

BEFORE THE ENVIRONMENT COURT

ENV-2015-AKL-0000

IN THE MATTER

of an appeal under Clause 14 of the First
Schedule to the Resource Management
Act 1991 (*the Act*)

AND

IN THE MATTER

of the decisions of the Thames
Coromandel District Council on the
Proposed Thames Coromandel District
Plan

BETWEEN

POWERCO LIMITED

Appellant

AND

**THAMES COROMANDEL DISTRICT
COUNCIL**

Respondent

**NOTICE OF APPEAL UNDER CLAUSE 14 OF THE FIRST SCHEDULE TO THE RESOURCE
MANAGEMENT ACT 1991**

**To: The Registrar, Environment Court
Specialist Courts and Tribunals Centre
Level 2
41 Federal Street (Corner Wyndham Street)
Auckland 1010
New Zealand**

- 1. The Appellant is Powerco Limited (*Powerco*)**
- 2. The Respondent is the Thames Coromandel District Council (*the Council*).**
3. Powerco appeals against part of a decision of the Council on the Proposed Thames Coromandel District Plan and Variation 1 – Natural Character (*the Proposed District Plan*). Powerco made submissions to the Council in relation to the Proposed District Plan. Powerco owns and operates electricity distribution infrastructure that traverses the Thames Coromandel District.
4. Powerco is not a trade competitor for the purposes of section 308D of the Act.
5. The Council notified the Proposed District Plan and made decisions on the submissions and further submissions of Powerco in relation to the Proposed District Plan. Powerco received notice of the decisions on 29 April 2016.
- 6. The parts of the decision that Powerco’s appeal relates to are:**
 - 6.1 Section 3 – Definitions: Minor upgrading of an electricity or telecommunication line
 - 6.2 Section 19 – Utilities: New Issue & Policy relating to the potential adverse effects of inappropriate subdivision, use and development on network utilities;
 - 6.3 Section 19 – Utilities: Policy 1c
 - 6.4 Section 19 – Utilities: Policy 1d
 - 6.5 Section 19 – Utilities: New Policy relating to existing network utilities in the natural environment overlays.
 - 6.6 Section 19 – Utilities: New Policy relating to new lineal utilities in the natural environment overlays.
 - 6.7 Section 35 – Significant Trees: Rules 2 and 3
 - 6.8 Section 38 – Subdivision: Advice notes
 - 6.9 Sections 40-59 – Zone Rules: Plan structure in relation to the management of network utilities
 - 6.10 Sections 40-59 – Zone Rules: Provision for the operation, maintenance, minor upgrade or removal of electricity or telecommunication facilities.
 - 6.11 Sections 40-59 – Zone Rules: Provision for new above ground customer connections or minor extensions where existing distribution is overhead.
 - 6.12 Section 59 – Waterfront Zone: Rule 22
- 7. The general reasons for the appeal are that the decision:**
 - 7.1 Does not promote the sustainable management of natural and physical resources and is contrary to Part 2 and other provisions of the Act.
 - 7.2 Does not give effect to the objectives and policies of the Waikato Regional Policy Statement relating to regionally significant infrastructure;

- 7.3 Is not the most efficient or effective way of regulating the electricity sub-transmission and distribution network;
- 7.4 Does not adequately address the matters set out in the submissions, further submissions and hearing statements / evidence of Powerco on these topics
- 7.5 Does not represent the most appropriate means of exercising the Council's statutory functions, having regard to the efficiency and effectiveness of other available options under section 32 of the Act.
- 7.6 Will potentially impose unnecessary and unjustified costs on utility operators.
- 7.7 Does not clearly identify reasons for all decisions made, which leads to uncertainty.

8. The specific reasons for Powerco's appeal are set out below:

8.1 SECTION 3 – DEFINITIONS: MINOR UPGRADING OF AN ELECTRICITY OR TELECOMMUNICATION LINE

- 8.1.1 Powerco (submission 1241.5) sought to retain the definition of 'Minor Upgrading of an Electricity or Telecommunication Line' and subsequently reached agreement with Council Officers on consequential changes to the definition during caucusing.
- 8.1.2 Agreed changes to bullet point 8 of the definition, relating to replacement support structures, have not been included in the decisions version. No reason is given for the alternative wording.
- 8.1.3 These changes are important to recognise the technical and operational constraints around such activities and the definition should be amended accordingly.

Relief Sought

- 8.1.4 Amend the definition of 'Minor Upgrading of an Electricity or Telecommunication Line' as follows (additions underlined; deletions in strikethrough):

Minor Upgrading of an Electricity or Telecommunication Line: means an increase in the carrying capacity, efficiency or security of an electrical or telecommunication operation that uses the existing support structures, or structures with a similar scale, character, bulk and form. It includes maintenance, limited upgrading and replacement.

Examples of minor upgrading include:

- *The addition of circuits, wires, lines or conductors;*
- *The reconducting of the line with higher capacity wires, lines or conductors;*

- *The resagging of wires, lines or conductors;*
- *The bonding of conductors;*
- *The addition of longer or more efficient insulators;*
- *The addition of earth wires which may contain telecommunication lines, earthpeaks and lightning rods;*
- *The addition of electrical fittings;*
- *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 electricity line 2 m of the existing support structures being replaced;*
- *The replacement of existing cross arms with cross arms of an alternative design;*
- *An increase in support structure height required to comply with the New Zealand Electrical Code of Practice 34:2001 (NZECP 34:2001).*

Minor upgrading does not include:

- *Additional support structures that meet the definition of a 'Building' in this Plan;*
- *An increase in the voltage of the line over 33 kV unless the line has been constructed to operate at the higher voltage but has been operating at a reduced voltage;*
- *National grid transmission infrastructure.*

8.2 SECTION 19 – UTILITIES: NEW ISSUE & POLICY RELATING TO THE POTENTIAL ADVERSE EFFECTS OF INAPPROPRIATE SUBDIVISION, USE AND DEVELOPMENT ON NETWORK UTILITIES

8.2.1 Powerco (submission 1241.2 & 1241.3) sought to retain Issue 19.2.3 and Policy 2b relating to the need to protect network utilities from the potential adverse effects of inappropriate subdivision, use and development.

8.2.2 The decision is to delete both Issue 19.2.3 and Policy 2b. This is an important issue for network utilities and needs to be recognised.

Relief Sought

8.2.3 Include a new issue and policy 2b should be included to this effect in Section 19: Utilities along the following lines:

New Issue

The safe and efficient operation and maintenance of network utilities can be put at risk from inappropriate subdivision, land use and development which can result in reverse sensitivity effects.

New Policy 2b

Subdivision, land use and development shall be designed and located to avoid the establishment of sensitive activities and vegetation close to network utilities that may compromise the operation and maintenance of the network utility.

8.3 SECTION 19 – UTILITIES: POLICY 1C

- 8.3.1 Powerco (submission 1241.2) sought to amend Policy 1c to clarify the policy approach to the location of linear and non-linear infrastructure above or below ground.
- 8.3.2 The decision makes some changes to the policy. However, the policy requirement is to mitigate all adverse effects of aboveground utilities. Due to the technical and operational requirements of network utilities, it may not be entirely possible to mitigate all adverse effects and nor is undergrounding a viable alternative for all types of utilities (e.g. an electricity substation) if adverse effects cannot be fully mitigated.
- 8.3.3 Undergrounding is already addressed in Policy 1b, which applies to all network utilities, irrespective of whether or not they are linear. Policy 1c is confusing and unnecessary and should be deleted.

Relief Sought

- 8.3.4 Delete Policy 1c, as follows (deletions in strikethrough):

~~Policy 1c~~

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

8.4 SECTION 19 – UTILITIES: POLICY 1D

- 8.4.1 Powerco (submission 1241.2) sought to retain Policy 1d relating to managing the effects of network utilities, without modification.
- 8.4.2 The decision is to amend the policy to include reference to the management of surrounding land uses.
- 8.4.3 The amendment results in the confusion of two separate issues, being managing the effects of network utilities on the environment and managing the effects of other activities on network utilities. The policy should be amended to revert to the notified wording.

Relief Sought

- 8.4.4 Amend Policy 1d to revert to the notified wording, as follows (deletions underlined):

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.

8.5 SECTION 19 – UTILITIES: NEW POLICY RELATING TO EXISTING NETWORK UTILITIES IN THE NATURAL ENVIRONMENT OVERLAYS.

- 8.5.1 Powerco sought to include a new policy to recognise the presence of existing network utilities in the overlay areas (biodiversity, coastal environment, outstanding natural features and landscapes) and to provide for the ongoing operation, maintenance and upgrade of those utilities.
- 8.5.2 The decision does not include a new policy to this effect.
- 8.5.3 It is appropriate to provide a policy framework for the operation, maintenance and upgrade of existing network utilities and this would be consistent with the permitted activity status afforded to such activities in the overlay areas.

Relief Sought

- 8.5.4 Include a new policy in Section 19: Utilities along the following lines:

Recognise existing network utilities in areas of indigenous vegetation and habitats of indigenous fauna, the coastal environment, natural character areas or outstanding natural features and landscapes and provide for their ongoing operation, maintenance and upgrading requirements.

8.6 Section 19 – Utilities: New Policy relating to new lineal utilities in the natural environment overlays.

- 8.6.1 Powerco (submission 1241.2) sought to retain Policy 1f, relating to the situations in which provision of new network utilities in outstanding landscapes might be considered acceptable, with amendments to apply the same policy approach to all overlay areas.
- 8.6.2 The decision is to delete Policy 1f in its entirety.

- 8.6.3 Due to the unique nature of lineal network utilities, such as the electricity network, and the functional and operational constraints they are subject to, it may not be practicable, in all situations, to completely avoid locating new utilities in the overlay areas. It is, therefore, appropriate to provide a policy framework identifying the situations in which such locations may be considered acceptable.

Relief Sought

- 8.6.4 Include a new policy in Section 19: Utilities, along the following lines:

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 has identified no feasible alternative.*

8.7 SECTION 35 – SIGNIFICANT TREES: RULES 2 AND 3

- 8.7.1 Powerco (submission 1241.13) sought to amend Rules 2 and 3 to enable a recognised network utility provider to undertake maintenance or enhancement work on a significant tree (Rule 2) and the felling or damaging of a significant tree (Rule 3).

- 8.7.2 The decision is to not make the amendments sought.

- 8.7.3 The provisions do not recognise the need for tree trimming works in close proximity to electricity lines to be undertaken by contractors approved by electricity network utility operators to undertake such works. This is a health and safety matter and important to ensure the integrity of electricity assets and Rules 2 and 3 should be amended accordingly.

Relief Sought

- 8.7.4 Amend Rules 2 and 3 in Section 35 Significant Trees as follows, or to the same effect (additions underlined; deletions in strikethrough):

Rule 2 Maintenance or enhancement of a significant tree

1. The maintenance or enhancement of a significant tree which may include pruning, trimming, dead wooding, crown reduction, cutting, thinning or topping is a permitted activity provided:

- (a) *Prior to any work being undertaken a Council approved contractor or recognised network utility provider provides written notice to the Council confirming that the work is necessary to:*

- (i) *Maintain or enhance the health and/or appearance of the tree; or*
- (ii) *Safeguard life or property; or*
- (iii) *Maintain or restore electricity, telecommunications, wastewater or water networks; and*
- (b) *The Council-approved contractor or recognised network utility provider carries out the work*
- (c) *Maintenance or enhancement of a significant tree that is not permitted under Rule 2.1 is a restricted discretionary activity.*

RULE 3 Felling or damaging a significant tree

1. *Felling or damaging a significant tree is a permitted activity provided:*

.....

c) The work is carried out by a Council-approved contractor or recognised network utility provider; and

- (i) *The work is necessary to maintain or restore electricity, telecommunications, wastewater or water supply networks operated by a statutory authority, network utility operator, the Council, the Department of Conservation, Waikato Regional Council or Civil Defence; and*
- (ii) *Within seven days of the work commencing the Council approved contractor provides written notice to the Council confirming the reason for the work.*

8.8 SECTION 38 – SUBDIVISION: ADVICE NOTES

8.8.1 Powerco sought to include an advice note drawing attention to the requirements of the New Zealand Electrical Code of Practice 34:2001 (*NZECP 34:2001*) and the Electricity (Hazards from Trees) Regulations (*the Tree Regulations*) in Section 38 Subdivision.

8.8.2 The decision is to not include the advice notes sought.

8.8.3 It is important to identify the requirement to comply with NZECP 34:2001 and the Tree Regulations at the subdivision stage of development as the subdivision creates the framework for future development. The size, shape and orientation of new lots influences the location of future building platforms and likely landscaping and can, therefore, result in encroachment on electricity infrastructure if the layout of new subdivision in relation to existing electricity infrastructure is inappropriate.

Relief Sought

8.8.4 Include advice notes in Section 38 – Subdivision as follows or to the same effect (additions underlined):

NOTE

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 (NZECP 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.

8.9 SECTIONS 40-59 – ZONE RULES: PLAN STRUCTURE IN RELATION TO THE MANAGEMENT OF NETWORK UTILITIES

8.9.1 Powerco (submissions 1241.1, 1241.4, FS1241.27 and FS1241.29) sought amendments to the Proposed Plan structure to provide a separate, standalone chapter for Network Utilities rules.

8.9.2 The decision is to retain the network utilities provisions in the zone and overlay sections of the Proposed Plan on the basis this will be more user friendly for the on-line version of the District Plan.

8.9.3 The location of all network utility rules together in a single standalone chapter has clear benefits in terms of the clarity and useability of the Proposed Plan and the Propose Plan should be amended accordingly.

Relief Sought

8.9.4 Amend the structure of the Proposed Plan to create a separate, standalone chapter for Network Utilities rules.

8.10 SECTIONS 40-59 – ZONE RULES: PROVISION FOR THE OPERATION, MAINTENANCE, MINOR UPGRADE OR REMOVAL OF ELECTRICITY OR TELECOMMUNICATION FACILITIES.

8.10.1 Powerco sought to ensure provision is made in all parts of the district for the operation, maintenance, minor upgrade and removal of its electricity network as a permitted activity.

8.10.2 The decision is to include a permitted activity rule in each of the zone chapters (Sections 40-59) that permits the operation, minor upgrade or removal of electricity or telecommunication lines.

8.10.3 These rules are supported. However, it is not clear that the rules will apply to electricity and telecommunication facilities, which are defined separately to

electricity or telecommunication lines. It is appropriate to permit the ongoing operation, maintenance, upgrade and removal of electricity or telecommunication facilities on the same basis as lines, noting that the definition of electricity or telecommunication facilities includes transformers, substations and switching stations, all of which are integral to the ongoing operation of the network.

Relief Sought

- 8.10.4 Amend the permitted activity rule in each of the zone chapters (Sections 40-59) for the operation, minor upgrading or removal of an electricity or telecommunication line to clearly provide for the operation, maintenance, minor upgrading or removal of electricity or telecommunication facilities, as follows:

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

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

8.11 SECTIONS 40-59 – ZONE RULES: PROVISION FOR NEW ABOVE GROUND CUSTOMER CONNECTIONS OR MINOR EXTENSIONS WHERE EXISTING DISTRIBUTION IS OVERHEAD

- 8.11.1 Powerco sought amendments to the zone rules in Sections 40-59 to permit minor extensions of the existing electricity network as well as new customer connections to be overhead where the existing supply is overhead.

- 8.11.2 The decision is to not include such a provision.

- 8.11.3 It is appropriate and practical to permit small scale extensions to existing overhead lines where the costs of obtaining a consent or undergrounding such short sections of line significantly outweigh the benefits. Effects of such infrastructure will be minimal and seen in the context of the existing overhead lines.

Relief Sought

- 8.11.4 Included a new rule to permit to new overhead customer connections and small scale extensions to existing overhead lines, as follows or to the same effect:

New Permitted Activity Rule to apply in all Zones

Extensions to or new above ground electricity lines and single-pole support structures where existing distribution is overhead and the line is required to facilitate new connections within the area served by the existing overhead electricity infrastructure.

8.12 SECTION 59 – WATERFRONT ZONE: RULE 22

8.12.1 There appears to be a drafting error whereby the rule (Rule 22) for new above ground electricity and telecommunication lines in the Waterfront zone is referenced in the activity table at Section 59.3, but not included in Section 59.6 Discretionary Activities.

Relief Sought

8.12.2 Update Section 59.6 to correctly include permitted activity Rule 22 for new above ground electricity and telecommunication lines in the Waterfront zone. It may be possible to address this as a minor amendment under clause 16 Schedule 1 of the RMA. However, for the avoidance of doubt the amendment is included in Powerco’s appeal.

8.13 MAKE ANY CONSEQUENTIAL AMENDMENTS AS A RESULT OF THE ABOVE AMENDMENTS.

8.14 SUCH OTHER RELIEF AS THE COURT SEES FIT.

Signature of person authorised to sign on behalf of Powerco



.....
Georgina McPherson
Burton Planning Consultants Limited

Dated at Takapuna this 13th June 2016

Address for Service:

Burton Planning Consultants Limited
PO Box 33-817
Takapuna
AUCKLAND 0740

Attention: Georgina McPherson

Ph: (09) 917-4301
Fax: (09) 917-4311
E-Mail: gmcpherson@burtonconsultants.co.nz

Annexures:

- (a) A copy of Powerco's submissions on the relevant points subject to this appeal
- (b) A copy of the decision on the relevant points subject to this appeal
- (c) Names and addresses of the persons to be served with a copy of this notice

Advice to Recipients of This 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 and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends. Note that the period for lodging of a notice of appeal ended on Wednesday 21 January 2015.

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 Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

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

Contact Details of Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar.

Auckland:

Specialist Courts and Tribunals Centre
Level 2
41 Federal Street (Corner Wyndham Street)
Auckland 1010
New Zealand

PO Box 7147
DX: CX10086
Wellesley Street
Auckland
New Zealand

Ph (09) 916 9091

Fax: (04) 916 9090

Wellington:

PO Box 5027
DX: SX 11154
Wellington

5th Floor, District Court Building
49 Balance Street
Wellington 6011

Ph (04) 918 8300

Fax: (04) 918 8480

Christchurch:

Enterprise Business Park

4-6 O'Briens Road

Unit 7

Stockburn

Christchurch

PO BOX 2069

DX:WX11113

Christchurch

New Zealand

Ph (03) 3455397

Fax: (03) 3455363

ANNEXURE A

A copy of Powerco's submissions on the relevant points subject to this appeal

ANNEXURE B

A copy of the decision on the relevant points subject to this appeal

ANNEXURE C

**Names and addresses of persons to be served
with a copy of this notice**

