

ANNEXURE 7

PUBLIC AND LOCAL ACTS AFFECTING LAND USE AND TREES



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PUBLIC AND LOCAL ACTS AFFECTING LAND USE AND TREES

- Note 1: The acts and regulations referred to below may be amended from time to time. Current statutes should therefore be referred to where action is to be taken, particularly under a public act.
- Note 2: Land vested in the Council in trust or as an endowment may be sold or exchanged under the provisions of Section 230 of the Local Government Act 1974 unless prohibited by the instrument creating the trust and endowment.
- Note 3: Where land is occupied under a lease, the terms of the lease may restrict the type of activities allowed.

1. Mt Hobson – Western Slopes

Section 9 of the Auckland City Loans Consolidation and Empowering Act 1921 No. 1 Local (Stats P681)

Validation of agreement between Dilworth Trust Board and the Auckland City Council 28 July 1921

The agreement is contained in the Third Schedule to the Act. It relates to a block of land on the western slopes of Mt Hobson (area 13 acres and 19.4 perches gross, less land taken for a telephone exchange. NZ Gazette 1950 p5 and 1967 p897) now in Council ownership C/T 514/214.

Clauses 4 and 5 of the agreement provide as follows:

- “(4) *The Council will keep, use and maintain the said land as an open space or recreation ground for the use of the public and for no other purpose whatsoever and in particular will not permit or allow the land to be used for a football-field.*
- (5) *The Council will preserve the present landscape appearance of the slopes of the said land and will not permit or allow the same to be disfigured or injured either by excavation-works or by any other means whatever”.*

2. Restrictions on Quarrying Volcanic Cones

Reserves and other land disposal and Public Bodies Empowering Act 1915 No. 68. (Stats P367)

Section 5 provides as follows:

- “(1) *From and after the passing of this Act it shall be unlawful for any person, unless expressly authorised in that behalf by the Governor in Council, to make, or permit or allow to be made, any excavation, quarry, terrace, or cutting of any kind (whether on any quarry reserve, or on any private land) on the side or slope of any of the volcanic cones or hills in the Auckland Provincial District which is bounded by or abuts on to a domain or other public reserve, without leaving an angle or batter of not less than forty degrees from the top of such excavation, quarry, terrace, or cutting (or from the boundary of such domain or reserve in*

cases where the excavation, quarry, terrace, or cutting extends back to such boundary) to the floor or base of such excavation, quarry, terrace, or cutting.

- (2) *Every person who hereafter makes, or causes or permits to be made, any such excavation, quarry, terrace, or cutting shall on completion thereof plant the slope formed by the angle aforesaid with trees or shrubs of a kind to be approved by the Board of Trustees or other body having control of the domain or reserve affected thereby.*
- (3) *Every person who commits a breach of any of the provisions of this section shall be deemed guilty of an offence, and shall be liable on summary conviction to a fine of not less than ten pounds for every such offence, or in the case of a continuing offence to a penalty of not less than ten pounds for every day during which such offence continues.*
- (4) *If any person not being authorised as aforesaid commences to make, or permits or authorises to be made, any such excavation, quarry, terrace, or cutting, the local authority or Domain Board, as the case may be, having control of the domain or reserve bounded by or abutting on to the land upon which such excavation, quarry, terrace, or cutting is being made or is about to be made may call upon such person to enter into a written undertaking with such local authority or Domain Board to comply with the provisions of subsection one hereof; and if such person fails or refuses or neglects to enter into and sign such undertaking upon being requested by the said local authority or Domain Board so to do, the said local authority or Domain Board, or any person on behalf of such local authority or Domain Board, shall be entitled to apply to the Supreme Court for a writ of injunction to restrain such person from making, or permitting, or authorising to be made, any such excavation, quarry, terrace, or cutting”.*



3. Western Springs

Auckland City Endowments and Reserves Act 1877 No. XXVII Local (Stats P 38)

Section 2 provides for land at Western Springs, defined in the Schedule to the Act (includes the zoo), to be held by the Council with powers as set out in Section 3 of the Auckland City Endowments and Reserves Act 1875 No. XXXIV. This latter Section 3 provides as follows:

“The Mayor, Councillors, and Citizens, in respect of the lands described in the First Schedule, and any other lands for the time being held by them under the provisions of this Act, may from time to time exercise all or any of the powers following —

- (1) *May raise money by mortgage or debenture, without power of sale, and subject to and with such powers covenants and stimulations as they may think fit.*
- (2) *May demise or lease for any term not exceeding ninety nine-years, without fine or foregift, or let from year to year or otherwise, and with or without special conditions.*
- (3) *May lay out roads through the said lands.*
- (4) *May dedicate any part or parts of such lands for public or for recreation purposes.*
- (5) *Provided that no person shall be liable to see to the application of any money paid by him, or accountable for the mis-application or non-application thereof”.*

4. Auckland Domain

(a) Auckland Domain Act 1987 No. 7 Local (Stats P 2863)

Applies to this domain and includes the following Sections which should be referred to for further details:

1. Status of Domain
2. Roadways within Domain
3. General powers of Council with respect to Domain
4. Special provisions as to leasing certain parts of the Domain
5. Grant of easements
6. Charges for certain functions
7. Minor commercial enterprises within Domain
8. Bylaws
9. Offences and penalties
10. Reserves Act 1977 not to apply

(b) Auckland City and Auckland Harbour Board Empowering Act 1914 Local No.7 (Stats P443)

Sections 12 and 13 authorise the Council to erect, on the Domain, a building for use as a cadet drill-hall, company rooms and incidental purposes.

(c) Auckland Domain

Bowling Club - 'A' on S.O. 49380

Tennis Association - S.O. 36189

Rugby League - S.O. 37421

Section 6 of the Reserves and Other Lands Disposal Act 1974 No.139 (Stats P2041)

provides for the Council to issue leases for part of the Auckland Domain to the above bodies. (Each lease should be perused for conditions relating to the particular land).

Auckland Domain - carpark (leased by Bowling Club Stanley Street)

(677m² marked 'B' on S.O. 49380)

Section 5 of the Reserves and Other Lands Disposal Act 1975 No. 134 (Stats P. 1189) provides for the Council -

- (a) To use the land or any part of it for the purposes of a public carpark, and to make such charges in respect of the use of the carpark as it thinks fit; and
- (b) To lease the land or any part of it to any person, or to permit any person to use the land or any part of it, for the purposes of a public carpark, for such period, not exceeding 1 year, for such consideration, and otherwise upon and subject to such terms and conditions as the Corporation thinks fit.

(d) Museum - Auckland Domain

Museum site (2ac, 3r, 19.14p) leased from the Council for 99 years from 1 March 1920 for \$2 per year under Section 6 Auckland Institute and Museum Site Empowering Act 1918. Local No.1 (Stats P225).

5. Coyle Park - Pt Chevalier

Auckland City and Auckland Hospital Board Empowering Act 1922 No. 10 Local (Stats P 427)

Section 2: Exchange of Auckland Domain land.

Schedule: Paragraph 7 - to be held as recreation ground with powers and subject to conditions upon which the Auckland Domain Cricket Ground is held under the Auckland Domain Vesting Act 1893 or any Act in amendment or



modification or substitution thereof (refer Auckland Domain Act 1987 No. 7 Local (Stats P 2863))

6. Bastion Point - Orakei

Land use and subdivision

See special legislation – **Orakei Act 1991 No 122**

7. Exminster Street

Statutory Building line:

Auckland City Empowering Act 1932-33 No. 8 Local (Stats P 590)

Section 3 (4) provides as follows:

“No building or part of a building shall at any time be erected on the land fronting the said streets within a distance of thirty-three feet from the centre-lines of (Exminster Street). The District Land Registrar at Auckland shall endorse on the titles of all land affected a memorandum that such land is subject to the above building line condition”.

8. Spring Street, Rowe Street, Onehunga

(Lots 6 and 8, Section 14 Town of Onehunga)

Section 3 of **The Onehunga Endowments Act 1877 Local No. LXIII (Local Stats P 118)** provides for 2 acres of land between Spring Street and Rowe Street to be constituted a municipal reserve for water purposes.

The vesting as a public reserve for water purposes is provided for by the Onehunga Water Reserves Act 1879. The land may be laid out, ornamental etc., as the Council thinks fit. In addition, no part of the land shall be alienated by way of sale, mortgage or lease.

9. Onehunga Cemeteries - by Waikaraka Park

Onehunga Cemetery Act 1898 Local No. 8 (Stats P. 355) authorised the Council to open and establish a public cemetery on 10 acres at end of Alfred Street adjacent to the then coastline.

10. Courts for Adjoining Premises

Section 21 of the **Auckland City Housing Act 1942 Local No. 4 (Stats P190)** provides as follows:

“(1) Where the owners of any parcel or parcels of land desire that any part or parts thereof shall be available or used as a courtyard or open space for two or more

separately-owned dwellings, and the Council is satisfied that it is desirable that land should be so available or used, the Council may require the owners of the land and of the dwellings concerned and all the persons having any interest therein —

(a) To grant such easements or rights as may in the opinion of the Council be necessary to ensure the retention of the land for the purposes intended:

(b) to include in the documents containing such grants suitable provisions to enable the Council to require the due performance and observance of the provisions thereof.

(2) If the document containing the grant of any such easement or right as is mentioned in paragraph (a) of the last preceding subsection would have been registrable under the provisions of the Land Transfer Act, 1915, if the provisions mentioned in paragraph (b) of that subsection had not been included therein, the Council may require the registration of the document under that Act and, notwithstanding anything in that Act or in any rule or law to the contrary, the document may be registered accordingly in the same manner as if those provisions had not been included therein.”

Note: that this provision can only be applied to properties within the former Auckland City district.

11. Park Cnr Tamaki Drive and Railway - Tamaki Drive Reserve

Transferred to Council by Section 5, **Auckland Harbour Board and other Local Bodies Empowering Act 1931 Local No. 7 (Stats P 582)** as a plantation reserve. (2ac, 2r, 8.7p)

12. Tamaki Drive – Maintenance and Widening

The Auckland Harbour Board and other Local Bodies Empowering Act 1931 Local No. 7 (Stats P 580) provides for the batters of Tamaki Drive to be maintained by the Council, and also for 20 feet of widening on the southern side.

13. Point Chevalier Foreshore

Section 6 of the Auckland City Sinking Funds and Empowering Act 1929 Local No. 15 (Stats P269) vested the control of the foreshore from OHWST to OLWST in the Council, subject to the plans of any building being submitted to and approved by the Auckland Harbour Board (ARC as Successor).



14. Municipal Abattoir, Great South Road, Westfield

This has been sold

15. 189 Mt Eden Road (Opposite Normanby Road)

(Lot 6 DP 248 C/T 17C/30)

Section 4, Local Legislation Act 1979 No. 142 (Stats P 1452) authorises the Council to lease this land to the University for a medical centre.

16. Parking Building – Clonbern Road

(2896m² C/T 320/154, 143/246, 19D/1099 S.O. Plan 49841)

The ACC (Remuera Shopping Development) Empowering Act 1975 Local No. 4 (Stats P 1348) authorises lease of site for a parking building, also Shops or offices subject to the Town and Country Planning Act 1953.

17. Grafton Bridge

Section 2 of the Auckland Cemetery Bridge and City Borrowing Act 1905 Local No. 32 (Stats P 743) authorises the Council to repair and maintain Grafton Bridge, to erect scaffolding and to generally use the cemetery land in any way the Council deems fit to keep and maintain the bridge in repair, the Council to do as little damage and injury to the cemetery and the graves and fences as possible.

18. 217-225 Church Street, Onehunga

Part Captain Springs Reserve, part rental housing (straddles railway).

The Onehunga Reserves Act 1875 No LXI (Stats P240) provides for Lot 22A, 3ac 0r 28p to be set aside as a water reserve.

Section 3 of this Act states:

“It shall be lawful of the said governing body from time to time to demise all or any of the lands specified in the Schedule hereto, or any part or parts thereof, at such annual rent or rents, and for such term of years, not exceeding twenty-one years, as the said governing body may think fit; and the rents issues and profits arising out of the lands specified in the Schedule hereto as endowments for the benefit of the Town of Onehunga shall form part of the ordinary local revenue of the said town.

But it shall not be lawful for the said governing body to demise or lease or apply to any other purpose than the purpose in each case particularly expressed any of or any

part of the lands described in the Schedule as water reserves.”

19. Cornwall Park - Land Vicinity Puriri Drive

(5.1945ha marked B on S.O. Plan 55019 described as Area 2 and 8.5448ha marked C on S.O. Plan 55019 described as Area 3)

Section 3(2) of the Cornwall Park Endowment and Recreation Land Act 1982 Local No. 4 (Stats P1803) provides as follows:

“Area 2 and Area 3 are hereby declared to be subject to the powers referred to in subsection (1) of this section, but in exercising those powers the Board shall preserve the present character of Area 2 and Area 3, and to this end each shall continue to be used in essentially the same manner and for essentially the same purpose as at (1 January 1980) and to the extent authorised by the provisions of the One Tree Hill Borough Council's operative district scheme under the Town and Country Planning Act 1977 as they applied to Area 2 and Area 3 on (1 January 1980) and no subsequent change in those provisions shall operate to extend the powers conferred on the Board by this subsection.”

20. Mt Eden Jail/Land Normanby Road

(Lot 105 and 109 Section 6 Suburbs of Auckland)

Section 5 of the Reserves and other lands Disposal and Public Bodies Empowering Act 1907 No. 72 (Stats P 361) authorises the Governor to grant a lease of part of the above land for the purpose of the manufacture of ammunition.

21. Pikes Point East - Onehunga

Section 6 of the Auckland Harbour Board (ARA Pikes Point East Reclamation) Empowering Act 1976 Local No. 9 (Stats P2334) provides for an amenity strip (esplanade reserve) of minimum width 25 metres.

(SO Plan 51331).

22. Orakei Basin

Section 2 of the Auckland Harbour Board Empowering Act 1927 Local No. 10 (Stats P 771) provides for the Council to lease the Orakei Basin for the purpose of a boating, bathing and camping area. The lease has recently been renewed.

(The ownership of the land is now with the Crown as a result of the Foreshore and Seabed Endowment Revesting Act 1991).



23. Geddes Basin (Gloucester Park)

- (a) Section 92 of the **Reserves and other lands Disposal and Public Bodies Empowering Act 1910 No. 80 (Stats P449)** vests the title land in the Council, subject to the proviso that the Crown may resume all or part without compensation.

(Part taken for Hugh Watt Drive).

- (b) Gloucester Park - Onehunga (Geddes Basin)

Vested in the Council in trust for recreation purposes and subject to the Reserves Act by Sec 16 of the **Reserves and other lands Disposal Act 1956 No. 53 (Stats P406)**.

(Note: Part of this reserve resumed/for motorway purposes).

24. Avondale Hall Site 16-20 St Georges Road, Avondale

(Pt Allot 64)

Transferred to the (Council) in trust for such public purposes with the road district on the Avondale Road Board thinks fit by Section 20 of the **Reserves and other lands Disposal and Public Bodies Empowering Act 1914 No. 50 (Stats P341)**

25. Avenham Walk - Mt Eden

Section 97 of the **Reserves and other lands Disposal and Public Bodies Empowering Act 1922 No. 50 (Stats P 310)** provides as follows:

"Notwithstanding anything in the Municipal Corporations Act, 1920, or in any other Act to the contrary, the Mount Eden Borough Council may take under the Public Works Act, 1908, or otherwise acquire the respective parcels of land laid out as streets, and known as Kelly Street and Avenham Walk, situated within the Borough of Mount Eden, and may lay out the same as streets, notwithstanding that such streets may be of less width than required by law:

Provided that no building permits other than permits for alterations of or additions to existing buildings, or permits for buildings to replace existing buildings, shall be issued by the said Council in respect of lands having a frontage to Avenham Walk."

26. 171-179 Richardson Road approx.

(Section 94A Parish of Titirangi 2 acres)

Section 18 of the **Reserves and other lands Disposal and Public Bodies Empowering Act 1924 No. 55 (Stats P411)** vests this land in Council in trust in municipal and public purposes.

27. 20-24 Ventnor Road, Remuera (Reserve)

Transferred to the Council, in trust for municipal purposes, by Section 9, **Reserves and other lands Disposal Act 1927 No. 64 (Stats P 591)**.

28. 104 Brighton Road (Reserve)

(Allot 30 Sec. 4 Suburbs of Auckland)

Transferred to the Council, in trust for the purpose of public recreation, by Section 16, **Reserves and other lands Disposal and Public Bodies Empowering Act 1925 No. 46 (Stats P475)**.

29. Mt Smart Domain (Ericsson Stadium)

(22 ac, 2 r being Allot 22 Sec 17 Suburbs of Auckland)

Section 27 of the **Reserves and other lands Disposal Act 1937 No. 39 (Stats P350)** declares the Mt Smart Domain to be a public domain subject to the Reserves Act and to be controlled by a special board. Now controlled by the ARC under the **Mt Smart Regional Recreation Act 1985. Local No. 10 (Stats P1544)** See also NZ Gazette 1979 p 3025.

Provides for the establishment of a regional sports, recreation, entertainment and convention centre.

30. Newmarket Domain (Olympic Pool)

pt Allots 32 and 39 Suburbs of Auckland pt.C/T 6/181)

Section 14 of the **Reserves and other lands Disposal Act 1951 No. 76 (Stats P 531)** vests the Newmarket Domain (North of Railway line bounded by Davis Crescent and Broadway) in the Council, without power of sale with building restrictions on the open space, cnr Davis Crescent/Broadway.

31. Swimming Pool - Onehunga (Park Gardens/Trafalgar Street)

(Allotments 5 and 13, Section 36 Town of Onehunga)

Section 28 of the **Reserves and other lands Disposal Act 1953 No. 107 (Stats P 1516)** vests this land in the Council (decisions to use it for war memorial purposes).

32. Gladstone Road, Mt Albert - Railway Overbridge

Section 22 of the **Local Legislation Act 1962 No. 117 (Stats P702)** empowers the Council to enclose the land under the northern space and lease it for storage, warehouse, commercial or light industrial purposes.



33. 9 Princes Street, Otahuhu - Senior Citizens Centre

Declared lawful by Section 2 of Local Legislation Act 1968 No. 131 (Stats P 1037)

34. Foreshore, Mt Roskill

Section 3 of the Reserves and other lands Disposal Act 1983 No. 148 (Stats P 1486) vests 1520m2 being lot 3 DP 92189 in the Council as recreation reserve subject to the Reserves Act.

35. Vellenoweth Green (St Heliers Bay Reserve)

Vested in Council as a reserve under the Reserves Act 1977 by the Auckland City Council (St Heliers Bay Reserve) Act 1995 No. 4 Local. Section 6(d) provides as follows:

- “(d) *The Council, in its capacity as owner of the reserve, shall not consent to any proposal by any of the clubs for any change, alteration, or expansion in the use by such clubs of the areas occupied by them which, in the reasonable opinion of the Council, after public consultation in accordance with the Reserves Act 1977, would either:-*
- (i) *result in a material increase in the intensity or scale of that use or a change to its character; or*
 - (ii) *not be in pursuance of or ancillary to the activities of the clubs as stipulated in the lease.”*

36. Reservoir - Mt Eden

Title to provide, that, if the site ceases to be used as a reservoir, it shall revert to the Domain Board without any reconveyance or other instrument of title from the Council (Special Powers and Contracts Act 1886, Local No. 16 (Stats P652)).

37. Newmarket Land - Vicinity Olympic Pool

(3ac, 2r 0p Allot 32 and 33, Sec 4 Suburbs of Auckland)

1. Land between Davis Crescent and Broadway Set aside as a public recreation ground, with control and management vested in Newmarket District Board, by the Newmarket Reserve Act 1878 Local No. 59 (Local Stats P59).
2. Part of above land (opp. Short Street abutting railway 2r, 13.69p) declared to be vested in Newmarket

Borough Council in trust, without power of sale, area site for municipal buildings.

38. 170 Broadway - Former Council Offices

(21p, pt. allot 24 of Sec 4 Suburbs of Auckland)

The Newmarket Borough Council Vesting and Empowering Act 1927 Local No. 20 (Stats P802) provides as follows:

“Section 3 – The lands particularly described in the First Schedule hereto shall as from the date of the passing of this Act vest in the Mayor, Councillors, and Burgesses of the Borough of Newmarket for an estate in fee-simple for municipal purposes freed and discharged from the trusts created or declared by the said Newmarket Hall Act, 1874, but subject to the trusts imposed by section five hereof.

Section 4 – The said lands shall be held by the Corporation in terms of and subject to the provisions of the Municipal Corporations Act, 1920, and the amendments thereof.

Section 5 – The Corporation shall set apart, keep, and maintain such portion, or part portions, or parts of the buildings now or hereafter erected or to be erected on the said lands as the Council shall by resolution determine for use as a library and reading-room and hall for social or other purposes.”

(See also Newmarket Reserve Act 1878 Amendment Act 1886).

39. One Tree Hill Domain

Established by the One Tree Hill Reserve Act 1886 No. 3 Local (Stats P 612) is a public reserve, subject to the Reserves Act and managed by the One Tree Hill Domain Board.

The One Tree Hill Domain Board was abolished at the time of amalgamation - See NZ Gazette 1989 p 2272.

See also NZ Gaz 1886/P176.

40. Onehunga Land - Alfred Street/Neilson Street/Railway

Known as the 75 acre block.

Vested in the Council for municipal purposes - see Onehunga Borough Vesting Act 1911 No. 24 Local (Stats P 293).



41. Alten Road Reserve

Section 5 of the **Auckland Improvement Trust Act 1971 No. 9 (Stats P 2432)** provides as follows:

- (1) *"The Corporation may from time to time at its discretion, enclose, lay out, and plant the piece of land fourthly described in the First Schedule to this Act and known as Alten Road Reserve, or erect thereon any building or buildings for ornamental purposes, but shall not otherwise deal with the whole or any part of the said piece of land or any interest therein.*
- (2) *For the avoidance of doubt it is hereby declared that Alten Road Reserve is a public reserve within the meaning of the Reserves and Domains Act 1953."*

42. Excavation in the Vicinity of Roads

Section 354 of the Local Government Act 1974 (R.S. Vol 25 P1) provides as follows

- "(1) Where the owner or occupier of any land proposes to construct a cellar, or make any other excavation (other than a cellar or other excavation to be constructed or made in accordance with a building consent under the Building Act 1991), within 20 metres from any road, private road, or any adjoining property, he shall give notice of his intention to the Council, whose consent must first be obtained before the work is commenced; and the owner or occupier shall cause the cellar or excavation to be so constructed or made that it cannot become a receptacle for stagnant water or other impure matter.*
- (2) Where, under subsection (1) of this section, the Council grants its consent to the construction of any cellar, it may grant its consent subject to a condition that neither the owners nor the occupier nor their successors in title shall be entitled to claim against the council for any damage caused to the cellar or any property therein arising, whether directly or indirectly, from any defect in any water-supply system, sewerage system, or other public-utility service under the control of the Council.*
- (3) As soon as conveniently may be after the passing of a resolution by the Council granting its consent to the construction of a cellar subject to the conditions specified in subsection (2) of this section, the Council shall send a copy of the resolution, authenticated by the Council, to the District Land Registrar. or the Registrar of Deeds, as the case may require, who shall deposit the same in his office and register against the title to the land a memorandum under his hand that the land is subject to those conditions.*
- (4) This section shall bind the Crown"*

43. Trees

There are a number of statutory powers affecting trees which may be exercised independently of the provision to the District Plan. These include

- (a) Section 58 of the **Electricity Act 1992 No. 122** provides as follows:

"Where any tree or part of a tree or any vegetation or part of any vegetation is removed pursuant to any regulations made under Section 169 of this Act, compensation, to be assessed in the manner prescribed by the Public Works Act 1981, shall be payable if the tree or vegetation was growing on the land before the construction of the works or electrical installation but not in any other case."

Note: Regulations made under S.169 include the Electricity Regulations 1993 (S.R 1993/95), also Trees (electric lines). Regulations (S.R 1986/315). Part II of the Trees Regulations controls the planting, cutting and trimming of shelter-belt trees.

- (b) **Fencing Act 1978 No. 50 (Stats P 592)** Section 26 provides for a court order authorising access over adjoining land for fencing purposes and the cutting down, or chopping of trees and shrubs with the owner's consent.
- (c) **Local Government Act 1974 (R.S Vol 25 P 271)** Section 355 provides for the Council to give written notice to the owner of any land abutting the road to remove or trim overhanging trees. There is the right of appeal to the District Court.
- (d) **Property Law Act 1952 (R.S Vol 22 P867)** Section 129C applies to trees and unauthorised structures (including walls and fences) affecting land used for residential purposes. An occupier of residential land may apply to the District Court for an order requiring the occupier of other land (which need not necessarily be residential land) to remove or trim trees or remove or alter any structure on that other land so as to remove or prevent
 - "(a) Any actual or potential danger to the applicant's life or health or property, or to the life or health of any person residing with the applicant; or*
 - (b) Any undue obstruction of a view than an occupier would otherwise be able to enjoy from the applicant's land or from any building used for residential purposes erected on that land; or*
 - (c) Any other undue interference with the reasonable enjoyment of the applicant's land for residential purposes:*



provided that, except for the purpose referred to in paragraph (a) of this subsection, the Court shall not make an order under this section relating to any tree the preservation of which is the subject of a requirement lawfully made by a heritage protection authority under the provisions of Part VIII of the Resource Management Act 1991.”

Where a tree is allegedly obstructing a view or causing an injury or loss, the Court shall have regard to the following matters

- “(a) *The interests of the public in the maintenance of an aesthetically pleasing environment:*
- (b) *The desirability of protecting public reserves containing trees:*
- (c) *The value of the tree as a public amenity:*
- (d) *The historical, cultural or significant significance (if any) of the tree:*
- (e) *The likely effect (if any) of the removal or trimming of the tree on ground stability, the water table, or run-off”*

Section 129C binds the Crown and applies to all land identifying Maori land, Crown land and public reserves.

- (e) **Public Works Act 1981 No. 35 (Stats P393)** Section 133 provides for the Minister or the Council to require an owner or occupier of land adjoining a road or public work to cut down or trim any tree.

There is a right of appeal to the District Court. Section 135 provides for work on trees and hedges etc in an emergency.

- (f) **Telecommunications Act 1987 No. 116 (Stats P1227)** Section 13 provides for a network operator to request an owner or occupier remove or trim trees and shrubs. There is a right of appeal to the District Court. Section 14 provides for the removal of trees in an emergency.

- (g) **Transit NZ Act 1989 No. 75 (Stats P1648)** Section 55 provides wide powers for the Minister and Council having control of a road to require the owner or occupier of any land adjoining a road a public work to cut down or trim any tree or hedge etc.

There is the right of appeal to a District Court. Section 57 provides for work on trees and hedges etc in an emergency.

44. Excavation Near Public Works

Section 237 of the **Public Works Act 1981 No. 35** requires, inter alia, the consent of the Council to excavate or otherwise interfere with any land in the

vicinity of a public works of the Council if the excavation or interference is likely to produce, directly or indirectly, a subsidence on to that work a subsidence of that work or of the soil under it.

Note: This Section of the Public Works Act also contains provisions affecting excavations in the vicinity of Public Works generally and in particular, excavations near pylons and power poles.

