

**BEFORE THE ENVIRONMENT COURT**

**I MUA I TE KOOTI TAIAO O AOTEAROA**

**Decision No. [2018] NZEnvC 222**

IN THE MATTER of the Resource Management Act 1991 (the Act)

AND of an application for enforcement order under s 316 of the Act

BETWEEN AUCKLAND COUNCIL  
(ENV-2018-AKL-000258)

Applicant

AND DONG JIN CHOI  
Respondent

Court: Environment Judge J A Smith sitting alone under s 309 of the Act

Date of Decision: 16 November 2018

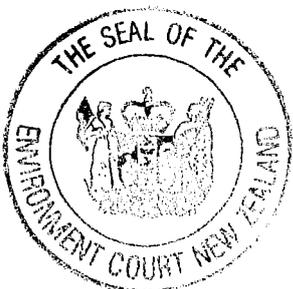
Date of Issue: 16 November 2018

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**DETERMINATION OF THE ENVIRONMENT COURT**

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A: The Court makes the enforcement orders set out in this determination.



## REASONS

### Introduction

- [1] On 19 October 2018 the Council applied for enforcement orders against Mr Choi in relation to the trimming / alteration of a scheduled Pohutukawa tree at 37 Sylvan Avenue, Northcote, Auckland.
- [2] Mr Choi was also prosecuted for altering the tree in the District Court. He was sentenced before the District Court on 14 November 2018.<sup>1</sup> As part of that sentencing the parties agreed, by consent, to the terms of the enforcement orders which will provide for the on-going rehabilitation of the tree.

### Enforcement Order

- [3] Accordingly, the Environment Court makes the following enforcement orders under s 316 of the Act, requiring the Respondent to:

#### Stage 1 – Initial Remedial Pruning

- [3.1] In September or at latest by the end of October year 2020, undertake pruning of the scheduled Pohutakawa tree to implement the stage 1- Initial Remedial Pruning in accordance with the Peers Brown Miller Report dated 16 October 2018 of the canopy re-construction of the tree. The work must:
- (a) Include the removal of dead branches, early selection and removal of competing and poorly connected growth on the tree.
  - (b) Meet best arboricultural practice.
  - (c) Ensure all trimming or alterations to retain the natural shape, form and branch habit of the tree.
  - (d) Ensure no more than 10 percent of live growth of the tree is removed during the pruning.

#### Stage 2 – Final Structural Pruning

- [3.2] In September or at latest by the end of October year 2023, undertake pruning of the scheduled Pohutakawa tree to implement the stage 2 – Final Structural Pruning in accordance with the Peers Brown Miller Report dated 16 October 2018. This



<sup>1</sup> *Auckland Council v Choi* [2018] NZDC 23488.

pruning will involve the final selection of new limbs that would emulate, as much as possible, the trees previous canopy form and structure. The work must:

- (a) Meet best arboricultural practice.
- (b) Ensure all trimming or alterations retain the natural shape, form and branch habit of the tree.
- (c) Ensure no more than 20 percent of live growth of the tree is removed during the pruning.

[4] The Environment Court grants Auckland Council consent under section 315(2) of the Act to:

- (a) Comply with any order above, if the Respondent fails to comply with the order within the stipulated timeframes, and for this purpose, to enter upon the property at 37 Sylvan Avenue, Northcote, Auckland;
- (b) Sell or otherwise dispose of any structures, or materials salvaged in complying with the orders in accordance with 2.1 above; and
- (c) After allowing for moneys received under 2.2 above, if any, recover the costs and expenses of doing so as a debt due from the Respondent.

[5] The Respondent will pay money to or reimburse the Applicant for any actual and reasonable costs and expenses which the Applicant has incurred or is likely to incur in avoiding, remedying, or mitigating any adverse effect on the environment, where the Respondent has failed to comply with:

- (a) Any other order made pursuant to s 314(1); or
- (b) An abatement notice; or
- (c) A rule in a plan or a proposed plan or a resource consent; or
- (d) Any of the Respondent's other obligations under the Act.

**The location for which the enforcement orders are sought is:**

[6] 37 Sylvan Avenue, Northcote, Auckland, legally described as Part Lot 23 Deposited Plan 21248.

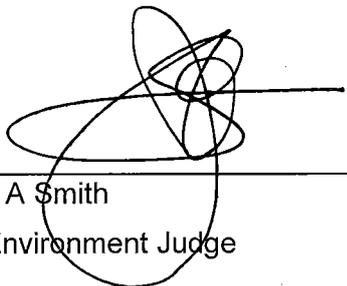


**The name and address of person against whom this order is sought is:**

[7] Mr Dong Jin Choi, 37 Sylvan Avenue, Northcote, Auckland

**The following terms and conditions are sought in respect of the orders:**

[8] That the orders shall apply to the personal representatives, successors and assigns of the Respondent to the same extent that they apply to the Respondent.

  
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J A Smith  
Environment Judge

