c) Where any work is to be undertaken within 4 metres of electricity lines, the Council approved contractor is also authorised by the network utility operator.

...

RULE 3 Felling or damaging a significant tree

...

- ii) Within seven days of the work commencing the Council approved contractor provides written notice to the Council confirming the reason for the work; and
- d) Where any work is to be undertaken within 4 metres of electricity lines, the Council approved contractor is also authorised by the network utility operator.

...

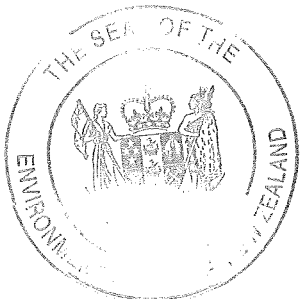
4) Amend Section 38.2 Subdivision to include the following advice notes below the Activity Table:

...

1. Works in close proximity to any electricity line can be dangerous. Compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZCEP 34:2001) is mandatory for all buildings and mobile plant within close proximity to all electricity lines.
2. Vegetation to be planted near electricity lines should be selected and/or managed to ensure that it will not result in the vegetation breaching the Electricity (Hazards from Trees) Regulations 2003.



"B"



Insert the following new Chapter 37A.1 Electricity and Telecommunication Distribution, Transmission and Generation into Part VII District-wide rules and make consequential changes to Part VIII Zone Rules to remove the activities from the activity tables and rules:

Section 37A Electricity and Telecommunication Distribution, Transmission and Generation

37A.1 ACTIVITY TABLE AND USER INFORMATION

The district-wide rules are part of a hierarchy of rules. There may be other district-wide rules, overlay rules or special purpose provisions that also apply to the activity and site. Where there is conflict between the relevant rules the rule hierarchy applies to the extent of the conflict (see Section 1 Background and How to Use the Plan for more information).

The only zone rules that apply to 'Electricity and Telecommunication Distribution, Transmission and Generation' activities are the earthwork and noise rules. In each zone the earthwork these rules permit utility installation, maintenance, upgrading and/or removal by the Council or a network utility operator.

<u>ACTIVITY TABLE</u>	<u>S.37A.2</u>
<u>Above-ground electricity or telecommunication line</u>	<u>R 1</u>
<u>Electricity or telecommunication facility</u>	<u>R 2</u>
<u>Operation, maintenance, minor upgrading or removal of an electricity or telecommunication line or facility</u>	<u>R 3</u>
<u>Solar panel</u>	<u>R 4</u>
<u>Telecommunication mast, tower, dish, antenna and any ancillary equipment</u>	<u>R 5</u>
<u>Underground electricity or telecommunication line</u>	<u>R 6</u>
<u>Wind turbine</u>	<u>R 7</u>

NOTES

1. Under the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016, any radio frequency fields emitted must comply with NZS 2772.1:1999 - Radiofrequency fields.
2. Support poles, booms, aerial elements, lightning rods and wires have some exemptions for height and site coverage as described in the Plan definition of 'building' and 'height'.

37A.2 PERMITTED ACTIVITIES

RULE 1 Above-ground electricity or telecommunication line

1. An above-ground electricity or telecommunication line is a **permitted activity** provided it is except:
 - a) not in the in any Residential Area, Recreation Area or Commercial Area or in any Road Zone adjoining any of these areas; and
 - b) anywhere in the Coastal Environment in both the Rural Zone and the Rural Lifestyle Zone;and provided that:
 - (i) any building or structure associated with the line does not exceed 15 m in height; or and
 - e) (ii) any extension to an existing overhead line network involving no more than 4 additional single pole structures; or d) is a new service connection to an existing overhead line.



2. An above-ground electricity or telecommunication line that is not a permitted activity under Rule 1.1 is a **restricted discretionary activity**.
3. The Council restricts its discretion to all the matters in Table 3 at the end of Section 37A.

RULE 2 Electricity or telecommunication facility

1. An electricity or telecommunication facility is a **permitted activity** provided:

 - a) Any building/structure does not exceed 2.5 m in height and 3 m² in area;

OR

 - b) Any building/structure meets the maximum building height, yards and height in relation to boundary assessment standards in the underlying zone; and
 - c) Excluding the Industrial Area, any building/structure does not exceed 50 m²; and
 - d) In the Rural Area, within the Coastal Environment, meets the specific standards in Table 2 at the end of Section 37A

2. An electricity or telecommunication facility that is not permitted under Rule 2.1 is a **restricted discretionary activity**.
3. The Council restricts its discretion to all the matters in Table 3 at the end of Section 37A.

RULE 3 Operation, maintenance, minor upgrading or removal of an electricity or telecommunication line or facility

1. Operation, maintenance, minor upgrading or removal of an electricity or telecommunication line or facility is a **permitted activity**.

RULE 4 Solar Panel

1. A Solar Panel is a **permitted activity** provided:

 - a) In the Residential Area any building/structure meets the assessment standards in the underlying zone; and
 - b) In the Residential Area and Open Space Zone the maximum area of any building/structure does not exceed 50 m².

2. An activity that is not permitted under Rule 4.1 is a **restricted discretionary activity**.
3. The Council restricts its discretion to all the matters in Table 3 at the end of Section 37A.

RULE 5 Telecommunication mast, tower, dish, antenna and any ancillary equipment

1. A telecommunication mast, tower, dish, antenna and any ancillary equipment is a **permitted activity** provided:

 - a) It is not in the Marine Service Zone or Open Space Zone; and
 - b) Any dish is no greater than 1.5 m in diameter or in the Rural Area is no greater than 3.0 m in diameter; and
 - c) Any antenna has a face area no greater than 1.5 m²; and
 - d) Where a dish or antenna is attached to an existing building/structure, the dish or antenna is no higher than 3 m above the highest part of the building/structure or in the Rural Area 5 m above the highest part of the building/structure; and
 - e) Any building/structure meets the standards set out in Table 1; and
 - f) In the Rural Area, in the **Coastal Environment**, any building/structure meets the specific standards in Table 2 at the end of Section 37A.

2. A telecommunication mast, tower, dish, antenna and any ancillary equipment that is not permitted under Rule 5.1 is a **restricted discretionary activity**.
3. The Council restricts its discretion to all the matters in Table 3 at the end of Section 37A.

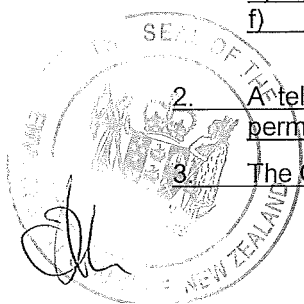


Table 1 - Standards for Telecommunication mast, tower, dish, antenna and any ancillary equipment

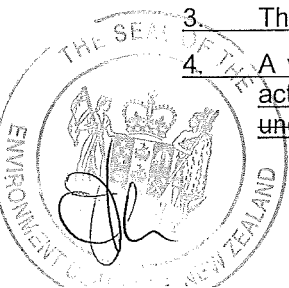
Area/Zone	Standards					
	Maximum height of any building / structure	Maximum building / structure height in relation to a boundary adjoining a site in the Residential Area	Maximum building / structure height in relation to boundary	Yards	Maximum site coverage	Maximum area of any building / structure
Commercial	20 m	3 and 45°	Gateway Zone 2 and 45°	Refer to the underlying zone standards	Refer to the underlying zone standards	Pedestrian Core Zone 30 m ²
Industrial	20 m	3 and 45°	-			-
Recreation	15 m	3 and 45°	2 and 45°			30 m ²
Residential	15 m	3 and 45°	-			30 m ²
Rural	25 m	3 and 45°	-			Rural Lifestyle Zone 100 m ²
Airfield Zone	15 m	3 and 45°	-			-
Road Zone	15 m	3 and 45°	-			-

RULE 6 Underground electricity or telecommunication line

1. An underground electricity or telecommunication line is a **permitted activity** provided the ground surface and any vegetation that has been disturbed is reinstated upon the completion of works unless covered by a building/structure or landscaping.
2. An underground electricity or telecommunication line that is not permitted under Rule 6.1 is a **restricted discretionary activity**.
3. The Council restricts its discretion to all the matters in Table 3 at the end of Section 37A.

RULE 7 Wind turbine

1. A wind turbine is a **permitted activity** in the Airfield Zone, Conservation Zone, Industrial Zone and the Rural Area provided:
 - a) any building/structure meets the yard and site coverage assessment standards in the underlying zone; and
 - b) any building/structure does not exceed 15 m in height; and
 - c) the blade length does not exceed 1.5 m; and
 - d) there is no more than one wind turbine on a site in the Rural Lifestyle Zone and no more than two wind turbines on a site in the Rural Zone.
2. A wind turbine that is not permitted under Rule 7.1 is a **restricted discretionary activity**.
3. The Council restricts its discretion to all the matters in Table 3 at the end of Section 37A.
4. A wind turbine that is not a permitted activity under Rule 7.1 or a restricted discretionary activity under Rule 7.2 is a **non-complying activity**, or a ~~restricted discretionary activity~~ under Rule 7.2 is a **discretionary activity**.



37A.3 ASSESSMENT STANDARDS, MATTERS AND CRITERIA

Table 2 - Specific Standards			
1.	Colour	Exterior building colours are selected from the British Standard BS5252 numbers 00-24 in Appendix 5	a) Exterior building colours are selected from the British Standard BS5252 numbers 00-24 in Appendix 5;
			OR are:
			b) A natural timber material; c) A natural stone material.
2.	Reflectivity	Has a reflective value no greater than 25%	Has a reflective value of no greater than 35%.
3.	Windows must have a reflective value no greater than 15%		

Table 3 - Restricted Discretionary Activity Matters			
Matter		Assessment Criteria	
1.	<u>Effects of not meeting the standard(s)</u>	a)	<u>Whether actions (if any) taken to address the adverse effects of not meeting the standard(s) are appropriate and effective.</u>
2.	<u>Utility infrastructure provision</u>	a)	<u>The extent to which positive effects from the activity contribute to the economic, social and cultural wellbeing of the local community.</u>
		b)	<u>The extent to which the functional and operational needs of the infrastructure directs its location, height, size and form or necessitates it being above ground.</u>
		c)	<u>Whether it is necessary and practicable to modify the design, scale and form of the infrastructure to address adverse effects.</u>
		d)	<u>Whether it is necessary and practical to soften the visual effects of the infrastructure by landscaping.</u>
		e)	<u>Whether the extension of existing above ground utility infrastructure is appropriate.</u>
		f)	<u>The extent to which the provision and location of utility infrastructure will provide for or constrain future planned development.</u>
		g)	<u>The extent to which the proposed infrastructure improves the resilience and security of the network.</u>
		h)	<u>Whether easements are appropriate.</u>
		i)	<u>Whether there is technical and practical potential for co-location of utility infrastructure on a site.</u>
		j)	<u>The extent to which the activity will contribute to central and regional government energy policy objectives and renewable energy targets.</u>

