

# **Proposed District Plan Change 43**

## **Residential and Suburban Mixed Use**

**Full Set of Further Submissions  
Addendum**



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**From:** Peter Anderson <P.Anderson@forestandbird.org.nz>  
**Sent:** Wednesday, September 4, 2019 4:13 PM  
**To:** Corporate Records  
**Subject:** FW: Late Further submission PC43  
**Attachments:** Hutt\_City\_PC43\_FurtherSubmission.pdf

Hi there,

I got an email from Kim Kelly that she no longer works for Hutt CC.

Please can you forward the attached late submission and waiver application to the hearing commissioners for PC43.

Regards  
**PETER ANDERSON**  
General Counsel

**Royal Forest and Bird Protection Society of New Zealand Inc.**

**M:** 021 2866992

**DD:** 03 9405524

[www.forestandbird.org.nz](http://www.forestandbird.org.nz)

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**From:** Peter Anderson  
**Sent:** Wednesday, 4 September 2019 4:08 PM  
**To:** [Kim.Kelly@huttcity.govt.nz](mailto:Kim.Kelly@huttcity.govt.nz)  
**Cc:** [Joseph.Jeffries@huttcity.govt.nz](mailto:Joseph.Jeffries@huttcity.govt.nz); [Nathan.Geard@huttcity.govt.nz](mailto:Nathan.Geard@huttcity.govt.nz)  
**Subject:** Late Further submission PC43

Hi Kim,

I attach a further submission in opposition and an application for a waiver with respect to PC43. Please can you refer this to the hearing commissioners?

Thanks.

Regards  
**PETER ANDERSON**  
General Counsel

**Royal Forest and Bird Protection Society of New Zealand Inc.**

**M:** 021 2866992

**DD:** 03 9405524

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4 September 2019

**Further submission on the Hutt City  
Proposed District Plan Change 43:  
Residential and Suburban Mixed Use**

Emailed to:

[Kim.Kelly@huttcity.govt.nz](mailto:Kim.Kelly@huttcity.govt.nz)  
[Joseph.Jeffries@huttcity.govt.nz](mailto:Joseph.Jeffries@huttcity.govt.nz)  
[Nathan.Geard@huttcity.govt.nz](mailto:Nathan.Geard@huttcity.govt.nz)

From: Forest & Bird  
PO Box 631  
Wellington 6140  
Attn: Peter Anderson  
[p.anderson@forestandbird.org.nz](mailto:p.anderson@forestandbird.org.nz)



**Forest & Bird**  
GIVING NATURE A VOICE

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## INTRODUCTION

1. The Royal Forest and Bird Protection Society of New Zealand (Forest & Bird) is New Zealand's largest independent conservation organisation. It is independently funded by private subscription, donations and bequests. Forest & Bird's mission is to protect New Zealand's unique flora and fauna and its habitat. Key matters of concern therefore relate to the protection of ecological values, particularly the sustainable management of New Zealand's indigenous biodiversity, natural landscapes, and publicly owned land, rivers and lakes.
2. Forest & Bird's further submission relates Hutt City Council's Proposed Plan Change 43, in particular, our submission opposes the submission by Hutt City Council seeking the inclusion of a new vegetation clearance rule.
3. Forest & Bird wish to be heard in relation to this submission.

## SUBMISSION

4. Forest and Bird is **strongly opposed** to the Hutt City Council's submission on the proposed Hutt City District Plan.
5. We are **opposed** in particular (although our opposition is not limited to this matter) to the proposal to include a new permitted activity rule for vegetation clearance as suggested in the Hutt City Council's submission and supported by the officers recommendation.

6. We consider there to be no scope for the insertion of new vegetation rules via PC43. The purpose of PC43 is described as:

Proposed District Plan Change 43 reviews the General Residential Activity Area provisions and proposes the introduction of two new activity areas, providing for medium density residential development and suburban mixed use in targeted areas. The plan change also proposes the introduction of a new Medium Density Design Guide and several consequential changes to related chapters of the District Plan.

The purpose of the proposed plan change is to provide for greater housing capacity and a wider range of options for housing styles and sizes at medium densities within the existing urban area. This could include low-rise apartments and terraced houses in areas that have good access to public transport, shopping, parks and schools, but also minor additional dwellings on smaller sites that do not have the potential for traditional infill.

7. The consequential changes do not include any reference to vegetation clearance.
8. There is no scope for the inclusion of vegetation clearance rules:
- a) the proposed vegetation clearance rules were not included in the proposed plan change;
  - b) no one reading the plan change as notified would reasonably apprehend that the plan change was addressing vegetation clearance, particularly in the circumstances where a recent plan change, PC36, addressed vegetation clearance was being considered and continues to be considered by the Environment Court;
  - c) the submission seeking the inclusion of the rules is not on the plan change.
9. The panel received comprehensive legal advice about what whether the Housing NZ submission was within scope. If the principles contained in this advice are applied, the Hutt City submission seeking vegetation clearance rules when that was not a matter that was addressed anywhere in PC43, is plainly not on the plan change.
10. A plan change is not the place to include rules such as this given the lack of safeguards for public participation.
11. If Forest & Bird had been aware that PC43 might result in rules that permit the clearance of all vegetation, including significant vegetation, in the specified zones, it would have submitted in opposition.
12. The rules should not be included on substantive grounds.
13. Hutt City Council did not include sufficient or appropriate grounds for a new vegetation clearance rule in their submission; therefore there are no proper grounds for the insertion of new rules now.
14. The proposed rules are said to be required to give effect to the urban trees exemption.

New Vegetation Removal Rules (GRAA, MDRAA and SMUAA).

Recommended Change

Introduce the following rule to Chapters 4A, 4F, and 5E: Rule xx 4.1.X Vegetation Removal

(a) The removal of vegetation (whether indigenous or exotic) is a permitted activity.

6 Reason

Supports the requested amendment of Hutt City Council to introduce a new rule on vegetation removal to ensure explicit compliance with section 76 (4A) of the RMA, which prohibits blanket tree protection. This ameliorates the issue identified by the Environment Court in the appeal hearing for Proposed District Plan Change 36.

15. The proposed rules do not give effect to the urban trees exemption, as they apply to all vegetation—not just trees, and would permit any clearance—including clearance in Significant Natural Areas. This includes any areas that have been identified as significant but not yet given protection through any planning mechanism.
16. As a result, the proposed rules are contrary to s6(c) of the Resource Management Act and do not give effect to the:
  - a. Wellington Regional Policy Statement, in particular Policy 23 and 24, which provide for the identification and protection of SNAs); or
  - b. New Zealand Coastal Policy Statement, which provide for the avoidance of certain adverse effects on indigenous vegetation in the coastal environment. .
17. The Environment Court is currently seized of the matter, which is the key part of the remaining issues in the PC36 appeal, which are scheduled for hearing in November 2019.

#### **WAIVER**

18. Forest and Bird acknowledge this submission is one year late (further submissions closed on 4 September 2018).
19. A waiver is sought to accept this late submission. This is on the following grounds:
  - a) The Hutt City Council submission was late;
  - b) no one reading the initial plan change would have had any idea that vegetation clearance was within the scope of the plan change, or that a permitted rule could be imposed;
  - c) granting this waiver will have no impact on the adequate assessment of the effects of the plan;
  - d) The Hutt City Council submission was improper, seeking to include a controversial matter through an unrelated plan change, while the matter is before the Environment Court is seized and where the outcome would relate to the same matters before the Environment Court
  - e) it would not create any unreasonable delay in process.

Yours faithfully

A handwritten signature in black ink, appearing to read "P Anderson", is centered within a light gray rectangular box.

Peter Anderson  
General Counsel





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**Subject:** FW: Late Submission on Plan Change 43  
**Attachments:** Further submissions on Proposed Plan Change 43.docx

**From:** Daniel Jones [REDACTED]  
**Sent:** Tuesday, 10 September 2019 4:07 PM  
**To:** Nathan Geard; Rachel Paul  
**Subject:** Re: Late Submission on Plan Change 43

Dear Sirs,

I attach a late submission and request for waiver in respect of Plan change 43. I request that these submissions are forwarded to the Commissioners who are seized of this matter and the relevant officers within HCC.

Please do not hesitate to contact me with any queries in relation to this matter.

Many thanks

Daniel Jones  
Korokoro



Lower Hutt 5012

10<sup>th</sup> September 2019

**Hutt City Council District Plan Division**

Emailed to:

[Rachael.Paul@huttcity.govt.nz](mailto:Rachael.Paul@huttcity.govt.nz)

[Kim.Kelly@huttcity.govt.nz](mailto:Kim.Kelly@huttcity.govt.nz)

[Joseph.Jeffries@huttcity.govt.nz](mailto:Joseph.Jeffries@huttcity.govt.nz)

Dear Sirs,

**Re: Further Submissions on Plan 43, Recommended Change re Vegetation Removal**

I write to request the opportunity to provide late submissions on a single aspect of Plan Change 43: the proposed rule change that, by virtue of Officer's Recommendation 12, will allow vegetation removal in General Residential Activity Areas, Medium Density Residential Areas and Suburban Mixed Use Activity Areas.

I am aware that these submissions are well out of time and that a waiver will be required if they are to be considered by Hutt City Council ('HCC') and the Commissioners. I suggest that this waiver is justified given the failure of HCC to properly notify the public of this significant plan change within the consultation period, which lead to me being unaware of it during the consultation period itself. Also, given that the HCC Submission that supports the plan change was itself significantly out of time.

In order to remedy this failure HCC and the Commissioners are invited to receive these submissions out of time.

**Factual background**

1. The relevant factual background to these submissions is as follows:
  - a. In 2015 HCC proposed Plan change 36 which sought to remove existing 'blanket' protections for trees in order to ensure that the District Plan complied with the requirements of section 76(4A)-(4D) of the Resource Management Act 1991.
  - b. In July 2016 the Plan change was appealed to the Environment Court by the East Harbour Environmental Association Incorporated, the appeal relating to changes to rules in respective of the Landscape Protection Residential Activity Area [LPRAA] and the Hill Residential Activity Area [HRAA].
  - c. In the course of litigation it became apparent that due to errors in drafting Plan Change 36, HCC had failed to effect the change that it sought and that, were it left unamended, the effect of Plan Change 36 would be to retain blanket protection for both LPRAA, HRAA and also for General Residential Activity Area [GRAA], Special Residential Activity Areas [SRAA].

- d. Therefore, HCC invited the Court to exercise its powers under section 293 of the RMA to remedy the Plan Change to reflect its intended removal of protections, in relation to all the above residential areas, in particular by replacing the then prohibitions on the removal of vegetation in GRAA's with a general permission to remove it.
- e. In a decision dated 4<sup>th</sup> October 2018 the Court indicated that it was minded to make an order and directed that HCC provide notice of this proposed amendment of Plan 36 in order that that a final decision of the Court would be made following receipt and consideration of public submissions.
- f. Notice was published on HCC's website and a number of submissions were received. A number of those submissions focussed on what submitters regarded as the inadequate and confusing notification of this proposed late change.
- g. It is understood that the Court has not yet convened a judicial conference to consider those submissions.
- h. The amendment that HCC asks the Court to make under section 293 is substantially the same change that is now sought to be made through Plan 43 (albeit that the Plan 43 proposed change seeks to extend that change to Medium Density Residential Areas)

#### **The inclusion of the proposed change within Plan Change 43**

2. Plan Change 43 was notified in on 7 November 2017. It relates to the General Residential Activity Area and is silent on the question of vegetation removal. It was only after the final date for the lodgement of submissions (9<sup>th</sup> March 2018) that HCC District Plan Department lodged submission [DPC 43/263]. This submission, which was lodged on the 17 July 2018, sought permitted activity status for all vegetation clearance in GRAA, MDRAA and SMUAA areas.
3. The submission states that the change was 'necessary' to ensure compliance with the requirements of section 76 (4A). It provides no reasoning to support that conclusion and is unaccompanied by any report on the potential consequences of such A plan change.
4. This proposed rule change is now to be found at Recommendation 12 of the Officers' Recommendations:

*'12. New Vegetation Removal Rules (GRAA, MDRAA and SMUAA). Recommended Change Introduce the following rule to Chapters 4A, 4F, and 5E: Rule xx 4.1.X Vegetation Removal (a)*

*The removal of vegetation (whether indigenous or exotic) is a permitted activity.*

*Reason: Supports the requested amendment of Hutt City Council to introduce a new rule on vegetation removal to ensure explicit compliance with section 76 (4A) of the RMA, which prohibits blanket tree protection. This ameliorates the issue identified by the Environment Court in the appeal hearing for Proposed District Plan Change 36.'*

**The need for a waiver arising out of a failure to properly notify the recommended plan change**

5. Clause 5 of Schedule 1 RMA requires HCC to 'publicly notify the proposed policy statement or plan.' However, HCC's Clause 5 notice makes no reference to the fact that the proposed plan Change 43 include changes to the protection of vegetation.
6. Nor is this proposed plan change included or alluded to in Proposed District Plan Change 43 itself.
7. HCC's Clause 5 notice does state that 'Documentation for proposed plan change' can be viewed at [huttcity.govt.nz/pc43](http://huttcity.govt.nz/pc43) and Recommendation 12 can indeed be found on that webpage, among a wealth of other documentary material, all of it relevant to the proposed plan change but not all of which would appear to the reader likely to contain proposed plan changes themselves. (The reader being entitled to assume, in the absence of information to the contrary, that the proposed rule changes have been incorporated into Proposed District Plan Change 43, as it appears on the website.)
8. The issue, therefore, is whether simply directing the reader to the fact that 'Documentation for a proposed plan change' can be found at a particular webpage, without alerting the reader to the nature of the proposed change or where, amongst that documentation, the proposed change might be found, amounts to the providing of proper notice.
9. It is submitted that it does not. Notification requires providing the reader of the notice with a broad idea of the nature of proposed plan, either through information placed in the body of the notice or in the draft plan change itself. It is not impossible that notification could be satisfied by an indication that certain proposed changes have not been incorporated into the draft plan change and must be found elsewhere in the document bank. However, in this case HCC's notice provided no such indication.
10. Notices must be designed for the general reader not simply for those who may be sufficiently experienced in the process of District Plan changes that they know to scour the document bank for changes that are unannounced in either the notice or the draft plan.
11. For all these reasons the Plan fails to comply with the notification requirements of Clause 5. In the absence of proper notification, it would be unfair and therefore improper for HCC to refuse to consider submissions outside the notification period in circumstances where the submitter makes submissions shortly after discovering of the plan change in question.
12. It is also necessary to take into account that these submissions respond to a submission from HCC that was itself significantly out of time.
13. It is also relevant to this application for waiver that the 'reasons' to support the rule change are misleading. The reader of recommendation 12 and HCC's supporting submission would infer that the change was necessary to comply with the requirements of the RMA. However, it is beyond peradventure that section 76(4A) does not require the removal of all protections

14. It appears that HCC are seeking to quietly, and without proper notice, effect a change that it failed to properly effect through Plan Change 36. It appears to be doing so as a fall-back position in the event that Environment Court does not make the order that it seeks under section 293.
15. It is submitted that this is a wrongful approach: having failed to properly effect the change through its drafting of Plan 36, HCC must either proceed with its application under section 293 or, if it is to seek this change through a new plan, do so having provided the public with proper notification and proper consultation.
16. It is no answer to say that full public consultation took place in relation to the proposed removal of protection in respect of Plan Change 36. The consultation exercise took place some 4 years ago. Since there has been a major change of public opinion in relation to environmental matters, prompted by the publication of the IPCC Special Report 2018 and the IPBES Global Assessment on Biodiversity 2019, which have prompted HCC, among many other public bodies, to declare a climate emergency.
17. Nor is it proper to rely on the public notification of the proposed section 293 change. Several submitters argued that the notice was insufficient, and the matter has yet to be determined by the Court.
18. For all these reasons, should HCC continued to seek, through Plan Change 43, to remove all protection on vegetation, fairness requires a waiver to enable late submitters who only became aware of this proposed change after the conclusion of the consultation period, to be heard.

**Submissions on the proposed plan change**

19. For the following reasons it is submitted that the proposed change should not be made:
  - a. No proper basis has been advanced for the change that is sought. Contrary to the Officer's submissions, the proposed change is not necessary to ensure compliance with 76(4A)-(4D), since the section can be complied with through the identification and scheduling of individual or groups of trees.
  - b. No reason has been given by HCC why the aims and objectives of those matters set out in sections 5, 6 and 7 of the RMA cannot be better achieved through the identification of trees which should be subject to protection rather than through the proposed removal of all protection.
  - c. The proposed rule goes beyond what is required by 76(4A)-(4D), since it refers not merely to trees but to all vegetation. No reason has been given for the removal of protections for all vegetation.
  - d. On its face the proposed rule is contrary to the Regional Policy Statement or the New Zealand Coastal Policy Statement. No reason has been given to explain how the proposed change is consistency with either policy statement.
  - e. The failure to properly notify the public of the proposed change means that other submitters may have been deprived of the opportunity to be heard.

- f. Council's submission in support of the Plan Change is not on the Plan change.
- g. HCC has its opportunity to effect the change that it seeks to make through its section 293 application. It is improper for HCC to make these changes through a new plan change 43 whilst the Court is seized of the appeal in relation to plan 36. The better course is simply to await the outcome of its section 293 application.

**Conclusion**

20. For all the above reasons I would request that these submissions are taken into account by HCC and the Commissioners. For the avoidance of doubt:

- 1. I could gain no trade advantage through this submission.
- 2. I am seeking to be heard.

Yours sincerely

Daniel Jones