

Resource Management Act 1991
Kaipara District Council
Plan Change 4 to the District Plan
Fire Safety Rules (Land Use)

Hearing of Submissions
Decisions of the Hearing Panel

Hearing Panel: **Alan Watson**
 Burnette Macnicol
 Mark Farnsworth

Hearing Dates: **15 – 16 August 2017**

1.0 THIS DECISIONS REPORT

This decision report contains the decisions of the Independent Hearing Commissions regarding the proposed plan change and the submissions to it. The report includes a commentary on the issues raised in the submissions as the basis for our decisions on the plan change and on the submissions. Those issues were largely addressed in the Kaipara District Council's (**Council**) report on the plan change and the submissions, that report having been prepared in accordance with section 42A of the Resource Management Act 1991 (**RMA**) and which is hereinafter referred to as the **section 42A report**.

As detailed below, our decisions are that the submissions are accepted, accepted in part or rejected in accordance with our decision that the plan change is approved with modifications.

2.0 PANEL APPOINTMENT

Council appointed Independent Hearing Commissioners (**Commissioners**) Alan Watson (Chair), Burnette Macnicol and Mark Farnsworth to a Hearing Panel (**Panel**), with the authority to hear and make decisions on submissions and further submissions, and in doing so, on the plan change itself.

3.0 NOTIFICATION AND SUBMISSIONS

The plan change was notified on 14 October 2016 and a summary of the submissions were notified on 17 March 2017. Twenty-nine submissions and fifty-nine further submissions were received. The further submissions included one received late, one week after the closing date. We resolved to accept that submission, which is a further submission, from Gordon Palmer in terms of sections 37 and 37A of the RMA. We note that Mr Palmer did not attend the hearing or provide any reasons for the submission being received late such that we would not usually accept it. However, the submission is in similar form to other further submissions and no persons would be prejudiced by our acceptance of it. Further, no parties at the hearing had any comments to make in relation to our acceptance or otherwise of it.

We accordingly extended the time period for the receipt of further submissions in order to accept the further submission of Gordon Palmer for the following reasons:

- The interests of no persons will be adversely affected by the waiver;
- The matters raised in the submission are not dissimilar to those raised in other submissions received during the submissions period;
- The acceptance of the submission will be in the interests of the community in achieving an adequate assessment of the effects of the plan change; and
- The acceptance of the submission will not result in any unreasonable delay in determining the plan change.

A list of submitters and further submitters can be found at pages 7-9 of the Section 42A report.

4.0 OFFICERS REPORT

The Panel received a section 42A report¹ prepared by Peter Reaburn, Council's consultant planner. That report also includes recommendations which are to accept the plan change but with rewording of the provisions as set out

¹ Section 342A Report, Proposed Plan Change 4, Fire Safety Rules (Land Use), 18 July 2017

in the report.

5.0 HEARING

The hearing was on 15 and 16 August 2017 at the Mangawhai Club. During the hearing, the following submitters appeared before the Panel to speak in support of their submissions on the Plan Change:

- New Zealand Fire Service², represented by:
 - Kerry Anderson, Legal Counsel;
 - William O'Donoghue, National Adviser Fire Risk Management;
 - Perri Duffy, Consultant Planner; and
 - Two representatives from the local NZFS
- Jonathan Larsen³
- Clive Boonham⁴
- Thomas Parsons.

David Chisholm, a resident from Alamar Crescent, also made a brief oral presentation to the Panel, although he was not a submitter. He sought, and was granted, that opportunity by the Chair, it being noted that he could be a witness for Mr Boonham.

We also heard from Council's reporting planner, Peter Reaburn.

In attendance from Council and providing comments as required, were Howard Alchin, Policy Manager and Natalie Robinson, Policy Analyst.

We note that the New Zealand Fire Service is now Fire and Emergency New Zealand (**FENZ**) under the Fire and Emergency New Zealand Act 2017. It is the same legal body as the New Zealand Fire Service Commission that lodged the submission.

The hearing was adjourned late morning on 16 August 2017 for the Panel to carry out a visit to sites around Mangawhai following which they returned to the hearing venue to consider whether they had sufficient information and to carry out some initial deliberations. They then closed the hearing. The site visit and subsequent meeting was attended by the Commissioners only.

6.0 THE PLAN CHANGE

The purpose and scope of the proposed plan change is described in the section 32 Evaluation Report (**section 32 report**) from the Council⁵, which states the following:

The purpose of the Plan Change is to provide a policy framework for managing the risk of structural fires to life, property and the wider environment and to amend existing rules from the District Plan that is (sic) considered a disproportionate mitigation action to the risk posed by structural fire events. It is also considered that there are other methods and legislation (for example, the Building Act 2004) that address the risk of structural fires and their spread other than including direct reference to the Code of Practice.

² Submitter 28

³ Submitter 29

⁴ Submitter 9

⁵ Section 32 Evaluation Report, Plan Change 4, Fire Safety Rules (Land Use), sections 1.2 and 1.3, dated September 2016

The scope of this Plan Change in respect of structural fires includes the following:

- *The addition of a new issue to Chapter 2;*
- *The addition of a new Objective to Chapter 2;*
- *The addition of three new Policies and an Explanatory Statement in respect of these Policies to Chapter 2;*
- *The addition of four new Other Methods to Chapter 2;*
- *The addition of a new Outcome to Chapter 2;*
- *The amendment of the Fire Safety Rules (Land Use) 12.10.26; 13.10.26; 14.10.26; 15A.10.25; and 15B.10.25;*
- *Amendment of the Dwelling Infrastructure Rule 15A.10.3b(c); and*
- *Retaining reference to the Code of Practice as a matter that will be considered at the time of subdivision in Rules 12.15.4; 13.14.4; 14.13.4; and 15B.14.4.*

More particularly, the proposal is to add an Issue, an Objective and three Policies to Chapter 2: District Wide Resource Management Issues as the District Plan does not contain a specific policy framework for 'structural fires'. An issue of 'fire' is included in Chapter 7: Natural Hazards, where the focus is on 'wild fires' that can occur naturally, and not on 'structural fires'. It is also proposed to amend the existing Fire Safety Rules (Land Use) in the Rural, Residential, Business (Commercial and Industrial), Maori Purposes: Maori Land and the Maori Purposes: Treaty Settlement Land Zones.

In all the rules for these sub-zones, clause (c) is proposed to be deleted. Sub-clause (c) reads as follows:

'The use of buildings shall at all times be in accordance with the fire safety requirements specified in New Zealand Standard NZS 9231:1971 (Model Bylaw for Fire Prevention).

This sub-clause has been removed, because the 1971 'Model Bylaw for Fire Prevention' no longer exists and was not replaced by an updated bylaw.

In all rules, sub-clause (b) is proposed to be deleted, and replaced with an advice note. Sub-clause (b) reads as follows:

'Water supply for fire fighting and access to this supply complies with the New Zealand Fire Service Fire Fighting Water Supply Code of Practice SNZ PAS 4509:2008'

It is considered, in terms of the plan change, that implementing the Code of Practice at a land use stage for new development is a disproportionate action to mitigate the risk posed by structural fire events, and in particular does not capture sites which already have been developed. It is considered that implementation of the Code of Practice is more appropriate at the subdivision stage where the issue of appropriate provision of water for firefighting purposes should be addressed upfront. Further, in the plan change, it is considered that for existing sites, particularly where there are no reticulated water supplies that have sufficient capacity for firefighting purposes, an advice note is a more appropriate measure.

For the Fire Safety Rules (Land Use) for the Residential, Business: Commercial and Industrial Zones, it is proposed to delete sub-clause (d) and Note 1. Sub-clause (d) and note reads as follows:

'The building is located at least 20m away from naturally occurring or deliberately planted areas of scrub or shrubland, woodlot or forest.'

Note 1: For fire safety, the New Zealand Fire Service advises that buildings should be at least 20m from the dripline of any tree and that these setbacks are also appropriate from scrubland and other similar vegetated areas.'

It is considered that sub-clause (d) and Note 1 are not generally urban issues, and to retain such a provision is unnecessary and onerous, particularly where planting in urban areas occurs that will be closer than 20m from residential buildings as part of residential amenity. It is considered that this provision relates more to wild fire situations in the rural areas.

This section of the section 32 report then proceeds to set out what is proposed under the plan change by way of additions and deletions to the existing rules in the District Plan. Those details can be found at pages 7-11 of the section 32 report.

7.0 SUMMARY OF HEARING EVIDENCE AND REPRESENTATIONS

We consider a brief account of the hearing evidence and representations from the hearing is useful context for our decisions.

Briefs of expert evidence had been pre-circulated prior to the hearing date. All material pre-circulated or presented at the hearing can be found on the Council's web page at www.kaipara.govt.nz. In this summary, it is not our intention to provide a detailed account of all the matters covered in each of the briefs/statements but rather an outline of the key matters raised.

Fire Emergency New Zealand (FENZ)

- **Kerry Anderson**, Legal Counsel, presented her written submissions. Key points included:
 - Principal issue is to require compliance with the NZFS Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 (**Code of Practice** or **Code**) for both land use and subdivision consent in the Kaipara district;
 - A consideration of emergency management under the RMA;
 - The treatment of firefighting requirements in the building legislation;
 - The Code of Practice and the appropriateness of including reference to it within the District Plan;
 - Application of the Code of Practice and how it has been accepted in other districts;
 - Compliance with the Code of Practice is an appropriate consideration; and
 - The relief sought.
- **William O'Donoghue**, the National Advisor Fire Risk Management for FENZ spoke to his written brief of evidence by way of a Powerpoint presentation. He addressed:
 - The principal statutory objectives of the Fire and Emergency New Zealand Act 2017;
 - The Code of Practice for firefighting water supplies and the importance of water supplies in non-reticulated areas;
 - A proposed solution for Kaipara;
 - Examples of why compliance with the Code of Practice is necessary; and
 - A consideration of issues that have been raised.
- **Perri Duffy**, a Senior Planner for Beca Limited, spoke to her written planning evidence for FENZ. Points covered included:

- A consideration of the policy framework.
- Noting that FENZ's interest in Plan Change 4 is underpinned by its principal objectives to reduce the incidence of unwanted fire, and associated risk to life and property and to prevent and limit damage to property.
- A consideration of the section 42A report.
- A discussion on the provisions and outcomes FENZ would like to achieve.

Jonathan Larsen, a Kaipara district ratepayer, Kaipara district Councillor and FENZ employee, spoke to his submission, noting:

- He was making a personal representation;
- He noted that the 20 metre boundary separating buildings from vegetation is unnecessary;
- He questioned the need for compliance with the Code of Practice on a number of different grounds, pointing out that the Fire Emergency NZ Act 2017 gives FENZ personnel the ability to access properties and water in the event of a fire emergency; and
- He advocated that a simple solution was to ensure all domestic water storage tanks had an appropriate mechanism which would assist FENZ's personnel to access the water in the event of an emergency.

Clive Boonham, a Kaipara district ratepayer and resident, presented a comprehensive written representation supporting his original submission and further submission. He noted that his submission had gained considerable support. Points made included:

- An outline of the 'serious' legal issues that should have been resolved prior to the hearing;
- The unlawfulness of the Code of Practice including how the scope of the Code of Practice has been broadened;
- A detailed explanation of why the Code of Practice only applies to urban areas challenging FENZ's interpretation of how it should be applied;
- An outline of the way FENZ are using the RMA provisions to apply pressure on units of local government;
- A consideration of the Building Act and Code of Practice;
- His responses to the FENZ submission to the Plan Change and the section 32 RMA analysis; and
- A concluding statement on 'where do we stand'.

Thomas Parsons, a Kaipara district ratepayer, tabled and spoke to a written representation, questioning the 'one size fits all' regulatory approach. He provided support to his view that the proposed rules are intrusive and expensive to implement. He pointed out the downward trend in the number of deaths due to house fires in New Zealand. Kaipara's contribution to those figures is extremely low. He was also of the view that the 20m boundary separating buildings from vegetation is unnecessary.

8.0 PANEL DECISIONS

We are to make decisions on the submissions, and on the plan change. Clause 10 of Schedule 1 to the RMA sets out the requirements for decisions:

- (1) *A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.*

- (2) *The decision –*
- (a) *must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to –*
 - i. *the provisions of the proposed statement or plan to which they relate; or*
 - ii. *the matters to which they relate; and*
 - (ab) *must include a further evaluation of the proposed policy statement or plan undertaken in accordance with section 32AA; and*
 - (b) *may include -*
 - i. *matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and*
 - ii. *any other matter relevant to the proposed statement or plan arising from the submissions*
- (3) *To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.*
- (4) *The local authority must –*
- (aaa) *have particular regard to the further evaluation undertaken in accordance with subclause (2)(ab) when making its decision; and*
 - (a) *Give its decision no later than two years after notifying the proposed policy statement or plan under Clause 5; and*
 - (b) *Publicly notify the decision within the same time;*
- (5) *On and from the date the decision is publicly notified, the proposed policy statement or plan is amended in accordance with the decision.*

In this decisions report, the Panel has focussed on the key issues raised in the submissions, further submissions, expert evidence and representations to it.

9.0 SECTION 32 EVALUATION

The plan change is underpinned by a comprehensive section 32 report, the veracity of which was tested during the hearing process. We accept that report addressed the relevant matters.

The Ministry for the Environment's Guide⁶ on Section 32 notes:

Section 32 (and section 32AA) is an important part of ensuring clear, robust decision-making. Section 32 provides a process for critical evaluation of proposals, including the appropriateness of objectives and the efficiency and effectiveness of options generated by the plan development process. It also provides a transparent way to assess the range of risks, costs and benefits of introducing new policies and rules.

Quality section 32 evaluations will show that local authorities have undertaken a rigorous and comprehensive assessment of policy and plan proposals. It is critical that the evaluation is carried out early in the plan development process to inform plan analysis and decision-making. They should provide a strong incentive based on consistent and reliable data for local authorities to make harder calls up-front.

⁶ Ministry for the Environment. 2017. A guide to section 32 of the Resource Management Act 1991: Incorporating changes as a result of the Resource Legislation Amendment Act 2017, Wellington: Ministry for the Environment.

Council (and the Panel) also has an obligation to make a further evaluation under s32AA as part of the decision-making process in relation to changes to the plan change since notification. A further evaluation ensures that any changes that are made to the proposal since the initial evaluation are subject to the same analysis and evaluation. We accordingly consider s32AA below.

10.0 COMMENTARY

10.1 Reference to the Code of Practice

Reference to the Code in the plan change as part of a permitted activity presents some difficulties. That is, difficulties in application and how permitted activity status can be determined without reference to another party. We do not consider the need to have recourse to another party, or to a document outside of the District Plan, to be appropriate in the case of a permitted activity. A permitted activity needs to be clearly expressed so that it is readily determined as to whether an activity is, or is not, permitted by the District Plan.

We endeavoured to enter into some discourse on this matter at the hearing. However, we found FENZ to be focused on having the Code included in the permitted activity provisions and the submitters appearing at the hearing (principally Messrs Boonham and Larsen) focused on the alleged shortcomings in the Council's approach to incorporation of the Code into the Plan Change and the District Plan. We are not in a position to decide on existing provisions in the District Plan that are not before us as part of the plan change, or the manner in which they may have been incorporated into the District Plan. We express no view on that matter. We can however decide the submissions received on the plan change and we proceed to do so in this decisions report.

The legal submissions from Ms Anderson for FENZ provide a comprehensive account of the issues and processes involved in the plan change. We questioned the applicability of using the RMA to address structural fire risk where the fire is caused by anthropogenic means, but Ms Anderson advocated that the RMA could address that risk, and referenced decisions that provided backing for the view advocated. She reminded us that s74(1) of the RMA requires the Council to consider its functions under section 32 and the provisions of Part 2 of the RMA. Council's functions are set out in section 31 of the RMA, with section 31(1)(b) stating:

'...the control of any actual or potential effects of the use, development or protection of land, including for the purpose of:

(i) The avoidance or mitigation of natural hazards...'

She proffered the view that fire is a natural hazard. Mr Reaburn, in addressing the same issue, confirmed that the RMA could address structural fire risk. A counter perspective was offered by Mr Boonham who submitted that the Code had been developed for areas serviced by reticulated water and pointed us to the Code's introduction, where this is clearly articulated. He also noted that the way the voluntary Code is used in the District Plan effectively makes adherence to its provisions mandatory. We accept that Council has chosen to extend the application of the Code and we do not intend to debate the validity of that extension. We will look at how the Code is referenced across the Rules. We also acknowledge that other District Plans make reference to the Code.

We have reviewed the examples provided, coming to the viewpoint that they effectively do make adherence to the voluntary Code mandatory. Whanganui is a good example:

Whanganui District Plan

Subdivision Rules

13.5.7 *Site serviceability*

d. For sites in any rural zone applications shall:

i.

ii. Demonstrate the ability to comply with New Zealand Fire Service Fire Fighting Water Supplies Code of Practice 2008 SNZ PAS 4509:2008

13.5.16 *Water*

b. In the Residential Zone firefighting supply shall be provided in accordance with the New Zealand Fire Service Fire Fighting Supplies Code of Practice 2008 SNZ PAS 4509:2008

Land Use Rules (example)

3.5.4 *Structures*

f. All new habitable structures to be used for residential, commercial or industrial purposes shall be provided with a fire fighting water supply and access to this supply in accordance with New Zealand Fire Service Fire Fighting Water Supply Code of Practice 2008 SNZ PAS 4509:2008

The same logic advanced above for the Code pertains to the reference of the 'use of buildings' in rules which relate to the construction of a building. Some of the rules, current and proposed, mix the **construction** of a building with the **use** of it, and are accordingly amended as consequential amendments, and for clarity and consistency, as part of our decisions.

In justifying the approach adopted both Ms Anderson and Mr Reaburn reminded us of the RMA, section 3, and the definition of **effect**:

3 Meaning of effect

*In this Act, unless the context otherwise requires, the term **effect** includes –*

(f) Any potential effect of low probability which has a high potential impact

There is no disagreement that a structural fire that results in a death is an event with a high impact. In the light of no counter-argument, we accept that section 3(f) RMA could apply to a structural fire however, when probability is added to the mix, then the effect equation changed from 'low probability' to a 'very low probability'. This was a view that Mr Reaburn reluctantly concurred with when pressed by the Panel.

If we accept that the supply of firefighting water and access to it is an issue that can be addressed in the District Plan, with that ability to do so deriving from the RMA, it is then a matter of how the risk profile is addressed, and the measures adopted. Are the measures practical and reasonable?

As pointed out, the RMA and the Building Act have different purposes with the latter focussing on the building itself and the components required to make it structurally sound and safe for those who use it. The Building Act and the Building Code do not, however, cover provision of and access to firefighting water to a building or site. Hence FENZ seeking provisions relating to firefighting water supply and access as part of the plan change. We note with interest, that while both the Building Act 2004 and the Local Government Act 2002 are referenced in the recently adopted Fire Emergency New Zealand Act 2017, the RMA under which FENZ has functions, does not receive a mention.

We accept the Code can be included in some manner in the District Plan, for example, where there are reticulated water supplies, but differ on the approach adopted for doing so in the plan change. We note the concerns of some

submitters in this respect, particularly with there being any reference to the Code at all in the plan change. We agree and question the Code being part of a permitted activity provision when one cannot be certain as to the status of such an activity without recourse to other parties. It cannot be part of a permitted activity if a discretion is needed to be exercised.

If there was to be any specific reference or provision relating to the Code, and we find that it should not be in the objectives, policies and rules, we would then agree with FENZ that the provisions should be applicable to both subdivision and land use, not just to subdivision as sought by the plan change.

Ms Anderson submitted in this respect⁷:

'Fire and Emergency's position is that there is no legitimate basis to distinguish the appropriateness for requiring the Code of Practice to be considered at land use consent stage, if it is an appropriate consideration at subdivision consent stage'

Further, she submitted that:

'Fire and Emergency maintains the requirement to comply with the Code of Practice should apply to all new buildings, not just buildings where subdivision is involved. It is built structures that are most likely to need water applied to them during a fire. It is not logical that because subdivision has already occurred that the issue of the effects of fire are ignored when building the very thing that will be directly affected by fire'

Messrs Larsen and Boonham had concerns with the shortcomings, and also with the legal issues, regarding the incorporation of the Code into the plan change/District Plan by reference, as well as with other issues, both legal and non-legal. We however find it is not necessary to consider much of the issue of the legalities or otherwise of the Code, or the method by which it has been included into the current District Plan, because we find that it is not appropriate to refer to compliance with such as part of a permitted activity, that being part of our considerations relating to the plan change.

We agree with a number of matters raised by Mr Boonham. Importantly, in relation to the plan change, our agreement is reached somewhat differently. Our agreement is based on the practicality of the plan change provisions being incorporated into the District Plan and the actual risk probability of an event occurring. In terms of referencing the Code, we see the need for a clearly differentiated approach for areas with water reticulation and those areas without water reticulation. For those areas without water reticulation, reference to the Code is deleted from the plan change provisions, as part of our decisions. For areas with water reticulation, the engineering standards set out the performance criteria. The standards make reference to the Code.

We accept that the supply of firefighting water and access to it, is an issue that Council has elected comes under their jurisdiction under the District Plan, particularly having regard to the definition of effect in the RMA. In terms of the Code, it is voluntary, any approach to water storage for fire control purposes needs to be tailored to the risk.

We note in this respect that whilst the management of fire may be sought, and effective management to be an outcome directed by the District Plan, that may not be realistic in light of the limited risk of fire. That is more so in reticulated areas. Accordingly, we find reference to, and particularly the use of, the Code as part of a permitted activity provision, and in the rules that apply to permitted activities, in the District Plan to be inappropriate. This is

⁷ Legal submissions by Kay Anderson at para's 40 and 42

due to it not being possible to determine permitted activity status when reference to the Code is required. The same applies to being able to determine whether, in the rules, compliance is achieved with the 'water supply for firefighting and access to this supply' complying with the Code or being 'adequate' for firefighting purposes.

Further, the measures included in the District Plan, being:

- The amount of water storage required on a site; and
- Each site having to provide for its own water storage

are excessive, and not practicable because:

- Storage is often in a position on a site where it cannot be accessed during a fire;
- The length of time it takes to reach a building that is on fire;
- The often unsightly nature of water storage tanks on individual sites; and
- The limited risk of fire occurring.

We have accordingly removed any reference to the Code, and/or provisions of it, in the plan change as part of permitted activity status, from the associated rules and from other provisions based on the submissions received.

We do recommend that Council investigates the provision of water tanks for communal use in the case of fire, at strategic locations in the district and its settlements along with the joint or shared use/availability of water for fire purposes between properties. We accept our recommendations in this respect cannot be all achieved through the current plan change process and would require further investigation by Council.

10.2 Building within 20m of vegetation

The relevant provision is that which states that any building is permitted if:

'The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrub land, woodland or forest'

It is supported by a 'Note', that is proposed to be introduced to the District Plan by the plan change, which states:

'Note 1: For fire safety, the New Zealand Fire Service advises that buildings should be at least 20m from the dripline of any tree and that these setbacks are also appropriate from scrub land and other vegetated areas'.

In the plan change provisions as notified, it is sought to delete both of these provisions from the urban rules, but to retain them in the rural rules.

We agree with deletion from the urban rules, because requiring such a significant setback from buildings (particularly dwellings) is not appropriate nor reasonable in an urban area for reasons including the limited size of sites. Accordingly, it is deleted from the urban rules in the recommended set of provisions appending to this report.

It is however, sought to be retained in the rural rules by the plan change. There was debate at the hearing regarding whether this provision could be addressed as part of the current plan change process. We consider it can, on the basis of amendments being sought at this time to the Fire Safety Rules and particularly the rules which contain this provision.

We find that the provision should also be deleted for similar reasons to the corresponding urban rule. That would see the permitted activity provision relating to a building being located at least 20m from scrub etc. being deleted, but the note relating to it being retained in the rural provisions as an advisory note. That note is:

'Note 1: For fire safety, the New Zealand Fire Service advises that buildings should be at least 20m from the dripline of any tree and that these setbacks are also appropriate from scrubland and other vegetated areas'

The corresponding note is also sought to be deleted from the urban rules, which we agree with, but we consider that this note should be retained in the rural rules for guidance purposes.

In support of the above, Mr Parsons, who presented a written submission at the hearing, stated the following⁸:

'The examples I have experienced and cited make it clear that the suggested 20metre boundaries separating buildings from forest is an unnecessary intrusion on the preferences of the property owner. It will save no lives and prevent no fires in Kaipara (whatever may be true in Australia). It may occasionally save a building or two from a wildfire, at the cost of preventing owners of rural properties such as myself from placing a building in a delightful location near the ancient forest and simply accepting the risk involved, with or without insurance, as I choose'.

Whilst we may not agree with all that Mr Parsons states, we do concur with the sentiment he expresses, along with others, in this respect.

Otherwise, the second note in both the urban and rural rules, referring to fire sprinkler systems, is retained.

10.3 Risk

The matter of 'risk', and how risk is to be managed going forward is central to this plan change. Our attention was drawn to 'risk' a number of times. For example, Perri Duffy for FENZ provided us with the view that the natural hazard provisions in the Regional Policy Statement are of particular relevance to the plan change, notably⁹:

Objective 3.13 seeks the risks and impacts of natural hazard events to be minimised by becoming better prepared for the consequences and promoting long-term strategies to reduce the risk on people and communities;

Policy 7.1.1 requires subdivision, land use and development to be managed to minimise the risks from natural hazards; and

Method 7.1.7 identifies objectives, policies and methods (including rules) as a means to give effect to Policy 7.1.1

Ms Duffy also stated that¹⁰:

'Fire and Emergency's interest in Plan Change 4 is underpinned by its principal objectives to reduce the incidence of unwanted fire, the associated risk to life and property, and to prevent or limit damage to property, land and the environment as provided by the FENZ Act 2017'

To achieve this in the Kaipara District, FENZ is seeking rules in the plan change which require compliance with the Code.

The section 32 report provided a finer grain analysis of risk, noting that the risk of structural fires occurring in the Kaipara district is low, however, the consequences can be high in terms of loss of property and even loss of life¹¹. It is noted in the report that taking the average of 25 structural fires within the Kaipara district over the last five years

⁸ Submission at the hearing by Thomas Parsons, penultimate paragraph

⁹ Perri Duffy, Evidence in Chief at [14]

¹⁰ Ibid at [18]

¹¹ Section 32 report at [17]

means there is an estimated 0.0023% chance of any given residential dwelling being affected by a fire within the next 12 months¹². It is further noted that there were no fatalities due to fires within the Kaipara district between the period 2011/2012 to 2015/2016. It was concluded in the report that this could be seen to indicate that the average annual risk to an individual dying from a structural fire within the Kaipara district is very low. Given that a fatality is possible, it means that the magnitude of the consequences of any given fire that occurs could be considered to be high and therefore the overall risk is moderate to high¹³.

Given the fire statistics quoted to us, we find it difficult to accept this conclusion. What is missing from the risk equation is a consideration of probability of an event occurring. When probability is factored into the risk equation then a different result is achieved. As noted above, we questioned Mr Reburn on the probability of death by fire occurring and he conceded that the probability of such an event occurring is very low. When probability is factored into the risk equation, the overall risk is low. We came to the view that the overall risk should be considered to be low.

We accept that if it was demonstrated that there is a high risk of a fire event occurring then there may be some justification for ensuring that the dedicated water storage for firefighting as required by the Code is a requirement. Given Kaipara's risk profile, the response sought by FENZ is not justified for rural settlements without reticulated water supplies.

When consideration is given to response times, particularly to structural fire events outside the settlements, the water stored onsite may not even be used by the fire service to save a building by the time it arrives at the site concerned¹⁴. It was recommended in the section 42A hearing report that:

'It is therefore considered that installing sprinklers is the best approach for the rural areas of the District. It is to be noted that this is consistent with what is advocated in s1.1 of the Code'

The option of Council providing strategically located tanks specifically for the storage of water for firefighting purposes, or providing volunteer fire brigades with mobile tankers or portable dams in communities that have a fire service (brigades) but not a reticulated water supply, is a method that was discussed in the section 42A report¹⁵. We agree with that being an effective option for the Council.

We are of the view that FENZ and the Council should explore the possibility of providing an agreed volume of water storage in the form of tanks strategically placed in Mangawhai, and potentially in other communities without reticulated water supplies but with firefighting capability, similar to the agreement that was described to us, that exists between FENZ and the Gisborne District Council.

10.4 Costs and Benefits

A common concern expressed in the submissions related to the high costs associated with implementing the Fire Safety Rules relative to the low number of incidents that occur in the district. It is accepted that there is potentially a high impact resulting from fire incident however, when the probability of a fire event occurring is factored into any consideration then a sensible and pragmatic approach is required. We consider that the probability of a fire event occurring should have been given greater weighting in the cost-benefit analysis in the section 32 report. Had greater weight been given to the very low probability of a fire event occurring then we are of the view that it would have

¹² Ibid at [3.2.1]

¹³ Ibid at [3.2.2]

¹⁴ Section 42A report at [18]

¹⁵ Ibid at page 20.

demonstrated that the high cost of providing water tanks, or entering into alternative arrangements, especially on an individual site basis in urban areas which lack water reticulation, is not a reasonable solution nor a cost-effective solution.

From our limited visit to sites at Mangawhai, we observed some situations which are less than desirable from both aesthetic and costs points of view. Those concerns include the number of tanks on individual sites and often the location of tanks in prominent positions. We accept the need for water storage for domestic and other purposes, but we question the need for a specific provision for firefighting purposes, a viewpoint expressed by some submitters.

We note too, the ability of the FENZ and others to access neighbours' water supplies in an emergency. Section 42 of the recently adopted Fire Emergency New Zealand Act 2017 (**FENZ 2017**) gives FENZ wide powers in the event of a fire emergency:

42 Powers of authorised person in relation to land, building or structure

- (1) *An authorised person may exercise the powers under this section for the purpose of taking any steps that the authorised person considers necessary or desirable in order to perform or exercise his or her functions, duties or power.*

We were told, in submissions, that a property owner's water storage could often not be accessed during a fire because of the location of the water storage adjacent, or in close proximity, to the building that is on fire. For example, water tanks under a deck attached to the dwelling. However, we reasonably consider that no one would withhold access to water at their neighbouring property if a property or life was in danger from a fire. Even if they did, FENZ has the ability to use the powers of section 42 of the FENZ 2017.

There was also concern expressed through submissions regarding the use of terms such as 'ensure' and 'adequate' in the provisions. We agree that such provisions are not prescriptive, but we consider that they are acceptable for objectives and policies. The objectives state what is sought and the policies are the means by which the objectives will be achieved. It is the rules which need to be prescriptive or certain in their application so it is clear regarding whether they are complied with or not. We do not see the use of such subjective terms as necessarily problematic as part of the objectives and policies, but agree with the submitters that they are too vague and subjective to be a part of rules.

After looking at a number of different options our attention was refocused by our consideration of risk, and the need for a simple unambiguous approach, one which can be clearly understood and applied. We came to the view that the following phrases should be amended:

- At Point 8, which relates to Chapter 15A.10.3b(c) in the Maori Purposes: Maori Land Chapter, the plan change proposes to amend this rule so that where a water supply is not available, water supplies to all dwellings shall *be adequate for firefighting purposes in accordance with the New Zealand Fire Service's Code of Practice SNZ PAS 4509:2008*. This needs amendment to delete reference to 'adequate' because it creates uncertainty. Given the risk it had been our intention to remove reference to the Code, as sought by the plan change, for this provision.
- Point 9 in the plan change is similar in needing to be amended following the hearing of the submissions. It seeks to retain reference to the Code in the subdivision provisions in the Rural, Residential, Business (Commercial and Industrial) and Maori Purposes: Treaty Settlement Zones (Rules 12.15.4; 13.14.4; 14.13.4 and 15B 14.4) and proposes to retain the rules so that where a water supply is not available, water supplies to dwellings shall *be adequate for firefighting purposes*.

Our rationale is based on:

- The risk profile;
- Site-specific considerations which require different solutions;
- Where dwellings are serviced by reticulated water, the Engineering Standards come into play and these standards appropriately reference the Code of Practice;
- Where dwellings are served by domestic water storage tanks, which can be accessed by FENZ in the event of a fire emergency, then no dedicated water storage for firefighting is required; and
- For rural dwellings, there will be an advisory note in the District Plan encouraging the other methods of fire protection.

In adopting this approach, there are gaps that need to be addressed, namely in the Business (Commercial and Industrial) and Maori Purposes: Treaty Settlement Zones that lack reticulated water storage and for settlements where there is neither reticulated or tank water storage.

Reference is made, in the section 42A report, to 177 resource consents being granted in the period 01 November 2013 to 01 June 2016. That number of consent applications supports the need for a change to the District Plan.

The amended provisions acknowledge the concern of submitters regarding each property owner being required to provide their own water supply on their site for firefighting purposes when that could be approached on a joint basis. That would be a better use of resources and could mean one water source providing for a number of properties and perhaps, following this plan change process, Council investigating the location of water tanks for use in the case of fires at strategic locations in the urbanised areas such as Mangawhai. This would be adopting a collective community-based approach. It is raised in submissions but with no proposals as to how it could be implemented, we do not advance it any further as part of our current considerations.

We do note that section 21 of the FENZ Act 2017 addresses local planning:

21 Local planning

(1) *FENZ must undertake, for each local area, local planning –*

(a) That takes into account –

- i. The national strategy; and*
- ii. The designated services required within the local area; and*
- iii. The fire plan for the local area; and*
- iv. The advice from engagement with civil defence emergency management groups; and*
- v. The advice from the relevant local advisory committee; and*
- vi. Any current operational service agreement and memorandum of understanding that FENZ has, including –*
 - A. The operational service agreement with the Department of Conservation under section 147; and*
 - B. The operational service agreement with the New Zealand Defence Force under section 148; and*
 - C. The memorandum of understanding with the Ministry of Education under section 151; and*

(b) That identifies –

- i. Specific needs, resources, constraints and capabilities in the local area that are relevant to FENZ's functions; and*

ii. *Local activities that address those needs (and do not duplicate national activities or the activities of other relevant organisations); and*

(c) That demonstrates how the local allocation of resources by FENZ fits in with the national plan.

In implementing the requirements of this section, FENZ and the Council will have the opportunity to objectively look at the different communities' needs of Kaipara and tailor site-specific solutions based on identified needs and realistic risk.

10.5 Section 32AA Evaluation

For the purposes of section 32AA of the RMA, the section 42A version of Plan Change 4 has been considered in terms of section 32(1) to section (4). The Panel finds that the section 32 analysis:

- Did not adequately address the probability of a fire event occurring. While the Panel does accept that any death resulting from fire event has the potential to have a profound effect, to put in place a high-cost solution (with associated amenity effects) to an event that has a very low probability of coming into play is not reasonable.
- Did not adequately address the monitoring of the water storage solutions adopted. Who does it? At what cost? And who pays? How is it ensured that it is effective?
- Did not give adequate attention to the insurance implication that could potentially result from a fire event where the stored water was neither absent or could not be accessed.

The potential cost, both in terms of dollars and amenity, of adopting the Code of Practice provision for water storage in areas which lack water reticulation outweighs the benefits of compliance. Council's reporting officer did note that one of the options the Panel could consider was removing any reference to the Code of Practice, an option taken up by the Panel in areas which lack water reticulation as part of our decisions.

The changes recommended by the Panel, as a result of the hearing and an evaluation of the evidence, representations, submissions and further submissions, will make the District Plan provisions more efficient and effective in achieving the purpose of the RMA.

11.0 CONCLUSIONS

The purpose of the plan change is to provide a specific policy framework for structural fires in the District Plan, and to make some amendments to the existing fire safety rules in the respective zones. We find that the plan changes does not fully address all that is needed in order to provide such a framework for reasons that include it endeavouring to use reference to the Code of Practice as part of a permitted activity provision and the different needs of reticulated and non-reticulated areas. It is not possible to address all that is needed as part of decisions on the submissions and on the plan change but nonetheless we have made amendments to the provisions to the extent that we consider we can.

12.0 DECISIONS

Acting under a delegation from the Kaipara District Council to hear and decide the proposed plan change and the submissions, the Commissioners, pursuant to Clauses 29 and 10 of the First Schedule of the Resource Management Act 1991, resolve that:

- The Proposed Plan Change 4 to the Kaipara District Plan is approved, with the modifications described below;

and

- The submissions and further submissions which support the proposed plan change and/or seek further changes to the plan change are accepted to the extent that the plan change is approved with the modifications described below; and
- All other submissions and further submissions, including those opposing the plan change, are rejected.

The reasons for the decisions on the plan change are included in the commentary in this decision report, and can be summarised as being:

- We agree with much of what is included, and sought by, the plan change as notified. Our agreement is reflected in the amended plan change provisions attached, and for the reasons that those changes to the District Plan are sought by the Council.
- The purpose of the plan change is met in providing a policy framework for managing the risk of structural fires to life, property and the wider environment and amend existing rules from the District Plan that are considered a disproportionate mitigation action to the risk posed by structural fire events. We accept that there are also other methods and other legislation (for example the Building Act 2004) that address the risk of structural fires and their spread other than including direct reference to the Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 (**Code of Practice**).
- The references to the Code of Practice are deleted from the subdivision provisions. Reference to the Code as a performance standard for subdivision is deleted because it lacks the required certainty for a rule but reference to the Code is otherwise retained given it would be beyond the scope of decisions on the plan change to do otherwise.
- Reference to the Code is also deleted from the rules where it does not provide the certainty for a rule and, in particular, to be able to determine whether the rule is met or not.
- Additional reference has been added to Council working with Fire and Emergency New Zealand (**FENZ**) in relation to determining the approach to be taken for the provision of water for firefighting purposes.
- The rules that require buildings to be located at least 20m away from vegetation are deleted, but the associated advice notes are retained for the rural areas, and in part for the urban areas.
- The references to subjective terminology in the rules, for example the use of the term 'adequate', are deleted.
- Reference to Council's Engineering Standards is retained. The provisions are a 'double-up' on the application of the engineering standards applied as part of building consent consideration, but we are limited to the scope of the plan change that would only allow us to remove reference to the engineering standards in rules that relate to water supply for firefighting purposes.
- Where appropriate, and in line with our commentary regarding the plan change process, the concerns of submitters have been taken account of with a number of amendments made to the plan change provisions.

The following modifications are made to the text of Plan Change 4:

1. Add to Chapter 2 as Issue 2.3.14

'2.3.14 Potential adverse effects to life, property, and environment from fires in buildings and structures

The risk to life, property and the environment from is affected by:

- The probability of an event occurring; and

- The variable ability of FENZ across the district to respond to fires in buildings.

The ability to respond is the greatest in those areas that have a public reticulated water supply and a fire emergency station within the settlement or close-by.

Settlements that do not have a public reticulated water supply nor a close-by fire service are more at risk. In these settlements and other rural parts of the district, reliance can be placed on utilising domestic water supplies (both on the site and on properties adjacent to the site) or other static water supplies such as lakes, streams, the sea and swimming pools.

In settlements without a reticulated water supply that do not have a dedicated firefighting supply, Council should work with FENZ on a settlement-by-settlement basis, to assess the need for dedicated community-based water storage and/or the provision of mobile water storage. Careful consideration should be given to the degree of risk; the probability of an event occurring; the costs (not just the establishment cost but also the ongoing costs); and, alternative measures that may be available in these settlements to minimise risk.

In the remaining rural areas of the district, there is a recognition that even with utilising any stored water on site and/or any dedicated water storage for firefighting purposes that these measures may not be sufficient to save a building by the time FENZ or any fire service arrives at the site. Reliance will be placed on education to highlight the need to give consideration to a fire event on an on-going basis.

2. Add to 2.4 District Wide Objectives, as Objective 2.4.15

2.4.15 To encourage and promote fire safety measures to minimise fire risk to life, property and the environment.

3. Add the following Policies to Section 2.5

2.5.17(a) To ensure the provision of water to new reticulated sites within the reticulated services boundary will adhere to the engineering standards.

2.5.17(b) For non-reticulated settlements Council will actively work with FENZ on a settlement by settlement basis to determine the approach to be taken for the provision of water firefighting purposes.

2.5.17(c) In remaining areas of the district encourage education on fire hazard and on fire risk reduction measures.

The District Plan should prompt an awareness of the need to consider fire hazards and how they are mitigated by means that include reinforcing FENZ educational programmes.

Where a public reticulated water supply exists, the Building Code standards can be met without the need for further measures.

For settlements where there is no reticulated water supply, Council will work with FENZ to determine the desirability of a particular community providing static supplies for firefighting purposes in the form of water storage tanks (at strategic locations); water tankers and/or portable dams.

For the remaining rural areas, reliance will be placed on public education.

4. Add the following to Other Methods

2.6.2.5 In non-reticulated settlements, Council will actively engage with FENZ to investigate the provision of additional water supply and to establish the desirability of providing community water tanks or volunteer fire brigades with mobile tankers or portable dams.

2.6.2.6 In the rural areas of the district, Council will promote public education which prompts the recognition of fire risk and the need for mitigation measures, including the installation of sprinkler systems.

2.6.2.7 Council will support FENZ fire safety education initiatives across the district.

5. Add the following to Outcomes

2.7.13 A community which is educated to the fire risk mitigation appropriate to their particular area and that the risks to life, property and the surrounding environment from fire are minimised, as far reasonably practicable.

6. Amend Rules 12.10.26; 15A.10.25; and 15B.10.25 (the rural rules)

Amend the Rules relating to performance standards as:

Chapter 12: Rural

12.10.26	Fire Safety	<p>Any building is permitted if it does not impede the movement of fire service vehicles or equipment or generally restrict access for firefighting purposes.</p> <p>a) Water supply for fire fighting and access to this supply complies with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008;</p> <p>b) The use of buildings shall at all times be in accordance with the fire safety requirements specified in New Zealand Standard NZS 9231:1971 'Model Bylaw for Fire Prevention'; and</p> <p>c) The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest.</p> <p>Note 1: For fire safety, the New Zealand Fire Service advises that buildings should be at least 20m from the dripline of any tree and that these setbacks are also appropriate from scrubland and other similar vegetated areas.</p> <p>Note 2: In the interests of the protection of life and the surrounding environment, in all areas particularly non-reticulated areas over five minutes driving distance from a fire station, it is recommended that subject to the use of the building, a fire sprinkler system is installed in accordance with either the:</p> <ul style="list-style-type: none"> • NZS 4517 (Fire Sprinkler Systems for Houses); or • NZS 4541 (Automatic Fire Sprinkler Systems); or • NZS 4515 (Fire Sprinkler Systems for Life Safety in Sleeping Occupancies up to 2,000m²).
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Chapter 15A: Maori Purposes: Maori Land

15A.10.25	Fire Safety	<p>Any building is permitted if it does not impede the movement of fire service vehicles or equipment or generally restrict access for firefighting purposes.</p> <p>a) Water supply for fire fighting and access to this supply complies with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008;</p> <p>b) The use of buildings shall at all times be in accordance with the fire safety</p>
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		<p>requirements specified in New Zealand Standard NZS 9231:1971 'Model Bylaw for Fire Prevention'; and</p> <p>c) The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest.</p> <p>Note 1: For fire safety, the New Zealand Fire Service advises that buildings should be at least 20m from the dripline of any tree and that these setbacks are also appropriate from scrubland and other similar vegetated areas.</p> <p>Note 2: In the interests of the protection of life and the surrounding environment, in all areas particularly non-reticulated areas over five minutes driving distance from a fire station, it is recommended that subject to the use of the building, a fire sprinkler system is installed in accordance with either the:</p> <ul style="list-style-type: none"> • NZS 4517 (Fire Sprinkler Systems for Houses); or • NZS 4541 (Automatic Fire Sprinkler Systems); or • NZS 4515 (Fire Sprinkler Systems for Life Safety in Sleeping Occupancies up to 2,000m²).
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Chapter 15B: Maori Purposes: Treaty Settlement Land

15B.10.25	Fire Safety	<p>Any building is permitted if it does not impede the movement of fire service vehicles or equipment or generally restrict access for firefighting purposes.</p> <p>a) Water supply for fire fighting and access to this supply complies with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008;</p> <p>b) The use of buildings shall at all times be in accordance with the fire safety requirements specified in New Zealand Standard NZS 9231:1971 'Model Bylaw for Fire Prevention'; and</p> <p>c) The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest.</p> <p>Note 1: For fire safety, the New Zealand Fire Service advises that buildings should be at least 20m from the dripline of any tree and that these setbacks are also appropriate from scrubland and other similar vegetated areas.</p> <p>Note 2: In the interests of the protection of life and the surrounding environment, in all areas particularly non-reticulated areas over five minutes driving distance from a fire station, it is recommended that subject to the use of the building, a fire sprinkler system is installed in accordance with either the:</p> <ul style="list-style-type: none"> • NZS 4517 (Fire Sprinkler Systems for Houses); or • NZS 4541 (Automatic Fire Sprinkler Systems); or • NZS 4515 (Fire Sprinkler Systems for Life Safety in Sleeping Occupancies up to 2,000m²).
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7. Amend Rules 13.10.26 and 14.10.26 (the Urban Rules)

Amend the Rules as:

Chapter 13: Residential

13.10.26	Fire Safety	<p>Any building is permitted if it does not impede the movement of fire service vehicles or equipment or generally restrict access for firefighting purposes.</p> <p>a) Water supply for fire fighting and access to this supply complies with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008;</p> <p>b) The use of buildings shall at all times be in accordance with the fire safety requirements specified in New Zealand Standard NZS 9231:1971 'Model Bylaw for Fire Prevention'; and</p> <p>c) The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest.</p> <p>Note: In the interests of the protection of life and the surrounding environment, in all areas particularly non-reticulated areas over five minutes driving distance from a fire station, it is recommended that subject to the use of the building, a fire sprinkler system is installed in accordance with either the:</p> <ul style="list-style-type: none"> • NZS 4517 (Fire Sprinkler Systems for Houses); or • NZS 4541 (Automatic Fire Sprinkler Systems); or • NZS4515 (Fire Sprinkler Systems for Life Safety in Sleeping Occupancies up to 2,000m²).
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Chapter 14: Business (Commercial and Industrial)

14.10.26	Fire Safety	<p>Any building is permitted if it does not impede the movement of fire service vehicles or equipment or generally restrict access for firefighting purposes.</p> <p>a) Water supply for fire fighting and access to this supply complies with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008;</p> <p>b) The use of buildings shall at all times be in accordance with the fire safety requirements specified in New Zealand Standard NZS 9231:1971 'Model Bylaw for Fire Prevention'; and</p> <p>c) The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest.</p> <p>Note: In the interests of the protection of life and the surrounding environment, in all areas particularly non-reticulated areas over five minutes driving distance from a fire station, it is recommended that subject to the use of the building, a fire sprinkler system is installed in accordance with either the:</p> <ul style="list-style-type: none"> • NZS 4517 (Fire Sprinkler Systems for Houses); or • NZS 4541 (Automatic Fire Sprinkler Systems); or • NZS 4515 (Fire Sprinkler Systems for Life Safety in Sleeping Occupancies up to 2,000m²).
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8. Rule 15A.10.3b(c)

Amend the Rule relating to performance standards for Maori Land as:

<p>15A.10.3b(c)</p>	<p>Dwelling Infrastructure</p>	<p>(1) Construction of a dwelling is a Permitted Activity if:</p> <p>a) Minimum floor levels are designed in accordance with the following Standards:</p> <ul style="list-style-type: none"> - Floor levels for habitable buildings are designed with a minimum freeboard height to floor level of 500mm above the 100 year Average Recurrence Interval floor level; and - In addition to the minimum floor level any new dwelling shall be: <ul style="list-style-type: none"> - 5.0m above mean sea level in the West Coast and East Coast Overlays; or - 3.0m above mean sea level in the Mangawhai Harbour Overlay; or - 3.5m above mean sea level in the Kaipara Harbour Overlay; or - 3.5m above mean sea level in Dargaville as defined by the Drainage District boundary as at 21 October 2009. <p>b) Where a Council water supply is available:</p> <ul style="list-style-type: none"> - The written approval of Council's asset manager is obtained and provided with the application to confirm that the Council water supply can be extended to serve the dwelling; - All dwellings are provided, within their net site area, with a connection to the Council water supply; and - The water supply is designed and constructed in accordance with the specific requirements of the Council water supply system; and - All water pipelines vested with Council shall be protected by an Easement in favour of Council; <p>c) Where a public supply is not available, water supplies to all dwellings shall:</p> <ul style="list-style-type: none"> - Meet the requirements of the Building Act 2004; and - Be adequate for firefighting purposes in accordance with the New Zealand Fire Service's Code of Practice SNZ PAS 4509:2008; <p>d) All dwellings are provided with the means for the collection and disposal of collected stormwater from the roof of all associated impervious surfaces including ancillary structures and paved areas, in such a way as to avoid any adverse effects of stormwater runoff on the receiving environment, in accordance with the Kaipara District Council Engineering Standards 2011; and</p>
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		<p>e) Where no Council wastewater system is available, all dwellings are provided with:</p> <ul style="list-style-type: none"> – A wastewater system for individual properties designed in accordance with AS/NZS1547:2008 “Onsite Wastewater Management Standards”; or – A 1,500m² area of land per household for wastewater disposal within the boundaries of the site. The area shall be clear of building sites, driveways and manoeuvring areas.
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9. Delete reference to the Code of Practice as a performance standard for subdivision in the Rural, Residential, Business (Commercial and Industrial) and Maori Purposes: Treaty Settlement Zones.

Amend the Rules accordingly.

10. Retain reference to the Kaipara District Council Engineering Standards 2011.

11. Delete reference to the Code of Practice in the subdivision provisions in Rules 12.15.4; 13.14.4; 14.13.4 and 15B.14.4

Amend the Rule accordingly.

Make the following amendments:

Rule 12.15.4

12.15.4	Water Supply	<p>(1) Where a Council water supply is available :</p> <ul style="list-style-type: none"> a) The written approval of Council’s asset manager is obtained and provided with the application to confirm that the Council water supply can be extended to serve the subdivision; b) All allotments are provided, within their net site area, with a connection to the Council water supply; and c) All water pipelines vested with Council shall be protected by an Easement in favour of Council. <p>(2) Where a public supply is not available, water supplies to all developments shall:</p> <ul style="list-style-type: none"> d) Meet the requirements of the Building Act 2004; and e) Be adequate for fire fighting purposes in accordance with the New Zealand Fire Service’s Code of Practice SNZ PAS 4509:2008.
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Rule 13.14.4 (Residential)

13.14.4	Water Supply	<p>(1) Where a Council water supply is available :</p> <ul style="list-style-type: none"> a) The written approval of Council’s asset manager is obtained and provided with the application to confirm that the Council water supply can be extended to serve the subdivision; b) All allotments are provided, within their net site area, with a connection to the Council water supply; and c) All water pipelines vested with Council shall be protected by an Easement in favour of Council.
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		<p>(2) Where a public supply is not available, water supplies to all developments shall:</p> <p>a) Meet the requirements of the Building Act 2004; and</p> <p>b) Be adequate for fire fighting purposes in accordance with the New Zealand Fire Service's Code of Practice SNZ-PAS 4509:2008.</p>
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Rule 14.13.4 (Business: Commercial and Industrial)

14.13.4	Water Supply	<p>(1) Where a Council water supply is available :</p> <p>a) The written approval of Council's asset manager is obtained and provided with the application to confirm that the Council water supply can be extended to serve the subdivision;</p> <p>b) All allotments are provided, within their net site area, with a connection to the Council water supply; and</p> <p>c) All water pipelines vested with Council shall be protected by an Easement in favour of Council.</p> <p>(2) Where a public supply is not available, water supplies to all developments shall:</p> <p>a) Meet the requirements of the Building Act 2004; and</p> <p>b) Be adequate for fire fighting purposes in accordance with the New Zealand Fire Service's Code of Practice SNZ-PAS 4509:2008.</p>
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Rule 15B.14.4 (Maori Purposes: Treaty Settlement Land)

15B.14.4	Water Supply	<p>(1) Where a Council water supply is available :</p> <p>a) The written approval of Council's asset manager is obtained and provided with the application to confirm that the Council water supply can be extended to serve the subdivision;</p> <p>b) All allotments are provided, within their net site area, with a connection to the Council water supply; and</p> <p>c) All water pipelines vested with Council shall be protected by an Easement in favour of Council.</p> <p>(2) Where a public supply is not available, water supplies to all developments shall:</p> <p>a) Meet the requirements of the Building Act 2004; and</p> <p>b) Be adequate for fire fighting purposes in accordance with the New Zealand Fire Service's Code of Practice SNZ-PAS 4509:2008.</p>
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12. Setbacks from Vegetation in all Zones

Retaining the 20m setback for dwellings from 'naturally occurring or deliberately planted areas of scrubland or shrubland, woodlot or forest' in residential and business zones is inappropriate. For residential zones in particular, the standard approach to amenity involves planting shrubs and trees to beautify sections. It is also noted that settlements have fire brigades, further supporting the deletion of this provision.

It is similarly appropriate for the setback from vegetation provisions to be deleted for the rural areas, but because this provision relates to wild fire effects that may present a risk to life and property, the associated 'Note' is retained in the Rural and two Maori Purposes Zones.

13. Consequential Amendments

Amend the District Plan, as required, in order to give effect to the intent of the above decisions.

Guidance Notes

Below is a table (non-statutory) that sets out what Plan Change 4 means to property owners who wish to build on their properties.

Proposed new approach to the Fire Rules – What does it mean to me?

3. Setbacks from Vegetation in all zones

Retaining the 20m setback for dwellings from “naturally occurring or deliberately planted areas of scrubland or shrubland, woodlot or forest” in residential and business zones is inappropriate. For residential zones in particular, the standard approach to amenity involves planting shrubs and trees to beautify sections. It is also noted that settlements have fire brigades, further supporting the deletion of this provision.

It is similarly appropriate for the setback from vegetation provisions to be deleted for the rural areas but, because this provision relates to wild fire effects that may present a risk to life and property, the associated “Note” is retained in the Rural and two Maori Purposes zones.

Guidance notes:

Below is a table (non-statutory) that sets out what Plan Change 4 means to property owners who wish to build on their properties.

Proposed new approach to the Fire Rules – what does it mean to me?

Zone	Reticulated Water	Non-reticulated water with effective fire service	Non-reticulated water without effective fire service
Residential and Business Zones	<ul style="list-style-type: none"> ✓ Reticulated water supply provides sufficient water. ✓ No District Plan requirements. ✓ Communities include Dargaville, Ruawai, Maungaturoto and Baylys. 	<ul style="list-style-type: none"> ✓ Council to engage with FENZ to review the desirability of dedicated communal water storage for FENZ use. ✓ No District Plan requirements. ✓ Communities include Mangawhai, Kaiwaka and Te Kopuru. 	<ul style="list-style-type: none"> ✓ District Plan support FENZ educational programme to consider fire hazards and appropriate mitigation measures including to install sprinklers. ✓ Communities include Papanui, Tinopai, Whakapirau and Pahi.
Rural and the two Maori Purposes Zones	<ul style="list-style-type: none"> ✓ Reticulated water supply provides sufficient water. ✓ No District Plan requirements. 	<ul style="list-style-type: none"> ✓ District Plan support FENZ educational programme to consider fire hazards and appropriate mitigation measures including to 	<ul style="list-style-type: none"> ✓ District Plan supports FENZ educational programme to consider fire hazards and appropriate mitigation measures, including to install

	install sprinklers.	sprinklers.
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Please Note: Effective FENZ service means if your building is within a five minute drive from a FENZ fire station. In the Kaipara district, there are FENZ fire stations at the following locations: Dargaville, Te Kopuru, Ruawai, Maungaturoto, Kaiwaka and Mangawhai.



Alan Watson

For the Hearing Panel being, Burnette Macnicol, Mark Farnsworth and Alan Watson

06 December 2017