

IN THE MATTER of the Resource Management Act  
1991

AND

IN THE MATTER of an appeal pursuant to clause 14  
of the First Schedule of the Act

BETWEEN DIRECTOR GENERAL OF  
CONSERVATION

ENV-2012-AKL-000231

Appellant

AND KAIPARA DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge C J Thompson sitting alone under section 279 of the Act

IN CHAMBERS at Auckland

## CONSENT ORDER

### Introduction

1. The Court has read and considered the appeal and the memorandum of the parties dated 30 August 2012.
2. FEDERATED FARMERS OF NEW ZEALAND (INCORPORATED) has given notice of an intention to become a party to the appeal pursuant to section 274 of the Act.



3. The Court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:
  - (a) All parties to the proceedings have executed the memorandum requesting this order.
  - (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

### Order

4. Therefore the Court orders, by consent, that the appeal be allowed to the extent that the Kaipara District Council be directed to amend the Proposed Kaipara District Plan ("**the Proposed Plan**") at Chapters 7 and 12 as follows, noting that the proposed insertions are shown as underline and deletions as ~~striketrough~~:
  - (a) At paragraph 7.1.5 of the Introduction to the Natural Hazards Chapter of the Proposed Plan as follows:

"7.1.5 Fire

Wild fire is a hazard in the Kaipara District, especially during dry summer periods. Wild fires can put lives at risk, destroy property, and devastate natural areas; putting at risk natural, cultural, historical and recreational values of the District. The changing weather patterns expected from climate change (as discussed above), including the increasing intensity of droughts, are expected to increase the risk of wild fire. Providing and maintaining adequate 'defensible space' (or the separation of buildings (particularly dwellings)) and bush and shrubland areas is one example of how land use planning can manage the risk to property and life as a result of wild fire."



- (b) Insert the following photograph and caption under paragraph 7.1.5:



A helicopter dousing Northland forest fire (DOC)

- (c) At Natural Hazards Issue 7.4.1 of the Proposed Plan as follows:

**"7.4.1 There is a risk to life, property and the environment from hazards including fire; flooding in low lying areas; coastal erosion; landslips; and storm damage.**  
*The Kaipara District is susceptible to a range of natural hazards many of which have the potential to cause significant property damage along with social and economic disruption to communities (e.g wildfire). Climate change has the potential to exacerbate these hazards in some areas (e.g. coastal locations and adjacent to waterways). Minimising the adverse effects of the various hazards, particularly on people, property and associated infrastructure, is an important part of sustainable resource management."*

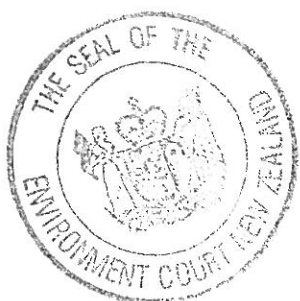
- (c) At Natural Hazards Issue 7.4.3 of the Proposed Plan as follows:

**"7.4.3 Inappropriately located activities and development increase the likelihood of significant property damage caused by hazards, such as wild fire, land instability and subsidence.**

*Human activity and development can increase this risk when they occur in or near areas prone to natural hazards. Certain natural features (such as sand dunes and wetlands) function to absorb the effects of natural hazards but may lose their protective role due to human intervention, thereby exacerbating the risks from natural hazards, e.g. draining wetlands may lead to increased downstream flooding.*

*Certain activities can contribute to increasing the hazard threat especially in high risk areas. Such activities include:*

- *Clearance of vegetation by mechanical or other means in areas exposed to the elements and/or with poor soil structures;*



- *Earthworks, in sensitive foreshore and riparian areas; and*
- *Erection of structures, especially buildings, in flood plains;*
- *Locating structures (especially dwellings) in close proximity to bush or shrubland areas or conversely allowing forestry activities close to existing residential buildings (locating property and residential activity in proximity to wild fire hazard areas).*

(d) At Natural Hazards Policy 7.6.1 of the Proposed Plan as follows:

"7.6.1 By considering the potential for development, subdivision and land use activities including:

- a) Vegetation clearance;
- b) Draining of wetlands;
- c) Changes in overland flow paths and storm water;
- d) Changes to riparian margins;
- e) Earthworks
- f) Buildings and building setbacks; and
- fg) Land reclamation;

to exacerbate any natural hazard on-site or off-site, and avoiding such activities, unless it can be demonstrated that the adverse effects can be mitigated, remedied or avoided.

*Natural hazards are often exacerbated by development, subdivision and land use activities through the clearance of vegetation, increase in impervious surfaces, changes in overland flow paths, changes to riparian margins, earthworks, failure to maintain adequate 'defensible space' or separation distances between activities and hazards, drainage of wetlands and reclamation of land. The adverse effects often occur off-site and downstream of the activities (e.g. flooding downstream as a result of vegetation clearance). Although there is some understanding of natural processes, it is often difficult to pin-point the exact cause of the changes in the natural systems and therefore, what causes the worsening of the hazard. This is compounded when the changes in natural hazards are the cumulative result of development and activities, and not just the result of a single development or subdivision. Therefore development, subdivision and land use should be assessed on the basis that they may exacerbate hazards and this should be taken into account when developing sites."*



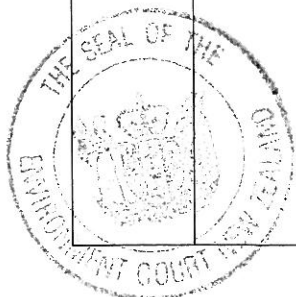
(e) At District Plan Method 7.7.1.2 (a) of the Proposed Plan as follows:

"7.7.1.2           **There are no Rules in this Chapter relating to natural hazards. However, there are Rules to manage the effects of land use and subdivision activities in hazard prone areas in the Part B – Zone Chapters. These Rules include:**

- a)           Performance standards to control earthworks, vegetation clearance and setbacks of buildings and structures from water bodies and areas of bush and shrubland (areas of higher wild fire risk)."

(f) In the 'Rural Permitted Activity Performance Standard' column for Rule 12.10.26 of the Performance Standards Rural Land Use table as follows:

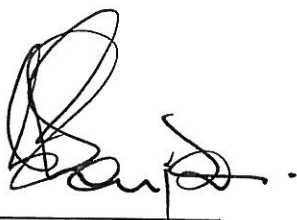
Rule	Parameter	Rural Permitted Activity Performance Standard	Activity Status if the Activity does not meet the Performance Standard	Assessment Criteria
12.10.26	Fire Safety	<p>Any <b>building</b> is permitted if:</p> <p>a) It does not impede the movement of fire service vehicles or equipment or generally restrict access for fire fighting purposes;</p> <p>b) 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>c) 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>d) The building is located at least 20m away from</p>	Restricted Discretionary Activity	<p>Where an activity is not permitted by this Rule, <b>Council</b> will restrict its discretion to the following matters when considering and determining an application for Resource Consent:</p> <p>i) The extent of consultation that has been undertaken with the New Zealand Fire Service and their response (or whether their written approval has been obtained);</p> <p>ii) Whether and the extent to which the <b>building</b> is assessed as a low fire hazard and risk;</p> <p>iii) Any mitigation measures proposed to reduce the fire risk;</p> <p>iv) The adequacy of water supply; and</p> <p>v) The accessibility of the water supply to fire service vehicles.</p>



		<p>a naturally occurring or deliberately planted area of <u>scrub</u> or <u>shrubland</u>, woodlot or forest.</p> <p><b>Note 1:</b> 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>		
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5. This order disposes the relief in paragraph 11.10 of the appeal, topic ENV-2012-304-000011 – Natural Hazards.
6. The remainder of the appeal is extant unless otherwise addressed through an Order of this Court.
7. There is no order as to costs.

DATED the 20<sup>th</sup> day of September 2012



C J Thompson  
Environment Judge

