

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of seven appeals under clause 14
of Schedule 1 to the Act
concerning Variation 1 to the
Kaipara Proposed District Plan

BETWEEN

**ENVIRONMENTAL DEFENCE
SOCIETY INCORPORATED**
ENV-2012-AKL-000131

AND

**THE BREAM TAIL RESIDENTS
ASSOCIATION**
ENV-2012-AKL-000135

AND

**THE WELCH INVESTMENT
TRUST**
ENV-2012-AKL-000134

AND

**FARMERS OF NEW ZEALAND
INCORPORATED AND THOMAS
COATES ESTATE TRUSTEES**
ENV-2012-AKL-000136

AND

**THE DIRECTOR GENERAL OF
CONSERVATION (NORTHLAND
CONSERVANCY)**
ENV-2012-AKL-000128

AND

MERIDIAN ENERGY LIMITED
ENV-2012-AKL-000126

AND

**FEDERATED FARMERS OF
NEW ZEALAND**
ENV-2012-AKL-000121

Appellants

AND

KAIPARA DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Acting Principal Environment Judge L J Newhook sitting alone under section 279 of the Act
IN CHAMBERS at Auckland.

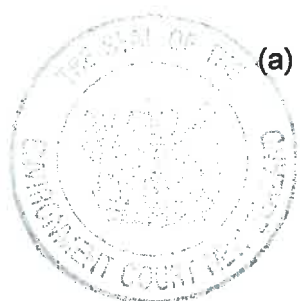
CONSENT ORDER



INTRODUCTION

1. These appeals relate to Variation 1 to the Kaipara District Plan. Variation 1 introduced a new Chapter 18 (Landscapes and Natural Features) to the Proposed Plan. Chapter 18 provides a set of issues, objectives, policies, methods, outcomes and rules to appropriately manage and / or protect Outstanding Natural Landscapes in the District. Variation 1 also made amendments to the following Chapters of the Proposed Plan: chapter 10 (Network Utilities), Chapter 12 (Rural), Chapter 13 (Residential), Chapter 15A (Maori Purposes – Maori Land), Chapter 15B – (Maori Purposes - Treaty Settlement Land), Chapter 24 (Definitions) and the planning maps.
2. This consent order resolves or resolves aspects of the following Topics:
 - (a) Topic ENV-2012-304-000095 (Bulk and Location);
 - (b) Topic ENV-2012-304-000096 (Excavation and Fill);
 - (c) Topic ENV-2012-304-000099 (Vegetation Clearance);
 - (d) Topic ENV-2012-304-000100 (Quarrying);
 - (e) Topic ENV-2012-304-000102 (ONL Boundaries);
 - (f) Topic ENV-2012-304-000105 (Visual Amenity Landscapes); and
 - (g) Topic ENV-2012-304-000107 (Renewable Energy).
3. In making this consent order the Court has read and considered the appeals and the memorandum of the parties
Dated 12 July 2013.
4. The Director-General of Conservation, Environmental Defence Society, C & J Hawley, Mangawhai Residents & Ratepayers Association, Marunui Conservation Limited, Friends of Brynderwyns Society, Farmers of New Zealand Incorporated, Ian Stuart, Federated Farmers of New Zealand, Meridian Energy Limited and Transpower New Zealand Limited have given notice of an intention to become parties to one or more of the appeals under section 274, and have signed the memorandum of the parties setting out the relief sought.
5. The Court is making this order under section 279(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 with an interest in these proceedings have executed the memorandum requesting this order.



- (b) All parties with an interest in these proceedings are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

ORDER

6. Therefore the Court orders, by consent, that:

- (a) Topic **ENV-2012-304-000100** relating to **Quarrying** is dismissed; and
- (b) Topic **ENV-2012-304-000105** relating to **Visual Amenity Landscapes** is dismissed; and
- (c) The Kaipara District Council otherwise be directed to amend Variation 1 of the Kaipara Proposed District Plan as set out below:

Bulk and Location (Topic ENV-2012-304-000095)

7. Renumber rule "12.10.3b" as rule "12.10.3c".

8. Amend rule 12.10.3c to include the following exemption:

(1) ~~Subject to the exclusion in (2) below, the Erection and Alteration of Buildings and Structures dwellings located in an Outstanding Landscape is a permitted activity if:~~

- a) It is no more than 8m in height; and
- b) Does not exceed 50m² gross floor area; or any alteration / additions to the building or structure do not exceed 40% of the gross floor area of the dwelling or 40% of the volume of the structure (whichever is the smaller); and
- c) The exterior finish of the building or structure has a reflectance value of, or less than 30% as defined within the BS5252 standard colour palette;
- d) It is required for maintenance to the interior and exterior of the building or structure; or
- e) It is required for renovations to the interior of the dwelling or structure.

(2) ~~Except that:~~

(a) ~~The standards of 12.10.3c(1) do not apply to the dwellings constructed within the defined Exclusive Use Areas shown on the Survey Plan for lots 1-29, 32, 34, 40, 41 and 45 DP 348513 (Bream Tail) consented by RM050086, provided that the other conditions of the Consent Notices (dated 2nd of February 2004) on these titles are complied with,~~

Excavation and Fill (Topic ENV-2012-304-000096)



Chapter 12 (Rural)

9. Renumber rule "12.10.1" as rule "12.10.1a".
10. Amend the Rural Permitted Activity Performance Standards at rule 12.10.1a as follows:

Subject to the exclusions in (7) below, *excavation* and *fill* is a *Permitted Activity* if:

- a) The *site* is not within any area known to be erosion prone, subject to instability flood hazards;
- b) All bare earth areas, including excavation and fill batter faces within a site, are revegetated or stabilised within six months of the earthworks being completed; and
- c) All revegetated areas within a site are maintained and managed so as to achieve 80% ground cover within 24 months of the earthworks being completed; and
- d) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2; and~~

(1) Rural Zone

- a) The works are within 6m of the bank of any lake, river or edge of any wetland and the volume is less than 1,000m³ and the area is less than 1,000m² in any 12 month period; or
- b) The works are located a minimum of 6m from the bank of any lake, river or edge of any wetland and the volume is less than 5,000m³ within a site, in any 12 month period;
- e) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2.~~

(2) East Coast and West Coast Overlays

- a) The works are within 300m of the CMA and/or within 20m of a lake, river or edge of any wetland and the volume is less than 300m³ and the area is less than 300m² in any 12 month period; or
- b) The works are not within 20m of the bank of any lake, river or edge of any wetland and the volume is less than 2,500m³ and the area is less than 2,500m² in any 12 month period; and
- c) The *height* or depth is less than 2m over a continuous distance of less than 50m within a site.
- e) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2.~~

...

(5) Kai Iwi Lakes Overlay

- a) The works are not within 6m of the bank of any lake, river or edge of any wetland and the volume is less than 150m³ and the area is less than 150m² in any 12 month period; and
- b) The height or depth is less than 2m over a continuous distance of less than 50m within a site.
- e) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2.~~



...

11. Reinstate the following Restricted Discretionary Activity Assessment Criterion in rule 12.10.1a:

vi) Effects on landscape and heritage values; ...

12. Amend Restricted Discretionary Activity Assessment Criterion vii) in rule 12.10.1a as follows:

vii) ~~Whether and~~ The extent to which the proposal will affect the values of any outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.

13. Amend rule 12.10.1b as follows:

(1) Subject to the exclusion in (2) below, within a site in an Outstanding Natural Landscape, excavation and fill is a Permitted Activity if:

- a) The volume is less than 150m³ and the area is less than 150m² in any 12 month period within a site and is not within 6m of the top of the bank of any water body; and
- b) The height or depth is less than 2m over a continuous distance of less than 50m within a site.

(2) Except that Normal Rural Practices (as defined in Chapter 24) are Permitted Activities.

Note 1: Excavation may require Resource Consent from the Northland Regional Council. The Regional Water and Soil Plan for Northland contain minimum standards for erosion and sediment control resulting from excavation. Applicants should contact the Northland Regional Council to confirm whether or not a Resource Consent is required.

Note 2: Where parallel Resource Consent for excavation and fill is required from the Northland Regional Council, Kaipara District Council will seek to undertake joint processing of both applications, e.g. via delegated authority from the Northland Regional Council.

Note 3: The height or depth of excavation will be based on an average height from existing ground level over the length of the excavation or fill, or over any 50m continuous length (whichever is the lesser length).

14. Amend the Discretionary Activity Assessment Criteria at rule 12.10.1b as follows:

Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for Resource Consent: Council will exercise its discretion under section 104B of the Resource Management Act and may consider but will not be limited to the following matters when considering an application for resource consent that meets the terms of this rule:-

- i) The matters for which it has limited its discretion listed under Rule 12.10.1a; and



- ii) ~~Whether and to~~ The extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.

Note 1: A description of the landscape features is provided in Appendix 18A. The values associated with the Outstanding Natural Landscapes are described in the Kaipara District Landscape Technical Report (2010).

Chapter 13 (Residential)

15. Renumber rule "13.10.1" as rule "13.10.1a".
16. Reinstate the following Restricted Discretionary Activity Assessment Criterion in rule 13.10.1a:
 - vi) Effects on landscape and heritage values; ...
17. Amend Restricted Discretionary Activity Assessment Criterion vii) in rule 13.10.1a as follows:
 - vii) ~~Whether and to~~ The extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.
18. Correct the numbering of rule "13.10.2b" to rule "13.10.1b".
19. Amend the Residential Permitted Activity Performance Standards in rule 13.10.1b as follows:
 - (1) Subject to the exclusion in (2) below, within an Outstanding Natural Landscape, excavation and fill is a Permitted Activity if:
 - a) The volume is less than 300m³ in any 12 month period per site; and
 - b) Any cut and/or filled face does not exceed 1.5m in height; and
 - c) Cut or fill areas that will be visible from a viewing point on a public road, public reserve, coastal marine area and the foreshore shall be stabilised using mulch, hydroseeding, or other rapid effective stabilisation technique. All other cut and fill areas will be revegetated as soon as practicable in the spring or autumn immediately following construction.
 - (2) Except that Normal Rural Practices (as defined in Chapter 24) are Permitted Activities.

Note 1: Excavation may require Resource Consent from the Northland Regional Council. The Regional Water and Soil Plan for Northland contain minimum standards for erosion and sediment control resulting from excavation. Applicants should contact the Northland Regional Council to confirm whether or not a Resource Consent is required.

Note 2: Where parallel Resource Consent for excavation and fill is required from the Northland Regional Council, Kaipara District Council will seek to undertake joint



processing of both applications, e.g. via delegated authority from the Northland Regional Council.

Note 3: The height or depth of excavation will be based on an average height from existing ground level over the length of the excavation or fill, or over any 50m continuous length (whichever is the lesser length).

20. Amend the Discretionary Activity Assessment Criteria at rule 13.10.1b as follows:

~~Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for Resource Consent: Council will exercise its discretion under section 104B of the Resource Management Act and may consider but will not be limited to the following matters when considering an application for resource consent that meets the terms of this rule:-~~

- i) The matters for which it has limited its discretion listed under Rule 13.10.1a; and
- ii) ~~Whether and~~ The extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.

Note 1: A description of the landscape features is provided in Appendix 18A. The values associated with the Outstanding Natural Landscapes are described in the Kaipara District Landscape Technical Report (2010).

Chapter 15A (Maori Purposes: Maori Land)

- 21. Renumber rule "15A.10.1" as rule "15A.10.1a".
- 22. Amend the Maori Land Permitted Activity Performance Standards in rule 15A.10.1a as follows:

Subject to the exclusions in (7) below, *excavation* and *fill* is a *Permitted Activity* if:

- a) The *site* is not within any area known to be erosion prone, subject to instability flood hazards;
- b) All bare earth areas, including excavation and fill batter faces within a site, are revegetated or stabilised within six months of the earthworks being completed; and
- c) All revegetated areas within a site are maintained and managed so as to achieve 80% ground cover within 24 months of the earthworks being completed; and
- d) ~~The site is not located within an Outstanding Natural Landscape identified on Map Series 2; and~~

(1) Maori Purposes: Maori Land Zone

- a) The works are within 6m of the bank of any lake, river or edge of any wetland and the volume is less than 1,000m³ and the area is less than 1,000m² in any 12 month period; or
- b) The works are located a minimum of 6m from the bank of any lake, river or edge of any wetland and the volume is less than 5,000m³ within a site, in any 12 month period; 1



- e) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2;~~

(2) East Coast and West Coast and Harbour Overlays

- a) The works are within 300m of the CMA and/or within 20m of a lake, river or edge of any wetland and the volume is less than 300m³ and the area is less than 300m² in any 12 month period; or
- b) The work are not within 20m of the bank of any lake, river or edge of any wetland and the volume is less than 2,500m³ and the area is less than 2,500m² in any 12 month period; and
- c) The height or depth is less than 2m over a continuous distance of less than 50m within a site.
- e) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2;~~

...

(4) Mangawhai Harbour Overlay

- a) The works are within 300m of the CMA and/or within 20m of a lake, river or edge of any wetland and the volume is less than 300m³ and the area is less than 300m² in any 12 month period; or
- b) The works are not within 20m of the bank of any lake, river or edge of any wetland and the volume is less than 1,000m³ and the area is less than 1,000m² in any 12 month period; and
- c) The height or depth is less than 2m over a continuous distance of less than 50m within a site.
- e) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2.~~

(5) Kai Iwi Lakes Overlay

- a) The works are not within 6m of the bank of any lake, river or edge of any wetland and the volume is less than 150m³ and the area is less than 150m² in any 12 month period; and
- b) The height or depth is less than 2m over a continuous distance of less than 50m within a site.
- e) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2.~~

...

23. Reinstate the following Restricted Discretionary Activity Assessment Criterion in rule 15A.10.1a:

- vi) Effects on landscape and heritage values; ...

24. Amend Restricted Discretionary Activity Assessment Criterion vii) in rule 15A.10.1a as follows:

- vii) ~~Whether and to~~ The extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 ~~and the extent to~~



~~which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.~~

25. Amend rule 15A.10.1b as follows:

~~(1) Subject to the exclusion in (2) below, w~~Within an Outstanding Natural Landscape, excavation and fill is a Permitted Activity if:

- a) The volume is less than 150m³ and the area is less than 150m² in any 12 month period within a site and is not within 6m of the top of the bank of any water body; and
- b) The height or depth is less than 2m over a continuous distance of less than 50m within a site.

~~(2) Except that Normal Rural Practices (as defined in Chapter 24) are Permitted Activities.~~

Note 1: Excavation may require Resource Consent from the Northland Regional Council. The Regional Water and Soil Plan for Northland contain minimum standards for erosion and sediment control resulting from excavation. Applicants should contact the Northland Regional Council to confirm whether or not a Resource Consent is required.

Note 2: Where parallel Resource Consent for excavation and fill is required from the Northland Regional Council, Kaipara District Council will seek to undertake joint processing of both applications, e.g. via delegated authority from the Northland Regional Council.

Note 3: The height or depth of excavation will be based on an average height from existing ground level over the length of the excavation or fill, or over any 50m continuous length (whichever is the lesser length).

26. Amend the Discretionary Activity Assessment Criteria at rule 15A.10.1b as follows:

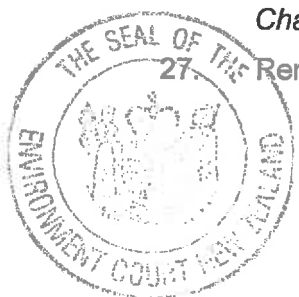
~~Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for Resource Consent: Council will exercise its discretion under section 104B of the Resource Management Act and may consider but will not be limited to the following matters when considering an application for resource consent that meets the terms of this rule:-~~

- i) The matters for which it has limited its discretion listed under Rule 15A.10.1a; and
- ii) ~~Whether and the~~The extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.

Note 1: A description of the landscape features is provided in Appendix 18A. The values associated with the Outstanding Natural Landscapes are described in the Kaipara District Landscape Technical Report (2010).

Chapter 15B (Maori Purposes: Treaty Settlement Land)

Renumber rule "15B.10.1" as rule "15B.10.1a".



28. Amend the Treaty Settlement Land Permitted Activity Performance Standards in rule 15B.10.1a as follows:

Subject to the exclusions in (7) below, *excavation* and *fill* is a *Permitted Activity* if:

- a) The *site* is not within any area known to be erosion prone, subject to instability flood hazards;
- b) All bare earth areas, including excavation and fill batter faces within a site, are revegetated or stabilised within six months of the earthworks being completed; and
- c) All revegetated areas within a site are maintained and managed so as to achieve 80% ground cover within 24 months of the earthworks being completed; and
- d) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2; and~~

(1) Maori Purposes: Treaty Settlement Land Zone

- a) The works are within 6m of the bank of any lake, river or edge of any wetland and the volume is less than 1,000m³ and the area is less than 1,000m² in any 12 month period; or
- b) The works are located a minimum of 6m from the bank of any lake, river or edge of any wetland and the volume is less than 5,000m³ within a site, in any 12 month period;
- e) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2; and~~

(2) East Coast and West Coast and Harbour Overlays

- a) The works are within 300m of the CMA and/or within 20m of a lake, river or edge of any wetland and the volume is less than 300m³ and the area is less than 300m² in any 12 month period; or
- b) The works are not within 20m of the bank of any lake, river or edge of any wetland and the volume is less than 2,500m³ and the area is less than 2,500m² in any 12 month period; and
- c) The height or depth is less than 2m over a continuous distance of less than 50m within a site.
- d) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2; and~~

...

(5) Kai Iwi Lakes Overlay

- a) The works are not within 6m of the the bank of any lake, river or edge of any wetland and the volume is less than 150m³ and the area is less than 150m² in any 12 month period; and
- b) The height or depth is less than 2m over a continuous distance of less than 50m within a site.
- e) ~~The site is not located within an Outstanding Natural Landscape, identified on Map Series 2; and~~

...



29. Reinstate the following Restricted Discretionary Activity Assessment Criterion in rule 15B.10.1a:

vi) Effects on landscape and heritage values; ...

30. Amend Restricted Discretionary Activity Assessment Criterion vii) in rule 15B.10.1a as follows:

vii) ~~Whether and to the extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.~~

31. Amend rule 15B.10.1b as follows:

(1) Subject to the exclusion in (2) below, within an Outstanding Natural Landscape, excavation and fill is a Permitted Activity if:

- a) The volume is less than 150m³ and the area is less than 150m² in any 12 month period within a site and is not within 6m of the top of the bank of any water body; and
- b) The height or depth is less than 2m over a continuous distance of less than 50m within a site.

(2) Except that Normal Rural Practices (as defined in Chapter 24) are Permitted Activities.

Note 1: Excavation may require Resource Consent from the Northland Regional Council. The Regional Water and Soil Plan for Northland contain minimum standards for erosion and sediment control resulting from excavation. Applicants should contact the Northland Regional Council to confirm whether or not a Resource Consent is required.

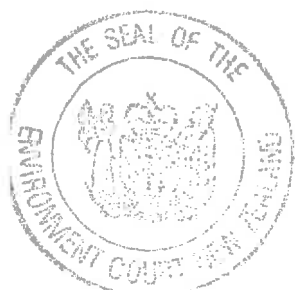
Note 2: Where parallel Resource Consent for excavation and fill is required from the Northland Regional Council, Kaipara District Council will seek to undertake joint processing of both applications, e.g. via delegated authority from the Northland Regional Council.

Note 3: The height or depth of excavation will be based on an average height from existing ground level over the length of the excavation or fill, or over any 50m continuous length (whichever is the lesser length).

32. Amend the Discretionary Activity Assessment Criteria in rule 15B.10.1b as follows:

Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for Resource Consent: Council will exercise its discretion under section 104B of the Resource Management Act and may consider but will not be limited to the following matters when considering an application for resource consent that meets the terms of this rule:-

- i) The matters for which it has limited its discretion listed under Rule 15B.10.1a; and
- ii) ~~Whether and to the extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.~~



Note 1: A description of the landscape features is provided in Appendix 18A. The values associated with the Outstanding Natural Landscapes are described in the Kaipara District Landscape Technical Report (2010).

Chapter 24 (Definitions)

33. Amend the definition of "Normal Rural Practices" as follows:

Normal Rural Practices

For the purpose of the Excavation and Fill Rules (see Rules 12.10.1a, 12.10.1b, 13.10.1, 13.10.1b, 14.10.1, 15A.10.1a, 15A.10.1b, and 15B.10.1a, and 15B.10.1b) of the Plan this means the maintenance of rural tracks, maintenance of dams, stop-banks and drains, digging offal holes, establishment and maintenance of fences and fence-lines, land cultivation and harvesting of crops, and outside ONL areas obtaining roading material for farming or forestry use on or servicing the same farm or forest production unit in which the extraction is located.

Vegetation Clearance (Topic ENV-2012-304-000099)

Chapter 12 (Rural)

34. Renumber rule "12.10.2" as rule "12.10.2a".
35. Amend the Rural Permitted Activity Performance Standards in rule 12.10.2a as follows:

...

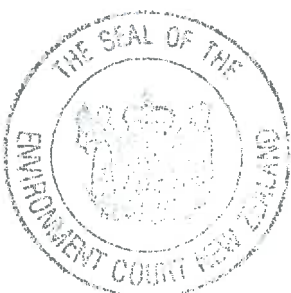
(3) Mangawhai Harbour Overlay:

- a) It is not located within an indigenous wetland; and
- b) It is not part of:
 - i) a continuous area of predominantly indigenous vegetation over 1 hectare in area; or
 - ii) a continuous area of predominantly indigenous vegetation greater than 3m in height and greater than 500m² in area; and
- c) It is not located within a site identified in Appendix F (Kiwi Density) of the District Plan; and
- d) It is not located within an Outstanding Natural Landscape as identified in Map Series 2.

...

(5) Except that the following are Permitted Activities throughout the Rural Zone, including the Overlays, and are excluded from the Standards of 12.10.2a (1), 12.10.2a (2), 12.10.12a (3) and 12.10.12a (4):

- a) The removal is in accordance with an existing use right; or
(Note: this would include activities such as vegetation clearance associated with the maintenance of existing drainage channels); or
- b) The total clearance within a site is no more than 500m² where the clearance is for the express purpose of providing a house site and / or access to a house site, or is to provide access to existing farming or forestry activities; or



...

36. Reinstate the following Restricted Discretionary Activity Assessment Criterion in rule 12.10.2a:

vi) Effects on landscape and heritage values; ...

37. Amend the Restricted Discretionary Activity Assessment Criteria in rule 12.10.2a numbered vii) and viii) as follows:

vii) ~~Whether and~~ The extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B;

viii) ~~Whether and~~ The extent to which the activity will affect any heritage values identified in Appendix 17.1 and 17.2 of the Plan;

38. Amend rule 12.10.2b as follows:

Subject to the exceptions provided in (1) below, cClearance or removal of indigenous vegetation within a site in an Outstanding Natural Landscape is a Permitted Activity if:

a) It is not located in an indigenous wetland; or

b) It is not part of:

i) a continuous area of *predominantly indigenous vegetation* over 1 hectare in area; or

ii) a) It is not part of a continuous area of predominantly indigenous vegetation, greater than that 3m in height and greater than over 500m² in area and is not located in 100m of the Coastal Marine Area.

(1) Except that the following are Permitted Activities, and are excluded from the Standards of 12.10.2b:

a) The removal is in accordance with an existing use right; or

(Note: this would include activities such as vegetation clearance associated with the maintenance of existing drainage channels)

b) The total clearance within a site is no more than 500m² where the clearance is for the express purpose of providing a house site and / or access to a house site, or is to provide access to existing farming or forestry activities; or

c) The clearance is for the maintenance of any open or clear space within an area defined by 20m of an existing dwelling or building; or

d) The removal is of trees that are a danger to human life or existing structures (including network utilities); or

e) The removal is for the formation and maintenance of walking tracks less than 1.5 metres in width; or

f) The clearance is for maintenance of existing fence lines or for a new fence where the purpose of the new fence is to exclude stock and/or pests from an area which is to be protected for ecological or soil conservation purposes, provided that the clearance does not exceed a width of 3.5m either side of the fence line; using manual methods that do not require the removal of any indigenous tree over 300mm girth; or



- g) It is part of the operation and maintenance of network utilities, or is necessary to protect electrical lines required to meeting the Electricity (Hazards from Trees) Regulations 2003;
- h) The clearance is for the creation and maintenance of firebreaks; or
- i) The vegetation or tree comprises the understorey directly beneath exotic or native plantation forest and the activity is carried out as part of forestry operations; or
- j) It is in accordance with the terms of a Queen Elizabeth II National Trust, or forest sink, covenant under the Forests Act 1949, or the trees have been planted specifically for forestry or cropping purposes, or the removal is limited to naturally dead or with forestry operations, if the company has Forest Stewardship Council certification or another third party certified environmental management system; or
- k) The vegetation clearance is on land which has been previously cleared and where the indigenous vegetation to be cleared is less than 10 years old.

Note 1: The Regional Water and Soil Plan for Northland contain minimum standards for erosion and sediment control resulting from land disturbance. Vegetation clearance activities may require a Resource Consent from the Northland Regional Council under those provisions. Applicants should contact the Northland Regional Council to confirm whether or not a Consent is required.

Note 2: Where parallel Resource Consent for vegetation removal is required from the Northland Regional Council, Kaipara District Council will seek to undertake joint processing of both applications, e.g. via delegated authority from the Northland Regional Council.

Note 3: An area of predominantly indigenous vegetation is an area where the vegetation cover is at least 75% indigenous.

39. Amend the Discretionary Activity Assessment Criteria in rule 12.10.2b as follows:

Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for Resource Consent: Council will exercise its discretion under section 104B of the Resource Management Act and may consider but will not be limited to the following matters when considering an application for resource consent that meets the terms of this rule:-

- i) The matters for which it has limited its discretion listed under Rule 12.10.2a; and
- ii) Whether and the extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.

Note 1: A description of the landscape features is provided in Appendix 18A. The values associated with the Outstanding Natural Landscapes are described in the Kaipara District Landscape Technical Report (2010).

Chapter 13 (Residential)

Renumber rule "13.10.2" as rule "13.10.2a".



41. Amend the Maori Land Permitted Activity Performance Standards in rule 15A.10.2a as follows:

...

(3) Mangawhai Harbour Overlay:

- a) It is not located within an indigenous wetland; and
- b) It is not part of:
 - i) a continuous area of predominantly indigenous vegetation over 1 hectare in area; or
 - ii) a continuous area of predominantly indigenous vegetation greater than 3m in height and greater than 50m² in area; and
- c) It is not located within an Outstanding Natural Landscape as identified in Map Series 2.

(4) Except that the following are Permitted Activities throughout the Maori Land Zone, including the Overlays, and are excluded from the Standards of 13.10.2a(1), 13.10.2a(2), and 13.10.12a(3):

...

42. Reinstate the following Restricted Discretionary Activity Assessment Criterion in rule 13.10.2a:

- vi) Effects on landscape and heritage values; ...

43. Amend the Restricted Discretionary Activity Assessment Criteria in rule 13.10.2a numbered vii) and xvii) as follows:

- vii) ~~Whether and to the extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B;~~

...

- xvii) ~~Whether and to the extent to which the activity will affect any heritage values identified in Appendix 17.1 and 17.2 of the Plan.~~

44. Amend rule 13.10.2b as follows:

Subject to the exceptions provided in (1) below, clearance or removal of indigenous vegetation within a site in an Outstanding Natural Landscape is a Permitted Activity if:

- a) It is not located in an indigenous wetland; or
- b) It is not part of:



- i) a continuous area of *predominantly indigenous vegetation* over 1 hectare in area; or
 - ii) a continuous area of *predominantly indigenous vegetation*, greater than 3m in height and greater than 50m² in area.
- a) The volume is less than 150m³ and the area is less than 150m² in any 12 month period within a site and is not within 6m of the top of the bank of any water body; and
 - b) The height or depth is less than 2m over a continuous distance of less than 50m within a site.

(1) Except that the following are Permitted Activities, and are excluded from the Standards of 13.10.2b:

- a) The removal is in accordance with an existing use right; or
(Note: this would include activities such as vegetation clearance associated with the maintenance of existing drainage channels)
- b) The total clearance within a site is no more than 500m² where the clearance is for the express purpose of providing a house site and / or access to a house site, or is to provide access to existing farming or forestry activities; or
- c) The clearance is for the maintenance of any open or clear space within an area defined by 20m of an existing dwelling or building; or
- d) The removal is of trees that are a danger to human life or existing structures (including network utilities); or
- e) The removal is for the formation and maintenance of walking tracks less than 1.5 metres in width; or
- f) The clearance is for maintenance of existing fence lines or for a new fence where the purpose of the new fence is to exclude stock and/or pests from an area which is to be protected for ecological or soil conservation purposes, provided that the clearance does not exceed a width of 3.5m either side of the fence line; using manual methods that do not require the removal of any indigenous tree over 300mm girth; or
- g) It is part of the operation and maintenance of network utilities, or is necessary to protect electrical lines required to meeting the Electricity (Hazards from Trees) Regulations 2003;
- h) The clearance is for the creation and maintenance of firebreaks; or
- i) The vegetation or tree comprises the understorey directly beneath exotic or native plantation forest and the activity is carried out as part of forestry operations; or
- j) It is in accordance with the terms of a Queen Elizabeth II National Trust, or forest sink, covenant under the Forests Act 1949, or the trees have been planted specifically for forestry or cropping purposes, or the removal is limited to naturally dead or with forestry operations, if the company has Forest Stewardship Council certification or another third party certified environmental management system; or
- k) The vegetation clearance is on land which has been previously cleared and where the indigenous vegetation to be cleared is less than 10 years old.

Note 1: The Regional Water and Soil Plan for Northland contain minimum standards for erosion and sediment control resulting from land disturbance. Vegetation clearance activities may require a Resource Consent from the Northland Regional Council under those provisions. Applicants should contact the Northland Regional Council to confirm whether or not a consent is required.



Note 2: Where parallel Resource Consent for vegetation removal is required from the Northland Regional Council, Kaipara District Council will seek to undertake joint processing of both applications.

Note 3: An area of predominantly indigenous vegetation is an area where the vegetation cover is at least 75% indigenous.

45. Amend the Discretionary Activity Assessment Criteria in rule 13.10.2b as follows:

Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for Resource Consent: Council will exercise its discretion under section 104B of the Resource Management Act and may consider but will not be limited to the following matters when considering an application for resource consent that meets the terms of this rule:-

- i) The matters for which it has limited its discretion listed under Rule 13.10.2a; and
- ii) ~~Whether and~~ The extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.

Note 1: A description of the landscape features is provided in Appendix 18A. The values associated with the Outstanding Natural Landscapes are described in the Kaipara District Landscape Technical Report (2010).

Chapter 15A (Maori Purposes – Maori Land)

46. Renumber rule "15A.10.2" as rule "15A.10.2a".

47. Amend the Maori Land Permitted Activity Performance Standards in rule 15A.10.2a as follows:

...

(3) Mangawhai Harbour Overlay:

- a) It is not located within an indigenous wetland; and
- b) It is not part of:
 - i) a continuous area of predominantly indigenous vegetation over 1 hectare in area; or
 - ii) a continuous area of predominantly indigenous vegetation greater than 3m in height and greater than 500m² in area; and
- c) It is not located within a site identified in Appendix F (Kiwi Density) of the District Plan; and
- d) It is not located within an Outstanding Natural Landscape as identified in Map Series 2.

...



- (5) Except that the following are Permitted Activities throughout the Maori Land Zone, including the Overlays, and are excluded from the Standards of 15A.10.2a(1), 15A.10.2a(2), 15A.10.42a(3) and 15A.10.42a(4):

...

48. Reinstate the following Restricted Discretionary Activity Assessment Criterion in rule 15A.10.2a:

- vi) Effects on landscape and heritage values; ...

49. Amend the Restricted Discretionary Activity Assessment Criteria in rule 15A.10.2a numbered vii) and xvii) as follows:

- vii) ~~Whether and to~~ The extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 ~~and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B;~~

...

- xvii) ~~Whether and to~~ The extent to which the activity will affect any heritage values identified in Appendix 17.1 and 17.2 of the Plan.

50. Amend rule 15A.10.2b as follows:

Subject to the exceptions provided in (1) below, cClearance or removal of indigenous vegetation within a site in an Outstanding Natural Landscape is a Permitted Activity if:

- a) It is not located in an indigenous wetland; or
b) It is not part of:
i) a continuous area of predominantly indigenous vegetation over 1 hectare in area; or
ii) a) It is not part of a continuous area of predominantly indigenous vegetation, greater than that 3m in height and greater than over 500m² in area and is not located in 100m of the Coastal Marine Area.

- (1) Except that the following are Permitted Activities, and are excluded from the Standards of 15A.10.2b:

- a) The removal is in accordance with an existing use right; or
(Note: this would include activities such as vegetation clearance associated with the maintenance of existing drainage channels)
b) The total clearance within a site is no more than 500m² where the clearance is for the express purpose of providing a house site and / or access to a house site, or is to provide access to existing farming or forestry activities; or
c) The clearance is for the maintenance of any open or clear space within an area defined by 20m of an existing dwelling or building; or
d) The removal is of trees that are a danger to human life or existing structures (including network utilities); or



- e) The removal is for the formation and maintenance of walking tracks less than 1.5 metres in width; or
- f) The clearance is for maintenance of existing fence lines or for a new fence where the purpose of the new fence is to exclude stock and/or pests from an area which is to be protected for ecological or soil conservation purposes, provided that the clearance does not exceed a width of 3.5m either side of the fence line; using manual methods that do not require the removal of any indigenous tree over 300mm girth; or
- g) It is part of the operation and maintenance of network utilities, or is necessary to protect electrical lines required to meeting the Electricity (Hazards from Trees) Regulations 2003;
- h) The clearance is for the creation and maintenance of firebreaks; or
- i) The vegetation or tree comprises the understorey directly beneath exotic or native plantation forest and the activity is carried out as part of forestry operations; or
- j) It is in accordance with the terms of a Queen Elizabeth II National Trust, or forest sink covenant under the Forests Act 1949, or the trees have been planted specifically for forestry or cropping purposes, or the removal is limited to naturally dead or with forestry operations, if the company has Forest Stewardship Council certification or another third party certified environmental management system; or
- k) The vegetation clearance is on land which has been previously cleared and where the indigenous vegetation to be cleared is less than 10 years old.

Note 1: The Regional Water and Soil Plan for Northland contain minimum standards for erosion and sediment control resulting from land disturbance. Vegetation clearance activities may require a Resource Consent from the Northland Regional Council under those provisions. Applicants should contact the Northland Regional Council to confirm whether or not a Consent is required.

Note 2: Where parallel Resource Consent for vegetation removal is required from the Northland Regional Council, Kaipara District Council will seek to undertake joint processing of both applications, e.g. via delegated authority from the Northland Regional Council.

Note 3: An area of predominantly indigenous vegetation is an area where the vegetation cover is at least 75% indigenous.

51. Amend the Discretionary Activity Assessment Criteria in rule 15A.10.2b as follows:

Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for Resource Consent: Council will exercise its discretion under section 104B of the Resource Management Act and may consider but will not be limited to the following matters when considering an application for resource consent that meets the terms of this rule:-

- i) The matters for which it has limited its discretion listed under Rule 15A.10.2a; and
- ii) ~~Whether and~~ The extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.



Note 1: A description of the landscape features is provided in Appendix 18A. The values associated with the Outstanding Natural Landscapes are described in the Kaipara District Landscape Technical Report (2010).

Chapter 15B (Maori Purposes – Treaty Settlement Land)

52. Renumber rule "15B.10.2" as rule "15B.10.2a".
53. Amend the Treaty Settlement Land Permitted Activity Performance Standards in rule 15B.10.2a as follows:

...

(3) Mangawhai Harbour Overlay:

- a) It is not located within an indigenous wetland; and
- b) It is not part of:
 - i) a continuous area of predominantly indigenous vegetation over 1 hectare in area; or
 - ii) a continuous area of predominantly indigenous vegetation greater than 3m in height and greater than 500m² in area; and
- c) It is not located within a site identified in Appendix F (Kiwi Density) of the District Plan; and
- d) It is not located within an Outstanding Natural Landscape as identified in Map Series 2.

...

- (5) Except that the following are Permitted Activities throughout the Maori Land Zone, including the Overlays, and are excluded from the Standards of 15B.10.2a(1), 15B.10.2a(2), 15B.10.2a(3) and 15B.10.2a(4):**

...

54. Reinstate the following Restricted Discretionary Activity Assessment Criterion in rule 15B.10.2a:

- vi) Effects on landscape and heritage values; ...

55. Amend the Restricted Discretionary Activity Assessment Criteria in rule 15B.10.2a numbered vii), xvi) and xviii) as follows:

- vii) ~~Whether and to~~ The extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B;

...

- xvi) ~~Whether and to~~ what extent provision has been made for the exercise of matauranga maori and tikanga;

...



- xviii) ~~Whether and~~ The extent to which the activity will affect any heritage values identified in Appendix 17.1 and 17.2 of the Plan.

56. Amend rule 15B.10.2b as follows:

Subject to the exceptions provided in (1) below, cClearance or removal of indigenous vegetation within ~~a site in~~ an Outstanding Natural Landscape is a Permitted Activity if:

- a) It is not located in an indigenous wetland; or
- b) It is not part of:
 - i) a continuous area of *predominantly indigenous vegetation* over 1 hectare in area; or
 - ii) a) It is not part of a continuous area of predominantly indigenous vegetation, greater ~~than~~ that 3m in height and greater ~~than~~ over 500m² in area and is not located in 100m of the Coastal Marine Area.

(1) Except that the following are Permitted Activities, and are excluded from the Standards of 15B.10.2b:

- a) The removal is in accordance with an existing use right; or
(Note: this would include activities such as vegetation clearance associated with the maintenance of existing drainage channels)
- b) The total clearance within a site is no more than 500m² where the clearance is for the express purpose of providing a house site and / or access to a house site, or is to provide access to existing farming or forestry activities; or
- c) The clearance is for the maintenance of any open or clear space within an area defined by 20m of an existing dwelling or building; or
- d) The removal is of trees that are a danger to human life or existing structures (including network utilities); or
- e) The removal is for the formation and maintenance of walking tracks less than 1.5 metres in width; or
- f) The clearance is for maintenance of existing fence lines or for a new fence where the purpose of the new fence is to exclude stock and/or pests from an area which is to be protected for ecological or soil conservation purposes, provided that the clearance does not exceed a width of 3.5m either side of the fence line; using manual methods that do not require the removal of any indigenous tree over 300mm girth; or
- g) It is part of the operation and maintenance of network utilities, or is necessary to protect electrical lines required to meeting the Electricity (Hazards from Trees) Regulations 2003;
- h) The clearance is for the creation and maintenance of firebreaks; or
- i) The vegetation or tree comprises the understorey directly beneath exotic or native plantation forest and the activity is carried out as part of forestry operations; or
- j) It is in accordance with the terms of a Queen Elizabeth II National Trust, or forest sink, covenant under the Forests Act 1949, or the trees have been planted specifically for forestry or cropping purposes, or the removal is limited to naturally dead or with forestry operations, if the company has Forest Stewardship Council certification or another third party certified environmental management system; or
- k) The vegetation clearance is on land which has been previously cleared and where the indigenous vegetation to be cleared is less than 10 years old.



Note 1: The Regional Water and Soil Plan for Northland contain minimum standards for erosion and sediment control resulting from land disturbance. Vegetation clearance activities may require a Resource Consent from the Northland Regional Council under those provisions. Applicants should contact the Northland Regional Council to confirm whether or not a Consent is required.

Note 2: Where parallel Resource Consent for vegetation removal is required from the Northland Regional Council, Kaipara District Council will seek to undertake joint processing of both applications, e.g. via delegated authority from the Northland Regional Council.

Note 3: An area of predominantly indigenous vegetation is an area where the vegetation cover is at least 75% indigenous.

57. Amend the Discretionary Activity Assessment Criteria in rule 15B.10.2b as follows:

Where an activity is not permitted by this Rule, *Council* will have regard to the following matters when considering an application for Resource Consent: Council will exercise its discretion under section 104B of the Resource Management Act and may consider but will not be limited to the following matters when considering an application for resource consent that meets the terms of this rule:-

- i) The matters for which it has limited its discretion listed under Rule 15B.10.2a; and
- ii) ~~Whether and~~ The extent to which the proposal will affect the values of any Outstanding Natural Landscape identified in Map Series 2 and the extent to which the subdivision, use or development meets the additional assessment criteria contained in Appendix 18B.

Note 1: A description of the landscape features is provided in Appendix 18A. The values associated with the Outstanding Natural Landscapes are described in the Kaipara District Landscape Technical Report (2010).

ONL Boundaries (Topic ENV-2012-304-000102)

58. Amend the explanation accompanying Issue 18.4.2 in Chapter 18 (Landscapes and Natural Features) as follows:

18.4.2 The need to identify and protect Outstanding Natural Landscapes from inappropriate subdivision, use and development while also providing for the social and economic well-being of the District's people and communities.

Some people have a perception that the identification of an Outstanding Natural Landscape on a property detracts from the value and development potential of the property. Such landscapes have the potential to make a significant contribution to the value of land and contribute to economic development, e.g. through increased opportunities for recreation and tourism activities or encouraging people to live and work within or near distinctive or iconic landscapes.

Much of the District's landscape is a working landscape that changes over time and includes pastoral land where structures such as fences, farmhouses,



barns, pump-houses, utilities and land management practices form part of the working landscape.

Other industries that may also value resources in or near these areas include extractive industries (due to the presence of a mineral resource) and new significant infrastructure such as renewable energy developments. As an example of the former, Bald Rock is a resource that has had a long history of quarrying. The underpinning volcanic decite geology of Bald Rock gives the feature its striking geomorphic character but is also a potential source of valuable building and construction material for the district and the wider region (due to its very slow weathering characteristics). There is an acknowledged shortage of aggregate and mineral resources for building and construction in the wider region and the Plan recognises the importance of managed mineral extraction to the social and economic wellbeing of the District (see outcome 2.7.12) and associated provisions.

There needs to be a careful balance between the protection of Outstanding Natural Landscapes and use of these resources (to provide for social and economic wellbeing) in achieving sustainable management.

Renewable Energy (Topic ENV-2012-304-000107)

59. Amend the final sentence of the first paragraph of the explanation for Issue 18.4.5 as follows:

... However, it is important to recognise that these landscapes are often working environments undergoing change and used for a variety of rural purposes.

TOPICS / APPEALS RESOLVED

60. This consent order resolves the following appeals, to the extent recorded below:

- (a) The appeal by The Bream Tail Residents Association (ENV-2012-AKL-000135) in its entirety;
- (b) The appeal by Farmers of New Zealand Inc / Thomas Coates Estate Trustees (ENV- ENV-2012-AKL-000136) as it relates to Topics:
 - (i) ENV-2012-304-000096 (Excavation and Fill);
 - (ii) ENV-2012-304-000099 (Vegetation Clearance);
 - (iii) ENV-2012-304-000100 (Quarrying); and
 - (iv) ENV-2012-304-000102 (ONL Boundaries);
- (c) The appeal by The Welch Investment Trust (ENV-2012-AKL-000134) as it relates to Topic ENV-2012-304-000096 (Excavation and Fill);
- (d) The appeal by Federated Farmers of New Zealand (ENV-2012-AKL-000136) as it relates to Topics:
 - (i) ENV-2012-304-000096 (Excavation and Fill); and
 - (ii) ENV-2012-304-000099 (Vegetation Clearance);
- (e) The appeal by the Director-General of Conservation (ENV-2012-AKL-000128) as it relates to Topic ENV-2012-304-000099 (Vegetation Clearance);



- (f) The appeal by Meridian Energy Limited (ENV-2012-AKL-000126) as it relates to Topic ENV-2012-304-000107 (Renewable Energy).
- (g) The appeal by the Environmental Defence Society (ENV-2012-AKL-000131) as it relates to Topic ENV-2012-304-000105 (Visual Amenity Landscapes).

61. This consent order resolves the following topics, to the extent recorded below:

- (a) Topic ENV-2012-304-000095 (Bulk and Location), solely as it relates to the appeal by The Bream Tail Residents Association (ENV-2012-AKL-000135);
- (b) Topic ENV-2012-304-000096 (Excavation and Fill) in its entirety;
- (c) Topic ENV-2012-304-000099 (Vegetation Clearance) in its entirety;
- (d) Topic ENV-2012-304-000100 (Quarrying) in its entirety;
- (e) Topic ENV-2012-304-000102 (ONL Boundaries), solely as it relates to Farmers of NZ Inc/Thomas Coates Estate Trustees (ENV- ENV-2012-AKL-000136);
- (f) Topic ENV-2012-304-000105 (Visual Amenity Landscapes) in its entirety;
- (g) Topic ENV-2012-304-000107 (Renewable Energy) in its entirety.

62. There is no order as to costs in relation to this consent order.

DATED at Auckland this

12th day of

August

2013



L J Newhook
Acting Principal Environment Judge

