

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 to the Proposed District Plan (*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 6 Biodiversity – Policy 1d and new policy
 - 6.2 Section 7 Coastal – Policy 1b
 - 6.3 Section 7A Natural Character of the Coastal Environment – Policy 1a
 - 6.4 Section 7A Natural Character of the Coastal Environment – Objective 2 and Policy 2a
 - 6.5 Section 9 – Outstanding Natural Features and Landscapes – Policy 1c
 - 6.6 Section 29 Biodiversity Rules 1 and 2
 - 6.7 Section 32 Outstanding Natural Features & Landscapes – Rules 2, 3 and 5
 - 6.8 Section 32 Outstanding Natural Features & Landscapes – Rule 9 and Rule 10
 - 6.9 Section 32A.2 High natural character overlay rules – Rules 2 and 4
 - 6.10 Section 32A.2 High natural character overlay rules 32A.3 – Rule 3 - Earthworks
 - 6.11 Section 32A.3 Outstanding natural character overlay rules – Rules 13 and 15
 - 6.12 Section 32A.3 Outstanding natural character overlay rules – Rule 14 - Earthworks
 - 6.13 Section 32A.3 Outstanding natural character overlay rules – Rules 19 and 20
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 6 BIODIVERSITY – POLICY 1D AND NEW POLICY

- 8.1.1 Powerco (submissions 1241.8; FS1241.32, FS1241.46 and FS1241.36) sought to retain Objective 2 and Policies 2a and 2b relating to the trimming of vegetation for the establishment, maintenance and upgrading of network utilities, with modifications.
- 8.1.2 The decision is to delete Objective 2, Policy 2a and 2b and amend Policy 1d to address network utilities.
- 8.1.3 The decisions version of Policy 1d appears to confuse two entirely separate issues - the 'reasonable use and enjoyment of land' and the maintenance of critical infrastructure. Specific policy guidance should be made for the clearance of vegetation associated with the maintenance of infrastructure.

Relief Sought

- 8.1.4 This could be achieved by amending Policy 1d and including a new policy along the following lines (additions underlined; deletions in strikethrough):

Policy 1d

Reasonable use and enjoyment of land with minor adverse effects on biodiversity shall be provided for. This may include:

- ~~a) The maintenance, operation and upgrading of lawfully established infrastructure and network utilities;~~*
- ba) The collection of material for traditional Maori cultural practices; and*
- eb) Actions necessary to avoid loss of life, injury or serious damage to property.*

New Policy

Limited indigenous vegetation clearance shall be enabled where necessary for the safe maintenance, operation and upgrading of lawfully established infrastructure and network utilities.

8.2 SECTION 7 COASTAL – POLICY 1B

- 8.2.1 Powerco (FS110.20 FS110.39) sought to ensure the policy direction for the Coastal Environment (outside the areas of identified outstanding and high natural character) includes appropriate provision for the establishment, operation, maintenance and upgrade of network utilities.
- 8.2.2 The decision is to include a new Policy 1b in Section 7 – Coastal Environment rather than in Section 7A – Natural Character of the Coastal Environment.
- 8.2.3 Policy 1b applies to the Coastal Environment in general, where a significant amount of Powerco’s infrastructure is located. While a location in the Coastal Environment for electricity infrastructure does not appear to result in any more than a discretionary activity status, the policy test is potentially harder for network utilities to meet than the policy requirements for High and Outstanding Natural Character Areas in the Coastal Environment. There is a need for balance between areas of High and Outstanding Natural Character and the remainder of the Coastal Environment.

Relief Sought

- 8.2.4 This could be achieved by amending Policy 1b: Section 7 Coastal Environment to clarify that the policy applies to adverse effects on the values and characteristics of natural character only, and not to any type of adverse effect, as follows or to the same effect (additions underlined; deletions in strikethrough):
- Subdivision, use and development in the coastal environment (outside of the Natural Character Overlay) shall avoid significant adverse effects ~~on the values and characteristics of natural character~~ and avoid, remedy or mitigate other adverse effects on the values and characteristics of natural character.*

8.3 SECTION 7A NATURAL CHARACTER OF THE COASTAL ENVIRONMENT – POLICY 1A

- 8.3.1 Powerco (submission 110.3 and FS110.30) sought to retain Policy 1a Section 7A Natural Character of the Coastal Environment subject to amendments to give effect to RPS Policy 12.3e relating to the functional necessity of activities being located in or near the coastal environment.
- 8.3.2 The decision is to include an additional clause j) in the policy relating to the functional necessity for an activity to locate in an area of High or Outstanding Natural Character where no reasonably practicable alternative locations exist.
- 8.3.3 The intent of the policy is supported. However, as identified at the Hearing (Variation 1 Hearing) the scope of activities covered by the term ‘functional

necessity' is uncertain and potentially excludes the technical and operational requirements of electricity infrastructure.

Relief Sought

- 8.3.4 The policy should be amended to avoid uncertainty around the scope of activities incorporated in the term 'functional necessity', as follows or to the same effect:

Subdivision, use and development in an area of High Natural Character or Outstanding Natural Character in the

Coastal Environment shall consider:

- a) The values and characteristics of the natural character area;*
- b) The extent of existing manmade changes to the landform, vegetation, coastal processes and water movement;*
- c) The presence or absence of manmade elements/structures, including infrastructure;*
- d) The vulnerability of the ecosystem and its representation in the District;*
- e) The integrity of landforms and features including ridgelines, headlands, peninsulas, cliffs and streams, rivers and their margins;*
- f) The natural appearance, functioning of beach and dune systems, wetlands, rivers and their margins;*
- g) The duration and nature of adverse effects of the proposed activity;*
- h) The physical and visual integrity of the natural character area;*
- i) The cover, pattern, sequence and integrity of vegetation of the natural character area; and*
- j) The ~~functional necessity of~~ need for the activity to be being located in this area including whether any ~~where no~~ reasonably practicable alternative locations exist.*

8.4 SECTION 7A NATURAL CHARACTER OF THE COASTAL ENVIRONMENT – OBJECTIVE 2 AND POLICY 2A

- 8.4.1 Powerco (FS110.26) supported the introduction of new policy seeking to promote the restoration or rehabilitation of natural character values.

- 8.5 The decision is to include a new Objective 2 and Policy 2a to this effect in Section 7A Natural Character of the Coastal Environment.

- 8.6 The intent of the new objective and policy is generally supported. However, the wording will not necessarily achieve the intent and could lead to perverse outcomes. Objective 2 and Policy 2a should be deleted and replaced with alternative wording, to focus on promoting the protection and enhancement or restoration of natural character, including where no associated subdivision or development is proposed.

Relief Sought

- 8.7 This could be achieved by making the following changes or changes to the same effect (additions underlined; deletions in strikethrough):

Objective 2

~~Areas of high and outstanding natural character are set aside for legal protection, and enhancement or restoration through subdivision and development.~~

Protect and enhance or restore areas of High and Outstanding Natural Character.

Policy 2a

~~Subdivision and development that protects, and enhances or restores high or outstanding natural character, should be promoted.~~

Promote land use practices and restoration projects that will protect and enhance or restore High and Outstanding Natural Character areas.

8.8 SECTION 9 – OUTSTANDING NATURAL FEATURES AND LANDSCAPES – POLICY 1C

- 8.8.1 Powerco (1241.10) sought to amend Policy 1c (notified version) relating to the location of network utilities in Outstanding Landscapes and to include a new policy in Section 9 to recognise the presence of existing network utilities in outstanding natural features and landscapes and provide for their ongoing operation, maintenance and upgrade requirements.
- 8.8.2 The decision is to delete the notified version of Policy 1c in its entirety and to not include the additional Policy sought by Powerco.
- 8.8.3 Policy 1c in the decisions version of the Proposed Plan applies to permanent buildings and other structures and will apply to network utilities. However, due to the unique requirements of lineal network utilities and their technical and operational constraints it will not be practicable in all situations to completely avoid traversing ridgelines. Policy 1c should be amended to provide appropriate recognition and balance to the technical and operational requirements of network utilities.

Relief Sought

- 8.8.4 This could be achieved by making the following amendments or changes to the same effect (additions underlined; deletions in strikethrough):

Policy 1c

Permanent buildings and other structures in ONFLs shall be designed and located so they:

- a) Are inconspicuous when viewed from public land; and*

- b) Do not dissect or sit or project above a prominent ridgeline or headland, unless there is a demonstrated need to locate in these areas and no reasonably practicable alternative is available; and*
- c) Use recessive colours and low reflectivity materials and minimise light spill; and*
- d) Are visually recessive and blend in with the surrounding vegetation colours and landscape shape and form.*

8.9 SECTION 29 BIODIVERSITY RULES 1 AND 2

- 8.9.1 Powerco (submission 1241.9) sought various amendments to Rules 1 & 2 Section 29 Biodiversity to ensure that sufficient provision is made for the trimming and clearance of vegetation for the establishment, operation, maintenance and upgrade of electricity infrastructure in all parts of the district.
- 8.9.2 The decision makes significant changes to the structure of the indigenous vegetation provisions and includes some provision for clearance of indigenous vegetation for the purpose of maintaining and operating network utilities.
- 8.9.3 While the intent of these provisions is supported there are a number of uncertainties around the scope of activities provided for and the potential for the provisions to restrict the ability to undertake works to vegetation in accordance with and to meet the safe separation distances set out in the Electricity (Hazards from Trees) Regulations.
- 8.9.4 Further, the link between the activity status of vegetation clearance within 10m of a permanent waterbody and the provision of Regional Council approval is potentially ultra vires and the basis for this control unclear.

Relief Sought

- 8.9.5 Rules 1 and 2 Section 29 Biodiversity should be amended to ensure appropriate provision is made for the trimming and clearance of vegetation for the establishment, operation, maintenance and upgrade of electricity infrastructure in all parts of the district, including by:
 - (a) Deleting Rule 1.1(n) and Rule 2.1(m) to remove the ultra vires requirement for regional council approval for vegetation clearance within 10m of a waterbody;
 - (b) Permitting indigenous vegetation clearance for the operation, maintenance and minor upgrade of existing electricity lines in all circumstances when that clearance is undertaken in accordance with the Electricity Hazards from Tree Regulations 2003; and
 - (c) Ensuring the activity status of indigenous vegetation clearance for new electricity lines is no more than discretionary in all circumstances.

8.9.6 This could be achieved by making the following amendments or changes to the same effect (additions underlined; deletions in strikethrough):

RULE 1 Clearing indigenous vegetation outside of the Rural Area

*1. Clearing indigenous vegetation outside of the Rural Area, excluding the Conservation Zone, is a **permitted activity** provided:*

...

m) It is either no more than 5 m either side of lawfully established network utility infrastructure (excluding an existing formed road) or is in accordance with the Electricity (Hazards from Trees) Regulations 2003; and

- i) it is for the purpose of maintainanceing, and operationing or minor upgrade of the network utility infrastructure; and*
- ii) it is undertaken or commissioned by the network utility operator;*

AND

n) ~~It is not within 10 m of a permanent waterbody wider than 1 m, unless the work is authorised by the Waikato Regional Council; and~~

en) It is not protected by a conservation covenant registered or encumbered with the Council, or Queen Elizabeth II National Trust, or Nga Whenua Rahui, unless the covenant provides for the clearance.

2. Except that Rule 1.1n) does not apply to the clearance of indigenous vegetation outside of the Rural Area undertaken in accordance with Rule 1.1m or required for the establishment of new network utility infrastructure.

RULE 2 Clearing indigenous vegetation in the Rural Area or Conservation Zone

*1. Clearing indigenous vegetation in the Rural Area or Conservation Zone is a **permitted activity** provided:*

...

l) It is either no more than 5 m either side of lawfully established network utility infrastructure (excluding an existing formed road) or is in accordance with the Electricity (Hazards from Trees) Regulations 2003; and

- i) it is for the purpose of maintainanceing, and operationing or minor upgrade of the network utility infrastructure; and*
- ii) it is undertaken or commissioned by the network utility operator;*

AND

m) ~~It is not within 10 m of a permanent waterbody wider than 1 m, unless the work is authorised by the Waikato Regional Council; and~~

~~m) It is not protected by a conservation covenant registered or encumbered with the Council, or Queen Elizabeth II National Trust, or Nga Whenua Rahui, unless the covenant provides for the clearance.~~

2. Except that Rule 2.1m) does not apply to the clearance of indigenous vegetation in the Rural Area or Conservation Zone undertaken in accordance with Rule 2.1l) or required for the establishment of new network utility infrastructure.

8.10 SECTION 32 OUTSTANDING NATURAL FEATURES & LANDSCAPES – RULES 2, 3 AND 5

8.10.1 Powerco (submission 1241.11) sought to ensure provision is made in Section 32 Outstanding Natural Features & Landscapes for the operation, maintenance, minor upgrade and removal of its electricity network as a permitted activity

8.10.2 The decision is to permit, as part of Rules 2, 3 and 5, the operation, minor upgrading or removal of electricity or telecommunication lines along with vegetation clearance and earthworks associated with those activities.

8.10.3 The 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 Rules 2, 3 and 5 Section 32 Outstanding Natural Features & Landscapes to clearly provide for the operation, maintenance, minor upgrading or removal of electricity or telecommunication facilities along with vegetation clearance and earthworks associated with those activities, as follows:

RULE 2 Earthworks

1. Earthworks that are a permitted activity in the underlying zone and districtwide rules retain their activity status provided:

a) They are not within 5 m of a permanent water body wider than 1 m;

AND

b) They are required to maintain an existing fence line, or the existing width of an existing operational legal road, legal right of way, operational farm or forestry road or driveway; or

c) They are required for operation, maintenance, minor upgrading or removal of an electricity or telecommunication line or an electricity or telecommunication facility; or

...

RULE 3 Clearing indigenous vegetation

1. Clearing indigenous vegetation is a permitted activity provided:

- a) It is no more than 50 m² per site; or
 - b) It is for ecosystem protection, rehabilitation or restoration works (e.g. Beachcare, removing plant pests as identified in the Waikato Regional Pest Management Plan); or
 - c) It is required for operation, maintenance, minor upgrading or removal of an electricity or telecommunication line or an electricity or telecommunication facility;
- or
- ...

RULE 5 Operation, maintenance, minor upgrading or removal of an electricity or telecommunication line or an electricity or telecommunication facility

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

8.11 SECTION 32 OUTSTANDING NATURAL FEATURES & LANDSCAPES – RULE 9 AND RULE 10

8.11.1 Powerco (submission 1241.11) sought to ensure provision is made in Section 32 Outstanding Natural Features & Landscapes for new aboveground and underground electricity lines and facilities as no more than a discretionary activity in Outstanding Natural Features & Landscapes.

8.11.2 The decision is to identify aboveground electricity or telecommunication lines and electricity or telecommunication facilities as a non-complying activity.

8.11.3 A non-complying activity status is inappropriate for new electricity infrastructure traversing an Outstanding Natural Features & Landscape as it signals that such activities are not provided for by the Proposed Plan. A non-complying activity status fails to recognise the regional significance of electricity infrastructure and the benefits associated with a reliable and secure supply of electricity; and the technical and operational constraints associated with such infrastructure.

Relief Sought

8.11.4 Amend Rules 9 and 10 Section 32 Outstanding Natural Features & Landscapes to provide for new above and below ground electricity and telecommunication lines and facilities as a discretionary, rather than non-complying activity, as follows:

RULE 9 Amateur radio configuration
Underground mining (without surface expression)
Aboveground electricity or telecommunication line
Electricity or telecommunication facility

1. An activity listed in Rule 9 is a discretionary activity.

- RULE 10 ~~Aboveground electricity or telecommunication line~~
~~Electricity or telecommunication facility~~
 Telecommunication mast, tower, dish, antenna and any ancillary equipment
 Two or more dwellings per lot
 Underground mining (with surface expression)**
1. An activity listed in Rule 10 is a noncomplying activity.

8.12 SECTION 32A.2 HIGH NATURAL CHARACTER OVERLAY RULES – RULE 2 & RULE 4

- 8.12.1 Powerco (submission 110.10 and FS110.40) sought to ensure provision is made in Section 32A.2 High Natural Character for the operation, maintenance, minor upgrade and removal of its electricity network, and associated vegetation removal, as a permitted activity
- 8.12.2 The decision is to include a new Rule 4 permitting the operation, minor upgrading or removal of an electricity or telecommunication line and to amend Rule 2 to permit vegetation clearance associated with those activities.
- 8.12.3 The 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

- 8.12.4 Amend Rules 2 and 4 Section 32A.2 High Natural Character to clearly provide for the operation, maintenance, minor upgrading or removal of electricity or telecommunication facilities along with vegetation clearance associated with those activities, as follows (additions underlined):

Rule 2 Clearing indigenous vegetation

Clearing indigenous vegetation is a permitted activity provided:

- a) *It is for ecosystem protection, rehabilitation or restoration works (e.g. beachcare, conservation covenants, removing plant pests as identified in the Waikato Regional Pest Management Plan); or*
- b) *It is required for operation, maintenance, minor upgrading or removal of an electricity or telecommunication line or facility; or*

...

Rule 4 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**.*

8.13 SECTION 32A.2 HIGH NATURAL CHARACTER OVERLAY RULES 32A.3 – RULE 3 – EARTHWORKS

8.13.1 Powerco (submission 110.12 and FS110.41) sought to retain Rule 3 Section 32A.2 High Natural Character subject to amendments to permit earthworks for the operation, maintenance, minor upgrade or removal of electricity or telecommunication facilities as well as lines; and to permit small scale earthworks associated with the installation of new network utilities where these will occur in a location where natural character has already been altered or where the installation technique means that adverse effects on natural character will be temporary and / or less than minor.

8.13.2 The decision is to make a number of changes to Rule 3. However, these do not fully address the matters raised in Powerco’s submission. It is inconsistent and unduly onerous to require consent to be obtained for earthworks associated with the installation of underground infrastructure that is otherwise permitted, where such earthworks are of low impact.

Relief Sought

8.13.3 Amend Rule 3 to permit earthworks associated with the operation, maintenance, minor upgrade or removal of electricity or telecommunication lines and facilities, and small scale earthworks associated with the installation of new utilities, as follows:

RULE 3 Earthworks

1. Earthworks that are a permitted activity in the underlying zone and district-wide rules retain its activity status provided:

- a) It is for ecosystem protection, rehabilitation or restoration works (e.g. beachcare, conservation covenants, works involved with pest management); or*
- b) It is required to maintain an existing fence line, or the legal width of an existing public road within the Road Zone or State Highway network, legal right of way, or an operational farm, driveway or track or is part of a plantation forestry activity; or*
- c) It is required for operation, maintenance, minor upgrading or removal of an electricity or telecommunication line or facility; or*
- d) It is part of the farming activity operational at the time Variation 1 was publically notified; or*

e) It is required to enable the installation of network utilities within the road reserve width of an existing operational legal road, or the installation of network utility service connections within existing formed tracks and driveways; or
f) It is boring or thrusting required for the installation of underground utility cables or pipes.

...

8.14 SECTION 32A.3 OUTSTANDING NATURAL CHARACTER OVERLAY RULES – RULES 13 AND 15

8.14.1 Powerco (submission 110.15, 110.6 and FS110.44) sought to ensure provision is made in Section 32A.3 Outstanding Natural Character for the operation, maintenance, minor upgrade and removal of its electricity network, and associated vegetation removal, as a permitted activity

8.14.2 The decision is to include a new Rule 15 permitting the operation, minor upgrading or removal of an electricity or telecommunication line and to amend Rule 13 to permit vegetation clearance associated with those activities.

8.14.3 The 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

8.14.4 Amend Rules 13 and 15 Section 32A.3 Outstanding Natural Character to clearly provide for the operation, maintenance, minor upgrading or removal of electricity or telecommunication facilities along with vegetation clearance associated with those activities, as follows (additions underlined):

Rule 13 Clearing indigenous vegetation

Clearing indigenous vegetation is a permitted activity provided:

a) It is for ecosystem protection, rehabilitation or restoration works (e.g. beachcare, conservation covenants, removing plant pests as identified in the Waikato Regional Pest Management Plan); or

b) It is required for operation, maintenance, minor upgrading or removal of an electricity or telecommunication line or facility; or

...

Rule 15 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**.*

8.15 SECTION 32A.3 OUTSTANDING NATURAL CHARACTER OVERLAY RULES – RULE 14 – EARTHWORKS

8.15.1 Powerco (submission 110.17 and FS110.45) sought to retain Rule 14 Section 32A.3 Outstanding Natural Character subject to amendments to permit earthworks for the operation, maintenance, minor upgrade or removal of electricity or telecommunication facilities as well as lines; and to permit small scale earthworks associated with the installation of new network utilities where these will occur in a location where natural character has already been altered or where the installation technique means that adverse effects on natural character will be temporary and / or less than minor.

8.15.2 The decision is to make some changes to Rule 14. However, these do not fully address the matters raised in Powerco’s submission. It is inconsistent and unduly onerous to require consent to be obtained for earthworks associated with the installation of underground infrastructure that is otherwise permitted, where such earthworks are of low impact.

Relief Sought

8.15.3 Amend Rule 14 to permit earthworks associated with the operation, maintenance, minor upgrade or removal of electricity or telecommunication lines and facilities, and small scale earthworks associated with the installation of new utilities, as follows:

RULE 14 Earthworks

1. Earthworks that are a permitted activity in the underlying zone and district-wide rules retain its activity status provided:

- a) It is for ecosystem protection, rehabilitation or restoration works (e.g. beachcare, conservation covenants, works involved with pest management); or*
- b) It is required to maintain an existing fence line, or the legal width of an existing public road within the Road Zone or State Highway network, legal right of way, or an operational farm, driveway or track or is part of a plantation forestry activity; or*
- c) It is required for operation, maintenance, minor upgrading or removal of an electricity or telecommunication line or facility; or*
- d) It is part of the farming activity operational at the time Variation 1 was publically notified; or*

e) It is required to enable the installation of network utilities within the road reserve width of an existing operational legal road, or the installation of network utility service connections within existing formed tracks and driveways; or

f) It is boring or thrusting required for the installation of underground utility cables or pipes.

...

8.16 SECTION 32A.3 OUTSTANDING NATURAL CHARACTER OVERLAY RULES – RULES 19 AND 20

8.16.1 Powerco (submission 110.19) sought to ensure provision is made in Section 32A.3 Outstanding Natural Character for new aboveground and underground electricity lines and facilities as no more than a discretionary activity in Outstanding Natural Character Areas.

8.16.2 The decision is to identify aboveground electricity or telecommunication lines and electricity or telecommunication facilities as a non-complying activity.

8.16.3 A non-complying activity status is inappropriate for new electricity infrastructure traversing an Outstanding Natural Character Areas as it signals that such activities are not provided for by the Proposed Plan. A non-complying activity status fails to recognise the regional significance of electricity infrastructure and the benefits associated with a reliable and secure supply of electricity; and the technical and operational constraints associated with such infrastructure.

Relief Sought

8.16.4 Rules 19 and 20 Section 32A.3 Outstanding Natural Character should be amended to provide for new above and below ground electricity and telecommunication lines and facilities as a discretionary, rather than non-complying activity, as follows:

RULE 19 Wind turbine

Underground mining (without surface expression)

Electricity or telecommunication facility

Above ground electricity or telecommunication line

1. An activity listed in Rule 19 is a discretionary activity.

RULE 20 ~~Above ground electricity or telecommunication line~~

Amateur radio configuration

~~Electricity or telecommunication facility~~

Subdivision creating one or more additional lots

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

1. An activity listed in Rule 20 is a noncomplying activity.

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

8.18 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
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Takapuna
AUCKLAND 0740

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E-Mail: gmcperson@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:

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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**

