

**Before the Environment Court  
At Auckland  
ENV-2018-AKL**

**Under** the Resource Management Act 1991 (RMA)  
**In the matter of** an appeal under clause 14 of the First Schedule of the RMA  
**Between** **Fire and Emergency New Zealand**  
**Appellant**  
**And** **Kaipara District Council**  
**Respondent**

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**Notice of appeal against decision on Kaipara District Council's Proposed Plan  
Change Number 4, Fire Safety Rules (Land Use) to the Kaipara District Plan**

**Date:** 22 February 2018

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Notice of appeal against decision on Kaipara District Council's Proposed Plan Change Number 4 to the Kaipara District Plan 22.02.18.docx

**To:** The Registrar  
Environment Court  
Auckland

**FIRE AND EMERGENCY NEW ZEALAND (Fire and Emergency)** appeals against the Hearing Panel's decision of 6 December 2017 on Kaipara District Council (**Council**)'s Proposed Plan Change Number 4, Fire Safety Rules (Land Use) to the Kaipara District Plan (**Plan Change 4**).

**The appellant**

- 1 Fire and Emergency is a submitter on Plan Change 4. Its submission (PC4.28) and further submission (FSPC4.56) were made as the New Zealand Fire Service Commission (**Commission**). The Commission became Fire and Emergency under the Fire and Emergency New Zealand Act 2017 (**FENZ Act**) on 1 July 2017.<sup>1</sup> Fire and Emergency is the same legal body as the former Commission, which was constituted under section 4 of the Fire Service Act 1975 (**FS Act**).
- 2 Fire and Emergency is the successor of that original submitter and is therefore the person who holds the right of appeal under clause 14 of the First Schedule to the RMA.
- 3 Fire and Emergency's submission was principally concerned with the provision of firefighting water supplies and firefighting access in new developments to enable it to operate effectively and efficiently in an emergency.
- 4 In order to achieve this, and of particular relevance to this appeal, Fire and Emergency made the following submissions:
  - 4.1 It opposed the proposed deletion of the permitted activity performance standard for a new building requiring water supply for firefighting and access to this supply to comply with the New Zealand Fire Service Firefighting Water

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<sup>1</sup> The FENZ Act has staged commencement dates, with some provisions commencing on the day of Royal Assent on 11 May 2017, and others commencing on 1 July 2017, and 1 July 2018.

Supplies Code of Practice SNZ PAS 4509:2008 (**Code of Practice**) in the Land Use Rules for the Rural and 2 Maori Purposes Zones (**Rural Land Use Rules**) and in the Residential and Business (Commercial and Industrial) Zones (**Urban Land Use Rules**).

- 4.2 It opposed the proposed deletion of the permitted activity performance standard for the construction of a dwelling in the Maori Purposes: Maori Land Zone requiring water supplies to all dwellings to be adequate for firefighting purposes in accordance with the Code where a public supply is not available.
- 4.3 It supported the proposed retention of the requirement for all developments to have water supplies that are adequate for firefighting purposes (including reference to the Code of Practice as a Performance Standard) in the Subdivision Rules for the Rural, Residential, Business (Commercial and Industrial), and Maori Purposes: Treaty Settlement Land Zones.
- 4.4 It supported proposed advice notes that recommended the installation of sprinklers.
- 4.5 It supported the deletion of permitted activity standards and a related note in Rules 13.10.26 and 14.10.26 relating to a 20m setback of buildings from vegetation because the rules apply to urban environments.

### **The decision appealed**

- 5 The Hearing for Plan Change 4 took place on 15 and 16 August 2017. The Hearing Panel comprised of Mr Alan Watson, Ms Burnette Macnicol and Mr Mark Farnsworth.
- 6 Fire and Emergency understands that Mr Farnsworth has previously been involved with plan change hearings involving issues such as those

which PC4 is concerned with. In particular, Mr Farnsworth chaired the Hearing Panel that considered the Proposed Gisborne Regional Freshwater Plan. During that process, he declared that there was the potential for a perception of a conflict of interest to arise with regard to the submission of the (then) New Zealand Fire Service due to his long history of involvement in rural fire matters, including a period where he was the chair of Northland's Rural Fire Coordinating Committee and as a Principal Rural Fire Officer. He indicated that he would stand aside from making any recommendation on that submission accordingly. Mr Farnsworth did not declare a similar conflict in relation to PC4 or any submissions in relation to it.

7 The Hearing Panel made its decision on PC4 on 6 December 2017 (**Decision**). The Hearing Panel notified its Decision in the Northern Advocate on 20 December 2017. Fire and Emergency received notice of the Decision on 20 December 2017. It now appeals that Decision.

8 Fire and Emergency is not a trade competitor for the purposes of section 308D of the RMA.

### **Parts of the Decision appealed**

9 Fire and Emergency appeals the following parts of the Decision:

#### ***Land Use Rules***

9.1 The decision to remove references to the Code of Practice in the permitted activity performance standards for a new building in the Urban Land Use Rules (13.10.26 and 14.10.26) and the Rural Land Use Rules (12.10.26, 15A.10.25 and 15B.10.25).

9.2 The decision to remove the reference to the Code of Practice in the permitted activity performance standard for the construction of a dwelling in the Maori Purposes: Maori Land Zone (Rule 15A.10.3b(c)).

- 9.3 The decision to remove the permitted activity performance standard requiring a building to be located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest from the Rural Land Use Rules (12.10.26, 15A.10.25 and 15B.10.25).

***Subdivision Rules***

- 9.4 The decision to remove references to the Code of Practice in the Subdivision Rules for the Rural, Residential, Business (Commercial and Industrial), and Maori Purposes: Treaty Settlement Land Zones (Rules 12.15.4, 13.14.4, 14.13.4 and 15B.14.4).

***New provisions***

- 9.5 The decision to add a new Issue 2.3.14 to Chapter 2, and in particular, the commentary that follows the issue.
- 9.6 The decision to add new Policies 2.5.17(a)-(c) and to provide a commentary to that Policy.
- 9.7 The decision to add new Methods 2.6.2.5-2.6.2.7.
- 9.8 The decision to include Guidance Notes.

***Other provisions***

- 9.9 The decision to amend Outcome 2.7.13.

**Reasons for appeal**

- 10 The reasons for the appeal are that the proposed provisions are not the most appropriate provisions. In particular, they are not the most appropriate way to achieve Objective 2.4.15, they do not give effect to higher order documents and/or the RMA, they do not enable people and

communities to provide for their health and safety, and they are premised on a flawed section 32AA assessment.

11 In addition:

*Land Use Rules*

11.1 The Panel has misinterpreted and unduly constrained the power to make permitted activity rules in a plan and failed to comply with section 32AA(1)(b). For example, by:

11.1.1 determining that it is inappropriate to have recourse to another party (Fire and Emergency) or document (the Code of Practice) outside of the District Plan in the case of a permitted activity; and

11.1.2 acknowledging that other District Plans make reference to the Code of Practice and noting that the Whanganui District Plan provides a good example of this, but failing to explain under section 32(1)(b)(iii) why the Council is unable to follow a similar approach to these other districts in its District Plan.

11.2 The Panel's section 32AA evaluation fails to properly assess the benefits and costs of retaining references to the Code of Practice in the District Plan, particularly in the Land Use Rules. The Panel has:

11.2.1 insufficient evidence to support its conclusion that retaining references to the Code of Practice is too costly a solution to an event that has a very low probability of occurrence;

11.2.2 attributed undue weight to Fire and Emergency response times from fire stations within the Kaipara district to incidents, particularly in respect of

structural fire events, and the suggestion that any water stored onsite may not be used by Fire and Emergency by the time it arrives at the site concerned;

11.2.3 failed to give due consideration to the importance of suppressing fires to prevent their spread to other structures and vegetation; and

11.2.4 taken into account irrelevant considerations, such as how any water storage solutions adopted will be monitored, and any insurance implications that might result from a fire event where stored water was either absent or could not be accessed.

11.3 The Panel decision to remove the requirement that a building be setback at least 20m from vegetation to reduce the likelihood of the spread of fire from the Rural Land Use Rules is inconsistent with Part 2 of the RMA, namely sections 5(2)(c) , 6(h), 31(1)(a) and (b) and the natural hazard provisions of the Regional Policy Statement for Northland **(RPS)**.

11.4 In the Decision, the Panel fails to properly explain its decision to remove the 20m setback requirement from the Rural Land Use Rules (which was not proposed in Plan Change 4) as required by section 32(1)(b)(iii) of the RMA. In its section 32 report, the Council stated that this provision related more to wild fire situations in rural areas rather than urban issues. The Decision states that deletion of this provision from the Urban Land Use Rules is necessary because requiring such a significant setback from buildings is inappropriate and unreasonable in an urban area. The Decision states that this provision should also be deleted from the Rural Land Use Rules "...for similar reasons to the corresponding urban rule", without any further explanation or justification.

### ***Subdivision Rules***

- 11.5 The Panel's decision to remove references to the Code in the Subdivision Rules for the Residential and Business (Commercial and Industrial) and Maori Land: Treaty Settlement Land Zones is inconsistent with Part 2 of the RMA, namely sections 5(2)(c), 6(h), 31(1)(a) and (b) and RPS Policy 7.1.1, which requires subdivision to be managed to minimise the risks from natural hazards.

### ***New provisions***

- 11.6 The Decision includes the addition of several new provisions in the District Plan which provide for collaboration between the Council and Fire and Emergency on a settlement-by-settlement basis to:

11.6.1 assess the need for dedicated community-based water storage and/or the provision of mobile water storage (Issue 2.3.14);

11.6.2 determine the approach to be taken for the provision of water for firefighting purposes (Policy 2.5.17(b); and

11.6.3 investigate the provision of additional water supply and establish the desirability of providing community water tanks or volunteer fire brigades with mobile tankers or portable dams.

- 11.7 The inclusion of such vague provisions in a district plan is inappropriate and impractical. It is indicative of the Panel's failure to properly examine the most appropriate way to achieve the objectives of Plan Change 4 and identify other reasonably practicable options to this end under section 32(1) of the RMA. The evidential and RMA basis for imposing these provisions is unclear. If the Council and Fire and

Emergency do collaborate in the manner envisaged by these provisions, their long-term inclusion in the District Plan will become redundant.

- 11.8 The 'non-statutory' table and the balance of the Guidance Notes are equally ambiguous and inappropriate in RMA terms, and contain inaccuracies.

### **Relief sought**

12 The following relief is sought by Fire and Emergency:

- 12.1 References to the Code of Practice in the permitted activity performance standards for a new building in the Urban Land Use Rules (13.10.26 and 14.10.26) and the Rural Land Use Rules (12.10.26, 15A.10.25 and 15B.10.25) are retained.
- 12.2 The reference to the Code in the permitted activity performance standard for the construction of a dwelling in the Maori Purposes: Maori Land Zone (Rule 15A.10.3b(c)) is retained.
- 12.3 The permitted activity performance standard requiring a building to be located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest in the Rural Land Use Rules (12.10.26, 15A.10.25 and 15B.10.25) is retained.
- 12.4 References to the Code of Practice in the Subdivision Rules for the Rural, Residential, Business (Commercial and Industrial) and Maori Purposes: Treaty Settlement Land Zones (Rules 12.15.4, 13.14.4, 14.13.4 and 15B.14.4) are retained.
- 12.5 The commentary to Issue 2.3.14 is deleted from Chapter 2 and replaced with commentary proposed in the section 42A report.

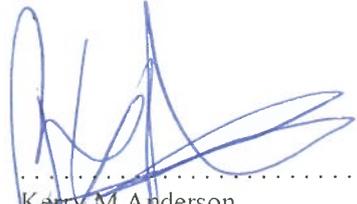
- 12.6 Policies 2.5.17(a)-(c) and associated commentary are deleted from Section 2.5 and replaced with the wording set out in the Fire and Emergency submission.
- 12.7 Methods 2.6.2.5-2.6.2.7 are deleted from Other Methods and replaced with the wording set out in the Fire and Emergency submission.
- 12.8 The Guidance Notes and associated table are deleted in their entirety.
- 12.9 Outcome 2.7.13 is deleted and replaced with the wording set out in the Fire and Emergency submission.
- 12.10 Such further or other relief, or consequential or other amendments to these or other provisions, considered appropriate and necessary to address Fire and Emergency's concerns.
- 12.11 Cost of this appeal.

**Documents attached**

- 13 Fire and Emergency attaches the following documents to this notice:
  - 13.1 Appendix A - a copy of its submission and further submission on the Proposed Plan.
  - 13.2 Appendix B - a copy of the relevant decision.
  - 13.3 Appendix C - a list of the names and addresses of persons to be served with a copy of this notice.

14 For those listed in Annexure C, who are served with a copy of this notice of appeal, a copy of the submissions and decision are not attached. If you would like to obtain a copy of these documents please contact the appellant on the details listed below.

**Date:** 22 February 2018



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Kerry M Anderson  
Counsel for Fire and Emergency  
New Zealand

This document is filed by Kerry Anderson of DLA Piper New Zealand, solicitor for Fire and Emergency New Zealand.

The address for service on Fire and Emergency New Zealand is at:

DLA Piper New Zealand  
50-64 Customhouse Quay  
Wellington 6140

Documents for service on Fire and Emergency New Zealand may be:

- left at the above address for service, or
- posted to the solicitor at PO Box 2791, Wellington 6140, or
- transmitted to the solicitor by fax on +64 4 472 7429.

Please direct enquiries to:

Kerry Anderson  
Tel +64 4 474 3255  
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### **Advice to recipients of copy of notice of appeal**

#### *How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

*How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission and (*or or*) the decision (*or* part of the decision) appealed. These documents may be obtained, on request, from the appellant.

*Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

**Appendix A - submissions on the Proposed Plan**

## Online Submission

### PC4: Fire Safety Rules (Land Use)

**Submitter**

**Company Name:** New Zealand Fire Service

**Title:** Mr

**First Name:** Jaiman

**Last Name:** Patel

If others make a similar submission, I will consider presenting a joint case with them

Could I gain an advantage in trade competition with this submission?: No

I am directly affected by an effect of the subject matter of the submission that: (a) adversely affects the environment; and (b) does not relate to trade competition or the effect of the trading competition: No

The body of this submission have been uploaded from a file and the content of that file is in the following page(s)

## Form 5

Submission on publicly notified proposal for policy statement or plan, change or variation

*Clause 6 of Schedule 1, Resource Management Act 1991*

**To:** Kaipara District Council (the Council)  
**Name of submitter:** New Zealand Fire Service Commission (the Commission)  
**This is a submission on:** Plan Change 4 – Fire Safety Rules (Land Use) (PC4)

**The Commission could not gain an advantage in trade competition through this submission.**

**The specific provision of PC4 that this submission relates to are:**

PC4 in its entirety.

**The Commission's submission is:**

The Commission is the governing body that controls the New Zealand Fire Service (NZFS). The Commission is also the National Rural Fire Authority (NRFA). The Fire Service Act 1975 (FSA) and the Forest and Rural Fires Act 1977 establish the governance, management and operational arrangements for these organisations. The NZFS trains for and responds to structural fires and other emergencies whereas the NRFA supports local Rural Fire Authorities (RFA) in training for, and responding to rural wildfires.

It is a matter of prime importance for the Commission to take an active and co-ordinating role in the promotion of fire safety in New Zealand, through reducing the incidence of fire and the attendant risk to life and property; and through seeking unity and completeness of fire safety law and practice as set out in section 20 of the FSA. The Commission is required to provide the New Zealand Government with a Statement of Intent (SOI) that sets out how the Commission will achieve its statutory responsibilities.<sup>1</sup> The SOI outlines the overall outcomes the Commission seeks to achieve, including the promotion of fire safety, fire prevention activities, extinguishing fires in a timely manner and other emergency responses.

It is essential that the NZFS is able to meet its responsibility of providing efficient and effective emergency services to all New Zealanders, in order to avoid, remedy or mitigate the adverse effects of fire and other emergencies. To do so the Commission requires, amongst other matters adequate water supply for firefighting activities and adequate access to properties for fire appliances to ensure that the NZFS can respond to emergencies.

The Commission's main areas of concern are the provision of firefighting water supplies and the provision of firefighting access in new developments to enable the New Zealand Fire Service (NZFS) to operate effectively and efficiently in an emergency. In order to achieve this, the Commission seeks compliance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 (Code of Practice). The Code of Practice is a non-mandatory New Zealand Standard that sets out standards for water supply and access design which meet the

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<sup>1</sup> New Zealand Fire Service Commission Statement of Intent, 2014 – 2018, Presented to the House of Representatives pursuant to Section 149 of the Crown Entities Act 2004.

operational requirements of the NZFS for both reticulated and non-reticulated areas. The requirements for firefighting water in the Code of Practice are based on building risk. The Commission seeks provisions in plans throughout New Zealand that require sufficient water for firefighting and also appropriate firefighting access onto properties so that fire appliances and other vehicles can access and respond to emergencies.

The Code of Practice provides a number of options for adequate water supply and details a number of minimum standards for different situations including:

- Firefighting water storage requirements;
- Standards regarding accessibility to firefighting water; and
- Standards regarding the location of the firefighting water in relation to the fire hazard (building or vegetation etc.).

The Code of Practice provides flexibility in the methods for providing water supplies that can include tank water, swimming pools or permanent rivers and ponds.

PC4 seeks to change the regulatory regime that applies to the provision of firefighting water supply in Kaipara District in a manner that has the potential to impact on the efficiency and effectiveness of the NZFS. It is considered that the elements of the approach set out in PC4 may compromise the ability of the Commission to meet its statutory obligations by deleting the requirement for land use developments to comply with the Code of Practice.

As a result, PC4, fails to achieve the sustainable management purpose of the Resource Management Act 1991 (RMA) by compromising the ability of people and communities to provide for their health and safety. Furthermore, PC4 does not appropriately provide for the management of the potential adverse effects of fire on people, property and the environment and does not appropriately give effect to the Regional Policy Statement for Northland (2016) (RPS), including Policy 7.1.1 that requires:

*“Subdivision, use and development of land will be managed to minimise the risks from natural hazards by:*

- (a) Seeking to use the best available information, including formal risk management techniques in areas potentially affected by natural hazards;*
- (b) Minimising any increase in vulnerability due to residual risk;*
- (c) Aligning with emergency management approaches (especially risk reduction);*
- (d) Ensuring that natural hazard risk to vehicular access routes and building platforms for proposed new lots is considered when assessing subdivision proposals; and*
- (e) Exercising a degree of caution that reflects the level of uncertainty as to the likelihood or consequences of a natural hazard event.”*

The Commission is also concerned that PC4 does not have sufficient regard to the Fire and Emergency New Zealand Bill, including unified fire services, the mandatory requirement to prepare a Code of Practice, the main functions and objectives of Fire and Emergency New Zealand and the likely mandatory requirement to comply with the Code of Practice.

The Commission considers that PC4 does not represent the most appropriate means of exercising the Council’s functions, having regard to the efficiency and effectiveness of other available means (including improved implementation and administration of the status quo – Operative District Plan

provisions) and therefore is not appropriate in terms of section 32 of the RMA. On this basis, the Commission is concerned that the requirements of section 32 have not been met and records this concern here as required by section 32A.

*Appendix A* to this submission sets out the Commission's submission in detail, including amendments sought by the Commission to specific provisions of PC4 and the reasons for the relief sought.

**The NZFS Commission seeks the following decision from the local authority:**

Amend PC4 to achieve the relief sought in Appendix A including any further of consequential amendments that may be necessary to address the matters raised in this submission.

**The Commission wishes to be heard in support of its submission.**

**If others make a similar submission, the Commission will consider presenting a joint case with them at the hearing.**

**Address for service of submitter:** c/o Beca Ltd  
PO Box 6345  
Wellesley Street  
AUCKLAND 1141

**Telephone:** +64 9 300 9756

**Email:** jaiman.patel@beca.com

**Contact person:** Jaiman Patel



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(Signature of person authorised to sign on behalf of the Commission)

**Date:** 25 November 2016

## Appendix A: New Zealand Fire Service Commission Submission on Proposed Plan Change 4 to the Kaipara District Plan

The following table sets out the decisions sought by the Commission, including specific amendments to the provisions of Proposed Plan Change 4. These amendments are shown in red.

Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
Chapter 2 - District Wide Resource Management Issues, 2.3 Significant Issues for the Sustainable Management and Development of the District, <b>new Issue 2.3.14</b>	<b>Support in part</b>	<p>At a high level the Commission supports the recognition of the potential adverse effects of fire as a significant resource management issue for the District. However, the Commission considers that proposed new Issue 2.3.14:</p> <ul style="list-style-type: none"> <li>• is not consistent with the purpose of district plans set out in section 72 of the RMA, nor does it directly relate to the functions of the Council under the RMA as set out in section 31, rather the explanatory text relates to some of the functions of the NZFS that are performed in accordance with the FSA;</li> <li>• is inconsistent with the level of detail, specificity and manner of expression in all other issues in section 2.3 of the District Plan;</li> <li>• inappropriately confines the issue to a consideration of fires in buildings and structures and does not consider the potential effects of fire spread;</li> <li>• fails to recognise the importance of swift access to firefighting water at the time a fire crew arrives at the site of a fire;</li> <li>• inappropriately and disproportionately elevates the confined matter of emergency management responses to fire alongside matters of national and regional significance identified in section 6 of the RMA and Part 2 of the RPS; and</li> <li>• the 'issue' of enabling people and communities in the District to provide for their health and safety through the management of the potential adverse effects of fire on the environment, including the recognition of the role of infrastructure, is better and more appropriately addressed more generically through Issue 2.3.7 and Issue 2.3.8.</li> </ul>	<b>Delete</b> proposed Issue 2.3.14 in its entirety.

Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
Chapter 2 - District Wide Resource Management Issues, 2.4 District Wide Objectives, <b>new Objective 2.4.15</b>	<b>Support in part</b>	<p>The Commission generally supports proposed Objective 2.4.15 subject to expanding the proposed Objective to addressing fire safety measures in generally, as opposed to confining the objective to fires in buildings and structures as proposed. Such an approach:</p> <ul style="list-style-type: none"> <li>• reflects the new and merged Fire and Emergency New Zealand organisation, including its likely legislative purpose set out in the Fire and Emergency New Zealand Bill;</li> <li>• recognises the risk of all fires;</li> <li>• aligns with the Commission’s statutory responsibility under the FSA;</li> <li>• better gives effect to Policy 7.1.1 of the RPS, which does not distinguish or confine emergency management approach and risk reduction to buildings and structures;</li> <li>• is the most appropriate way to achieve the sustainable management purpose of the Act in accordance with section 32(1)(a), that is the appropriate statutory test for an objective.</li> </ul>	<p><b>Amend</b> proposed Objective 2.4.15 as follows:  <b>“2.4.15 To encourage and promote fire safety measures <del>for buildings and structures</del> to minimise fire risk to life, property and the environment.”</b></p>
Chapter 2 - District Wide Resource Management Issues, 2.5 District Wide Policies, <b>new Policies 2.5.17(a), (b) and (c)</b>	<b>Support in part</b>	<p>The Commission generally supports proposed Policies 2.5.17(a), (b) and (c) to the extent that the proposed Policies generally seek to achieve firefighting water supplies and fire risk reduction across the District. However, the proposed Policies, and associated explanatory text, fail to consider the importance of access for fire appliances to that water supply in a manner that is consistent with the Code of Practice (and the subsequent rules that implement these proposed Policies). Further, the Commission considers that the explanatory text that accompanies the proposed Policies:</p> <ul style="list-style-type: none"> <li>• fails to recognise that the Code of Practice as one of the primary fire risk reduction tools used by the NZFS;</li> <li>• fails to recognise the broader adverse effects of fire by only addressing the risk of fire spread.</li> </ul> <p>The Commission seek limited amendments to the Policies and accompanying explanatory text to:</p>	<p><b>Amend</b> proposed Policies 2.5.17 (a), (b) and (c) as follows:  <b>“2.5.17(a) To ensure new reticulated sites within the Reticulated Services Boundary are provided with an adequate supply of water for fire fighting, and access to that water supply, for the reasonably anticipated land use;</b>  <b>2.5.17(b) To <del>promote</del> ensure in non-reticulated areas that there is an adequate alternative supply of water for fire fighting purposes, and access to that water supply, for the reasonably anticipated land use;</b>  <b>2.5.17(c) To encourage education on fire hazard and on fire risk reduction</b></p>

Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
		<ul style="list-style-type: none"> <li>• better give effect to Policy 7.1.1 of the RPS;</li> <li>• is the most appropriate way to achieve proposed Objective 2.4.15 (including as amended by this submission);</li> <li>• better enable the Commission to meet its statutory obligations;</li> <li>• reflect the respect accorded to New Zealand Standards by the Environment Court as set out in <i>McIntyre v Christchurch City Council</i> [1996] NZRMA 286; and</li> <li>• achieve the purpose of the RMA by enabling people and communities to provide for the health and safety and by enabling the appropriate mitigation of natural hazards and management of the adverse effects of fire on people, communities, property and the environment.</li> </ul>	<p><b>measures.</b></p> <p><i>The District Plan <del>includes can promote</del> measures at land use and subdivision stages to <del>avoid or minimise the potential adverse effects of fire on people, property and the environment.</del> <del>assist in minimising fire risk spread for the community.</del> <u>The New Zealand Fire Service Firefighting Supplies Code of Practice SNZ PAS 4509:2008 is a New Zealand Standard that specifies what constitutes an adequate water supply, and access to it, for firefighting purposes.</u> <del>However, provisions in a District Plan are not the only method of minimising fire risk. The Building Code contains measures that are applied at the time a building consent is lodged. Council or the community for areas where there is no reticulated water supply can provided static supplies for fire fighting purposes in the fore of tanks situated at strategic locations that can service a wider area.</del></i></p>
Chapter 2 - District Wide Resource Management, 2.6 Methods, 2.6.2 Other Methods, <b>new Methods 2.6.2.5, 2.6.2.6, 2.6.2.7 and 2.6.2.8</b>	<b>Support in part</b>	<p>The Commission does not oppose the proposed 'Other Methods' 2.6.2.5, 2.6.2.6, 2.6.2.7 and 2.6.2.8 and comments as follows:</p> <ul style="list-style-type: none"> <li>• the detail, specificity and form of the proposed Other Methods is inconsistent with the form and content of Section 2.6 of the District Plan;</li> <li>• the proposed Plan Change does not include a parallel District Plan Method in Section 6.1 of the District Plan to address the approach taken in the District Plan to addressing the adverse effects of fire and implementing proposed Policies 2.5.17(a), (b) and (c);</li> <li>• the investigation of the potential use of communal water supplies, as set out in proposed Other Method 2.6.2.5, in a manner that achieves compliance with the Code of Practice is acknowledged;</li> </ul>	<p><b>Amend</b> proposed new Other Methods 2.6.2.5, 2.6.2.6, 2.6.2.7 as follows:</p> <p><b>"2.6.2.5 Investigate the provision of additional water supply for fire fighting purposes <u>consistent with New Zealand Fire Service Firefighting Supplies Code of Practice SNZ PAS 4509:2008</u> in non-reticulated residential areas where there is a fire service (e.g. Mangawhai, Kaiwaka and Te Kopuru) e.g. Community water tanks or providing volunteer fire</b></p>

Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
		<ul style="list-style-type: none"> <li>implementing the Building Code, as set out in proposed Other Method 2.6.2.6 is a statutory obligation on the Council and not necessary in the context of the Council's functions under the RMA;</li> <li>sprinkler systems are considered to be one of the most efficient means of fighting structural fires and therefore the Commission supports the promotion of the installation of sprinkler systems (consistent with the advice in the Code of Practice), however, sprinkler systems require a building consent and therefore should be promoted when a building is designed rather than as an advice note to a building consent; and</li> <li>support for the NZFS's education initiatives is acknowledged and appreciated.</li> </ul>	<p><b>brigades with mobile tankers or portable;</b></p> <p><b>2.6.2.6 Implementation of the Building Code at the time of building consents;</b></p> <p><b>2.6.2.7 Promote the installation of Sprinkler Systems by including an Advice Note on <u>resource consents</u> and/or <del>all</del> Building Consents; ..."</b></p>
Chapter 2 - District Wide Resource Management Issues, 2.7 Outcomes, <b>new Outcome 2.7.13</b>	<b>Support in part</b>	<p>The Commission supports proposed Outcome 2.7.13 subject to limited amendments because the Outcome is consistent with:</p> <ul style="list-style-type: none"> <li>the Commission's statutory obligations;</li> <li>the Objective and Policies of Proposed Plan Change 4 as amended by this submission;</li> <li>Policy 7.1.1 of the RPS; and</li> <li>the sustainable management purpose of the RMA.</li> </ul>	<p><b>Amend</b> proposed Outcome 2.7.13 as follows:</p> <p><b>"2.7.13 A community where the risks to life, <u>property</u> and the surrounding environment from fire <u>is are</u> minimised."</b></p>
<b>Rule 12.10.26 (Rural), Rule 15A.10.25 (Maori Purposes: Maori Land and Maori Purposes) and Rule 15B.10.25 (Treaty Settlement Land Zones)</b>	<b>Support in part</b>	<p>The Commission opposes the proposed deletion of the requirement for a new building to comply with the Code of Practice in Rules 12.10.26, 15A.10.25 and 15B.10.25 because such a deletion:</p> <ul style="list-style-type: none"> <li>does not accord appropriate respect for the Code of Practice as a New Zealand Standard as set out in <i>McIntyre v Christchurch City Council</i> [1996] NZRMA 286;</li> <li>is not consistent with the importance afforded to firefighting water by section 14(3)(e) of the RMA;</li> <li>is not the most appropriate way to achieve proposed Objective 2.4.15 (including as amended by this submission);</li> <li>does not appropriately implement proposed Policies 2.5.17(a), (b) and (c) (including as amended by this submission);</li> <li>does not give effect to Policy 7.1.1 of the RPS;</li> </ul>	<p><b>Retain</b> Clause (b) in the Operative Plan Rules 12.10.26, 15A.10.25 and 15B.10.25, do not delete Clause (b) as proposed.</p> <p><b>Delete</b> Clause (c) in Rules 12.10.26, 15A.10.25 and 15B.10.25 as proposed.</p> <p><b>Include</b> Advice Note 2 in Rules 12.10.26, 15A.10.25 and 15B.10.25 as proposed.</p>

Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
		<ul style="list-style-type: none"> <li>• does not enable the Commission to meet its statutory obligations;</li> <li>• does not appropriately mitigate natural hazards and the adverse effects of fire on people, communities, property and the environment; and</li> <li>• does not enable people and communities to provide for their health and safety and therefore does not achieve the purpose of the RMA.</li> </ul> <p>Further, the Commission considers that the Section 32 Evaluation Report fails to appropriately consider and give appropriate weight to the following matters:</p> <ul style="list-style-type: none"> <li>• Policy 7.1.1 of the RPS that requires subdivision, use and development of land to be managed to minimise the risks of natural hazards by, amongst other matters, <i>“aligning with emergency management approaches (especially risk reduction)”</i>;</li> <li>• the provisions of the Fire and Emergency New Zealand Bill that was introduced in Parliament in June 2016 and includes a requirement to prepare a Code of Practice and is likely to require mandatory compliance with the Code of Practice through the Bill’s offence provisions (Department of Internal Affairs regulatory impact statement ‘Fire Service Review: Detailed Policy Design’ 7 April 2016, paragraph 41.1);</li> <li>• the inherent flexibility included in the Code of Practice that means that compliance can be achieved by a number of means rather than just the 45,000 litre static water supply set out in Part 1 of the Section 32 Evaluation Report;</li> <li>• the full range of solutions and approaches taken in other jurisdictions, to the extent that the Section 32 Evaluation Report in Sub-Section 2.3 fails to consider those district plans that include provisions that are similar to the Operative Kaipara District Plan, for example the recent decisions made by the Independent Hearings Panel on the Christchurch Replacement District Plan (a district that includes remote areas on Banks Peninsula);</li> <li>• the costs of providing sprinklers in a manner that is consistent with the evaluation of costs of other methods that may achieve compliance with the Code of Practice; and</li> </ul>	

Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
		<ul style="list-style-type: none"> <li>the extent to which the “community frustration” mentioned in Part 1 of the Section 32 Evaluation Report is a result of incorrect implementation of the Operative District Plan (by apply a rigid 45,000 litre static water supply standard, rather than the full ambit of solutions available to achieved compliance with the Code of Practice), such that the proposed Plan Change is not necessary to address the “community frustration” and achieve the outcome sought.</li> </ul> <p>The Commission therefore seeks the retention of the requirement to comply with the Code of Practice in Rules 12.10.26, 15A.10.25 and 15B.10.25, and welcomes the opportunity to continue to work with the Council to ‘streamline’ the implementation of these Rules in a manner that enables a full consideration to the various approaches that may be deployed to achieve compliance with the Code of Practice, including the installation of sprinklers.</p> <p>Further, the Commission supports the proposed deletion of the clause in the Rules that requires compliance with NZS 9231:1971 on the basis that the Standard no longer exists.</p> <p>The Commission also supports the proposed Advice Note that recommends the installation of sprinklers on the basis that sprinkler systems are considered to be one of the most efficient means of fighting structural fires such an Advice Note is consistent with advice included in the Code of Practice. That said, the Commission considers that the Advice Note alone does not achieve the purpose of the RMA on the basis that advice notes do not have statutory weight.</p>	
<b>Rule 13.10.26 (Residential), Rule 14.10.26 (Commercial and Industrial)</b>	<b>Support in part</b>	<p>For the reasons set out above, the Commission:</p> <ul style="list-style-type: none"> <li>opposes the proposed deletion of the requirement for a new building to comply with the Code of Practice in Rules 13.10.26 and 14.10.26;</li> <li>supports the proposed deletion of the clause in the Rules that requires compliance with NZS 9231:1971; and</li> <li>supports the proposed Advice Note that recommends the installation of sprinklers.</li> </ul> <p>The Commission also acknowledges the rationale given by the Council for the proposed deletion of Clause (d) and Note 1, which relate to the</p>	<p><b>Retain</b> Clause (b) in the Operative Plan Rules 13.10.26 and 14.10.26, do not delete Clause (b) as proposed.</p> <p><b>Delete</b> Clause (c) in Rules 13.10.26 and 14.10.26 as proposed.</p> <p><b>Include</b> Advice Note 1 in Rules 13.10.25 and 14.10.25 as proposed.</p>

Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
		proximity of vegetation to buildings and does not oppose their deletion given that the rules apply in urban environments.	
<b>Rule 15A.10.3b(c)</b>	<b>Oppose</b>	For the reasons set out above, the Commission opposes the proposed deletion of the requirement for a new dwelling to comply with the Code of Practice in Rule 15A.10.3b(c).	<b>Retain</b> reference to the Code of Practice as it is currently included in Operative Plan Rule 15A.10.3b(c).
<b>Performance Standards - Rule 12.15.4 (Rural), Rule 13.14.4 (Residential), Rule 14.13.4 (Commercial and Industrial), Rule 15B.14.4 (Maori Purposes: Treaty Settlement Zones).</b>	<b>Support</b>	<p>The Commission supports the proposed retention of the requirement for all developments to have water supplies that are adequate for firefighting purposes, including reference to the Code of Practice as a Performance Standard in Rules 12.15.4, 13.14.4, 4.13.4 and 15B.14.4. The retention of these Performance Standards:</p> <ul style="list-style-type: none"> <li>• is consistent with the importance afforded to firefighting water by section 14(3)(e) of the RMA;</li> <li>• is the most appropriate way to achieve proposed Objective 2.4.15 (including as amended by this submission);</li> <li>• appropriately implements proposed Policies 2.5.17(a), (b) and (c) (including as amended by this submission);</li> <li>• gives effect to Policy 7.1.1 of the RPS;</li> <li>• enables the Commission to meet its statutory obligations;</li> <li>• appropriately mitigate natural hazards and the adverse effects of fire on people, communities, property and the environment; and</li> <li>• achieves the purpose of the RMA by enabling people and communities to provide for their health and safety.</li> </ul>	<b>Retain</b> the Operative Plan Performance Standards in Rules 12.15.4, 13.14.4, 4.13.4 and 15B.14.4 as proposed.
<b>References to the Kaipara District Council Engineering Standards 2011</b>	<b>Support</b>	The Commission supports the proposed retention of references to the Kaipara District Council Engineering Standards throughout the District Plan to the extent that these Standards, in turn, require reticulated water supplies to be in accordance with the Code of Practice. The Commission's support is for the reasons set out above (in relation to subdivision performance standards).	<b>Retain</b> references to the Kaipara District Council Engineering Standards 2011 throughout the District Plan.

Further Submission in support of, or in opposition to,  
submissions on the Proposed Kaipara District Plan Change 4

**Clause 8 of Schedule 1, Resource Management Act 1991**

**FORM 6 Resource Management (Forms, Fees and Procedures)**

<b>1. Further Submitter Details:</b>	
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<b>2. Interest in the submission</b>
<p>The New Zealand Fire Service Commission (the Commission) is a party who has an interest in the Proposed Kaipara District Plan Change 4 that is greater than the interest the general public has. This is for the following reasons:</p> <ul style="list-style-type: none"><li>▪ The Commission's role includes promoting fire safety and fire prevention, and extinguishing fires. The Proposed Kaipara District Plan provides an opportunity to better facilitate these activities, by including appropriate objectives, policies and rules which will enable people and communities to provide for their social and economic wellbeing, and for their health and safety with regard to fire safety, fire prevention and fire extinction. It is also directly affected by some of the submissions made, particularly those that will result in a reduced ability to effectively fight fires.</li><li>▪ It is essential that the Commission is able to meet its responsibility of providing an efficient and effective emergency service to all New Zealanders, so as to avoid, remedy or mitigate the adverse effects of fire and other emergencies (as required by the Fire Service Act 1975).</li><li>▪ The Commission is the governing body that controls the New Zealand Fire Service (NZFS) and the National Rural Fire Authority (NRFA).</li></ul>

- The Fire Service Act 1975 and the Forest and Rural Fires Act 1977, establish the governance management, and operational arrangements for protecting life and property from fire in New Zealand.

### 3. Request to be heard in support of further submission

The Commission **does** wish to be heard in support of its further submission.

If others make a similar submission, the Commission will consider presenting a joint case with them at a hearing.

Appendix 1 to this submission sets out the detail of the further submission of the Commission.

### 4. Signature of person authorised to sign on behalf of the further submitter



\_\_\_\_\_ Date: 3<sup>rd</sup> April 2017

**Jaiman Patel**

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**If others make a similar submission I will consider presenting a joint case.**

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## **Appendix 1 – Further Submission of the Commission**

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
PC4.9 Clive Boonham	PC4.9.1	Role of Code in the District Plan	Incorporation of Fire Safety Rules based on NZFS Code of Practice was illconceived and done without consideration of the legal situation; whether contents of code were lawful; ramifications on amenity values of district; cost to individuals to comply with the Code.	Support in part	The NZFS supports the withdrawal of Proposed Plan Change 4, due to the current plan already providing reference to the NZFS Code of Practice (the Code).  The NZFS opposes the request to remove the Code in its entirety within the District Plan. It is essential that the NZFS is able to meet its responsibility of providing efficient and effective emergency services to all New Zealanders, in order to avoid, remedy or mitigate the adverse effects of fire and other emergencies. The production of the Code of Practice is a mandatory requirement under the Fire Service Act and has been Gazetted by the National Commander.	Allow in part
	PC4.9.2	Amenity	If allowed to continue it will turn Mangawhai, as an example, into a tank town denuded of all vegetation and trees - an example being the area on the causeway on Molesworth Street opposite the Museum.	Oppose	The New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 (Code of Practice) requires water to be accessible for firefighting via a connection point, but does not state the connection point has to be directly on any tank provided for firefighting purposes. This enables flexibility in the location of tanks, if tanks are installed for firefighting purposes.	Disallow submission
	PC4.9.3	Costs to Comply	Rules were side-stepped to allow smaller tanks and modified requirements in respect of access and special couplings but only on obtaining resource consents at great cost (Evaluation shows that 177 consents have been granted with no indication of how many applicants installed the standard 45,000 litre tanks).	Oppose in Part	The Code of Practice allows applicants to submit their own alternative methods of obtaining a sufficient water supply. The NZFS then reviews alternative proposals on a case by case basis to confirm if they will meet the firefighting needs. This flexibility is enabled through Section 4.4. of the Code of Practice. Depending on circumstances examples of alternatives may include smaller tanks, swimming pools or permanent ponds or streams. The Code of Practice does not rigidly require the installation of 45,000 litre tanks as the submitter suggests.	Disallow in part
	PC4.9.4	Legislation	Some of the changes are welcome but other simply perpetuate the confusion that surrounds the NZFS Code of Practice and whether it is legally applicable to the RMA and the Building Act.	Oppose in Part	The supply of water to a building, as opposed to within a building, is not provided for under the Building Act or Building Code which have a different purposes. The implementation of the Code of Practice within the District Plan is consistent with the purpose of the RMA.	Disallow in part
	PC4.9.13	Rural and Maori Purpose Zone Rules	Rural and Maori Purpose Zones have retained access for fire service vehicles and the 20 metre vegetation rule for vegetation and trees including scrublands. This will prevent rural dwellers from beautifying the gardens immediately adjacent to their house. Who is to distinguish what is garden and what is scrub or shrubland. The 20 metre setback is inappropriate for NZ conditions and seems to be taken out of a Code of Practice for Victoria, Australia. How many houses have been destroyed by wildfires that have resulted from rose beds, fruit trees and ornamental shrubs surrounding houses. Is the KDC going to appoint an inspector of rural gardens to ensure there is not vegetation within 20 metres of a house?	Oppose	This is a legitimate issue, as recent experience of the Port Hills Fires out of Christchurch demonstrates. The NZFS accepts that there is a distinction between typical ornamental garden planting and larger scale, contiguous vegetation growing in close proximity to buildings. The NZFS's concern relates to the latter type of vegetation, particularly where it predominately comprises species that are not of low combustibility or that provide for rapid fire spread (such as, for example, tea tree species). A more nuanced plan provision could be developed to cater for this distinction.	Disallow submission

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
	PC4.9.17	Role of Code in the District Plan	The Code of Practice is not a statutory document and it is not mandatory for Council to include it in rules in the District Plan. There is no interface between the Code of Practice in the Fire Service Act with other legislation which is relevant to local authorities such as the RMA and Building Act. The Code of Practice is simply a set of standards for water mains and has no relevance to any other matters relating to firefighting and does not impose any requirements in respect of the RMA or Building Act.	Oppose	The implementation of the Code of Practice is an appropriate means of avoiding, remedying and mitigating potentially significant adverse effects. There have been many cases where the Environment Court has imposed conditions requiring firefighting water supply on consents, for example <i>Puwerā Maori Ancestral Land Unincorporated Group v Whangarei DC [2016] NZEnvC 94</i> ; and <i>Sustainable Ventures Ltd v Tasman District Council [2015 NZEnvC 174]</i> . This confirms that implementing the Code of Practice through the Resource Management Act is appropriate. The scope of the Code of Practice is not statutorily limited to mains supply adequacy as the submitter suggests.	Disallow submission
	PC4.9.18	Legislation	Section 30 of the Fire Services Act deals with: Use of water in mains for fire protection, fire fighting, and hazardous substances emergency protection. Note that s30 deals solely with water mains and water mains only. The duties of the National Commander in respect of water mains are set out in s30(2), and under s30(3) the National Commander is obliged to publish a Code of Practice specifying standards for water supply volume and pressure for water mains. The Code of Practice cannot include other matters such as access for fire trucks, hard-stands and turning circles for fire trucks, other forms of water supply that are not water mains, special couplings or restrictions on vegetation around houses. The Code of Practice as drafted goes way beyond the limitations imposed by section 30(3).	Oppose	The NZFS disagrees the Code of Practice is beyond the limitations of section 30. Section 30(2) enables NZFS to check the adequacy of water supply concerning any property the Fire Service is under obligation to protect, this is not limited to reticulated properties. This includes the testing of water mains, but does not specifically exclude alternative and/or onsite water supply methods.	Disallow submission
	PC4.9.19	Legislation	Under s21(6) of the Fire Service Act states that 'the Minister shall not approve any code of practice or standard...which has the effect of requiring any building to achieve performance criteria additional to or more restrictive than specified in the Building Act 2004 or in the Building Code'. The Code of Practice can have no application to the issue of building consents. The National Commander does not have the statutory power to include such matters under section 30(3).	Neutral	The supply of water to a building, as opposed to within a building, is not provided for under the Building Act or Building Code which have a different purpose. The Code of Practice does not require more restrictive or additional criteria as the Building Act does not address the supply of water to a building. The NZFS agrees this is consistent with section 21(6) of the Fire Service Act, although that addresses different matters to a Code of Practice confirmed under section 30.	Acknowledge Submission
	PC4.9.20	Role of Code in the District Plan	The Foreword to the Code tends to embellish the powers that the NZFS derives from the Code of Practice. For instance, it states that the Code will form the basis of a partnership between the Fire Service and territorial authorities. The Evaluation appears to accept this: '...Council is supportive of the intent of NZFS's document that it forms the basis of a partnership between NZFS and territorial authorities and be used by territorial authorities in rules regulating subdivisions in the District Plan. Council and NZFS would then achieve a common objective in respect of providing water supplies for firefighting purposes to facilitate fire safe communities'. To be blunt, there is no such statutory partnership and there is no mandate for such matters to be included in the Code of Practice.	Oppose	The Fire and Emergency New Zealand (FENZ) Bill has passed its second reading and is currently in the House of the Whole Committee. Whilst there has been no confirmation of an enactment date, it is likely to be later in 2017. As it is currently written FENZ will be required to develop a Code of Practice in consultation with local authorities (s63(2)) which is then subject to approval by the Minister. This further emphasises the intent for the Commission and local authorities to work together to provide for the safety and wellbeing of communities. The current Code of Practice has been embedded into consents through first instance decisions on district plans and Environment Court caselaw, for example <i>Puwerā Maori Ancestral Land Unincorporated Group v Whangarei DC [2016] NZEnvC 94</i> ; and <i>Sustainable Ventures Ltd v Tasman District Council [2015] NZEnvC 174</i> . This confirms that implementing the Code of Practice through the Resource Management Act is appropriate.	Disallow submission

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
	PC4.9.21	Legislation	Under s21 of the Fire Services Act the Fire Service Commission's role is to seek to achieve co-ordination with territorial authorities along with all other authorities, departments and professions in respect of fire safety. The functions of the Commission in promoting fire safety are set out in s21(2). They relate to the dissemination of knowledge, education, and publicity about fire safety, campaigns and research and do not relate to setting obligatory guidelines or standards that relate to the supply of water for fire fighting or the issue of consents under the RMA or in respect of subdivisions.	Oppose in Part	The NZFS disagrees this is the only role under s21. In addition to the identified matters, section 21(2)(g) states that the functions of the commission shall include "seeking continuously new ways to reduce the incidence of fire and the risk to life from fire". Having adequate water on site is essential to reduce the risk to life from fire. The focus on section 21 of the Fire Service Act also omits other important functions, such as the National Commander's obligations under section 170 to: make provision in every fire district for the prevention, suppression and extinction of fire and the safety of persons endangered by fire; and to make provision for cooperation between the NZFS and local authorities.	Disallow in part
	PC4.9.22	Legislation	While it is accepted practice that it (the Code of Practice) is reviewed every five years, that practice had not been followed. The last review was in 2008. In fact there is no statutory basis for the review of the Code.	Oppose in Part	The Fire and Emergency New Zealand (FENZ) Bill has passed its second reading and is currently in the House of the Whole Committee. Whilst there has been no confirmation of an enactment date, it is considered likely to be later in 2017. As it is currently written FENZ will be required to develop a Code of Practice in consultation with local authorities (s63(2)) which is then subject to approval by the Minister. As currently drafted there will be three yearly reviews of the Code. Clause 31A of Schedule 1 to the FENZ bill confirms the provisions of the current Code of Practice will continue to apply until a new Code of Practice is developed. Any replacement code of practice developed following enactment of the FENZ bill will take time to develop. Given the length of time likely to pass until a new Code of Practice is developed and approved, the current Code of Practice, as included within the Operative District Plan is still the most appropriate means of providing water for firefighting purposes.	Disallow in part
	PC4.9.23	Legislation	Under the RMA, a reference to the Code in the District Plan is treated as a reference to the Code in force at the time. If the Code is replaced or amended then there has to be a costly Plan amendment	Oppose in Part	The superseding of documents and replacement with an updated version is a risk to all documents referenced in District Plans but is not a valid reason for the document to not be included within a Plan. If a new Code of Practice is developed, the existing Code can remain as the relevant document until such time as the Plan is reviewed.	Disallow in part
	PC4.9.24	Costs to Comply	KDC has spent a fortune in ratepayers' money on trying to come to terms with this issue and work out what the Code actually says, how it applies, and what its legal obligations are in respect of the Code. Unless the matter is put to bed once and for all it is going to cost the KDC many millions of dollars on an ongoing basis to keep up to date with the vagaries of the NZFS, with absolutely no benefit to the community.	Neutral	The NZFS disagrees the implementation of the Code of Practice has no benefit to the community. The NZFS has also worked collaboratively with KDC as part of the previous plan change processes to develop material explaining the operation and effect of the Code of Practice: this material still has value as an aid to understanding of the Code of Practice	Acknowledge Submission

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
	PC4.9.25	Miscellaneous	The Evaluation notes the different approaches of local authorities throughout the country to this issue. It is ludicrous that each council in the country should be faced with dealing with such a complex issue separately, at huge expense for each individually. It is totally unreasonable that small councils such as the KDC should be burdened with such complicated problems. The whole question of fire safety and the powers of the NZFS should not be a matter for each individual council but a national issue which is the responsibility of central government in association with the NZFS.	Neutral	The Commission agrees that a national approach to water for firefighting is the most appropriate method of management to what is a consistent resource management issue across the country. The Code of Practice provides consistent regulations to be applied across the country. In the absence of an existing central government requirement, the NZFS considers implementation of the Code of Practice through District Plans throughout the country to be the most appropriate means of a consistent approach.	Acknowledge Submission
	PC4.9.26	Miscellaneous	Examining other sources of water for fighting fires in a non-reticulated area (such as community tanks and portable dams) is also an issue for the whole of the country, not just Kaipara. It seems absurd that Kaipara and other councils should be separately researching these matters at huge individual cost. This is clearly the role of the NZFS under the Fire Service Act.	Oppose in Part	The NZFS Code of Practice provides flexibility to enable consideration of community tanks or water sources as a means of compliance. The Commission has developed the code to provide a consistent framework across New Zealand for providing water for firefighting purposes and regularly works with local authorities and property owners to develop compliance options.	Allow in part
PC4.16 Grant and Fiona Douglas	PC4.16.1	Oppose Plan Change	We object to the Plan Change 4 of the Fire Safety Rules	Oppose	The District Plan is an ideal document to give effect to the NZFS Code of Practice (the Code). It is essential that the NZFS is able to meet its responsibility of providing efficient and effective emergency services to all New Zealanders, in order to avoid, remedy or mitigate the adverse effects of fire and other emergencies. The Commission's main areas of concern are the provision of firefighting water supplies and the provision of firefighting access in new developments to enable the New Zealand Fire Service (NZFS) to operate effectively and efficiently in an emergency. In order to achieve this, the Commission seeks compliance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 (Code of Practice).	Disallow submission
	PC4.16.11	Miscellaneous	The location of fire service appliances within a certain radius from a town like Mangawhai should remove the draconian tank requirements by virtue of the fact that they are within proximity to attend a fire at an early stage.	Oppose	Fire appliances carry a limited amount of water and therefore cannot be the sole water sources to fight a fire. In addition if a fire is not contained there is a risk of fire spread to neighbouring properties, inadequate provision of water on site increases and compounds the risk.	Disallow submission
	PC4.16.12	Role of Code in the District Plan	The Code of Practice is too prescriptive in their handling of NZFS Water Supplies Code of Practice, given it is not a legal requirement but of an advisory nature and therefore any reference to making any of the statements mandatory in the District Plan should be removed.	Oppose	The incorporation of the Code of Practice in full is preferred by NZFS as this provides flexibility for landowners as to the best means of providing water for firefighting purposes. There have been many cases where the Environment Court has imposed conditions requiring firefighting water supply on consents, for example Puwera Maori Ancestral Land Unincorporated Group v Whangarei DC [2016] NZEnvC 94; and Sustainable Ventures Ltd v Tasman District Council [2015 NZEnvC 174]. This confirms that implementing the Code of Practice through the Resource Management Act is appropriate.	Disallow submission

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
PC4.5 Graham Drury	PC4.5.1	Oppose Plan Change	That the Proposed Plan Change 4 be withdrawn in its entirety and that it be replaced with a new Plan Change which makes no reference in the District Plan to Fire Safety Rules and the NZFS Code of Practice.	Oppose in Part	The NZFS supports the withdrawal of Proposed Plan Change 4, due to the current plan already providing reference to the NZFS Code of Practice (the Code).  The NZFS opposes the request to remove the Code in its entirety within the District Plan. It is essential that the NZFS is able to meet its responsibility of providing efficient and effective emergency services to all New Zealanders, in order to avoid, remedy or mitigate the adverse effects of fire and other emergencies. The Commission's main areas of concern are the provision of firefighting water supplies and the provision of firefighting access in new developments to enable the New Zealand Fire Service (NZFS) to operate effectively and efficiently in an emergency. In order to achieve this, the Commission seeks compliance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 (Code of Practice).	Disallow in part
	PC4.5.3	Oppose Plan Change	The proposed changes are inappropriate for Mangawhai and other small villages and the rural areas of Kaipara.	Oppose in Part	The risk to life from fire is relevant across the entire district and the provision of firefighting water supply is essential to avoid, remedy and mitigate fire risks.	Disallow submission
	PC4.5.4	Costs to Comply	The costs to residential property owners of complying with the proposed changes are substantial and totally out of proportion to any possible benefits and would impose an unreasonable and unnecessary financial burden upon owners.	Oppose in Part	NZFS supports the submitters comment of implementing and installing smoke alarms within the Kaipara District as a form of saving lives. However, a single factor approach is not sufficient when it comes to fire safety and the protection of property. Availability of fire fighting water supplies is another important consideration. Water supply is able to be addressed through the implementation of the Code of Practice contributing to the safety and wellbeing of communities.	Disallow in part
Far North District Council	PC4.27.2	Policies	The proposal adds an issue, an objective and three policies to Chapter 2 - District wide resource management. The general public may see no difference between structural fire and wildfire. It is unclear if there will be mention in Chapter 7 - Natural Hazards that structural fire is addressed in Chapter 2.	Support	The NZFS supports this proposal to the extent the proposal will benefit the public by improving the clarity of the District Plan in relation to types of fires.	Allow submission
PC4.24 Steve Fitt	PC4.24.1	Role of Code in the District Plan	Incorporation of Fire Safety Rules based on NZFS Code of Practice was illconceived and done without consideration of the legal situation; whether contents of code were lawful; ramifications on amenity values of district; cost to individuals to comply with the Code	Support in part	The NZFS supports this proposal to the extent the proposal will benefit the public by improving the clarity of the District Plan in relation to types of fires.	Allow in part

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
	PC4.24.2	Amenity	If allowed to continue it will turn Mangawhai, as an example, into a tank town denuded of all vegetation and trees - an example being the area on the causeway on Molesworth Street opposite the Museum	Oppose	The New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 (Code of Practice) requires water to be accessible for firefighting via a connection point, but does not state the connection point has to be directly on any tank provided for firefighting purposes. This enables flexibility in the location of tanks, if tanks are installed for firefighting purposes.	Disallow submission
	PC4.24.3	Costs to Comply	Rules were side-stepped to allow smaller tanks and modified requirements in respect of access and special couplings but only on obtaining resource consents at great cost (Evaluation shows that 177 consents have been granted with no indication of how many applicants installed the standard 45,000 litre tanks).	Oppose in Part	The Code of Practice allows applicants to submit their own alternative methods of obtaining a sufficient water supply. The NZFS then reviews alternative proposals on a case by case basis to confirm if they will meet the firefighting needs. This flexibility is enabled through Section 4.4. of the Code of Practice. Depending on circumstances examples of alternatives may include smaller tanks, swimming pools or permanent ponds or streams. The Code of Practice does not rigidly require the installation of 45,000 litre tanks as the submitter suggests.	Disallow in part
	PC4.24.4	Legislation	Some of the changes are welcome but other simply perpetuate the confusion that surrounds the NZFS Code of Practice and whether it is legally applicable to the RMA and the Building Act.	Oppose in Part	The supply of water to a building, as opposed to within a building, is not provided for under the Building Act or Building Code which have a different purposes. The implementation of the Code of Practice within the District Plan is consistent with the purpose of the RMA.	Disallow in part
	PC4.24.10	Miscellaneous	In my understanding most house fires are caused by cooking accidents, heaters [or] open fire accidents, candles overturned, or electrical faults.	Oppose	The NZFS undertake advertising and education programmes to minimise risks of fire in and around the home. Despite that, it is unlikely that all fires can be avoided and therefore provisions needs to be made for the suppression and extinction of fires, including by the provision of adequate firefighting water supplies.	Disallow submission
	PC4.24.17	Role of Code in the District Plan	The Code of Practice is not a statutory document and it is not mandatory for Council to include it in rules in the District Plan. There is no interface between the Code of Practice in the Fire Service Act with other legislation which is relevant to local authorities such as the RMA and Building Act. The Code of Practice is simply a set of standards for water mains and has no relevance to any other matters relating to firefighting and does not impose any requirements in respect of the RMA or Building Act.	Oppose	The implementation of the Code of Practice is an appropriate means of avoiding, remedying and mitigating potentially significant adverse effects. There have been many cases where the Environment Court has imposed conditions requiring firefighting water supply on consents, for example <i>Puwerā Maori Ancestral Land Unincorporated Group v Whangarei DC [2016] NZEnvC 94</i> ; and <i>Sustainable Ventures Ltd v Tasman District Council [2015 NZEnvC 174]</i> . This confirms that implementing the Code of Practice through the Resource Management Act is appropriate. The scope of the Code of Practice is not statutorily limited to mains supply adequacy as the submitter suggests.	Disallow submission

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
	PC4.24.18	Legislation	Section 30 of the Fire Services Act deals with: Use of water in mains for fire protection, fire fighting, and hazardous substances emergency protection. Note that s30 deals solely with water mains and water mains only. The duties of the National Commander in respect of water mains are set out in s30(2), and under s30(3) the National Commander is obliged to publish a Code of Practice specifying standards for water supply volume and pressure for water mains. The Code of Practice cannot include other matters such as access for fire trucks, hard-stands and turning circles for fire trucks, other forms of water supply that are not water mains, special couplings or restrictions on vegetation around houses. The Code of Practice as drafted goes way beyond the limitations imposed by section 30(3).	Oppose	The NZFS disagrees the Code of Practice is beyond the limitations of section 30. Section 30(2) enables NZFS to check the adequacy of water supply concerning any property the Fire Service is under obligation to protect, this is not limited to reticulated properties. This includes the testing of water mains, but does not specifically exclude alternative and/or onsite water supply methods.	Disallow submission
	PC4.24.19	Legislation	Under s21(6) of the Fire Service Act states that 'the Minister shall not approve any Code of Practice or standard which has the effect of requiring any building to achieve performance criteria additional to or more restrictive than specified in the Building Act 2004 or in the building code'.	Neutral	The supply of water to a building, as opposed to within a building, is not provided for under the Building Act or Building Code which have a different purposes. The Code of Practice does not require more restrictive or additional criteria as the Building Act does not address the supply of water to a building. The NZFS agrees this is consistent with section 21(6) of the Fire Service Act, although that addresses different matters to a Code of Practice confirmed under section 30.	Acknowledge Submission
	PC4.24.20	Role of Code in the District Plan	The foreword to the Code tends to embellish the powers that the NZFS derives from the Code of Practice. For instance, it states that the Code will form the basis of a partnership between the Fire Service and territorial authorities. The Evaluation appears to accept this: '...Council is supportive of the intent of NZFS's document that it forms the basis of a partnership between NZFS and territorial authorities and be used by territorial authorities in rules regulating subdivisions in the District Plan. Council and NZFS would then achieve a common objective in respect of providing water supplies for firefighting purposes to facilitate fire safe communities'. To be blunt, there is no such statutory partnership and there is no mandate for such matters to be included in the Code of Practice.	Oppose	The Fire and Emergency New Zealand (FENZ) Bill has passed its second reading and is currently in the House of the Whole Committee. Whilst there has been no confirmation of an enactment date, it is likely to be later in 2017. As it is currently written FENZ will be required to develop a Code of Practice in consultation with local authorities (s63(2)) which is then subject to approval by the Minister. This further emphasises the intent for the Commission and local authorities to work together to provide for the safety and wellbeing of communities. The current Code of Practice has been embedded into consents through first instance decisions on district plans and Environment Court caselaw, for example <i>Puwerā Maori Ancestral Land Unincorporated Group v Whangarei DC [2016] NZEnvC 94</i> ; and <i>Sustainable Ventures Ltd v Tasman District Council [2015] NZEnvC 174</i> . This confirms that implementing the Code of Practice through the Resource Management Act is appropriate.	Oppose

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
	PC4.24.21	Legislation	Under s21 of the Fire Services Act the Fire Service Commission's role is to seek to achieve co-ordination with territorial authorities along with all other authorities, departments and professions in respect of fire safety. The functions of the Commission in promoting fire safety are set out in s21(2). They relate to the dissemination of knowledge, education, and publicity about fire safety, campaigns and research and do not relate to setting obligatory guidelines or standards that relate to the supply of water for fire fighting or the issue of consents under the RMA or in respect of subdivisions.	Oppose in Part	The NZFS disagrees this is the only role under s21. In addition to the identified matters, section 21(2)(g) states that the functions of the commission shall include "seeking continuously new ways to reduce the incidence of fire and the risk to life from fire". Having adequate water on site is essential to reduce the risk to life from fire. The focus on section 21 of the Fire Service Act also omits other important functions, such as the National Commander's obligations under section 170 to: make provision in every fire district for the prevention, suppression and extinction of fire and the safety of persons endangered by fire; and to make provision for cooperation between the NZFS and local authorities. In addition, as previously stated a new Code of Practice will be developed in consultation with local authorities following enactment of the FENZ bill. Clause 31A of Schedule 1 to the FENZ bill confirms the provisions of the current Code of Practice will continue to apply until a new Code of Practice is developed. Any replacement code of practice developed following enactment of the FENZ bill will take time to develop. This will likely be a lengthy process given the extensive consultation throughout the development. Given the intent of the FENZ bill and caselaw on the Code of Practice it is appropriate for the Code of Practice to be incorporated in the District Plan.	Disallow in part
	PC4.24.22	Legislation	While it is accepted practice that it (the Code of Practice) is reviewed every five years, that practice had not been followed. The last review was in 2008. In fact there is no statutory basis for the review of the Code.	Oppose in Part	The Fire and Emergency New Zealand (FENZ) Bill has passed its second reading and is currently in the House of the Whole Committee. Whilst there has been no confirmation of an enactment date, it is considered likely to be later in 2017. As it is currently written FENZ will be required to develop a Code of Practice in consultation with local authorities (s63(2)) which is then subject to approval by the Minister. As currently drafted there will be three yearly reviews of the Code. Clause 31A of Schedule 1 to the FENZ bill confirms the provisions of the current Code of Practice will continue to apply until a new Code of Practice is developed. Any replacement code of practice developed following enactment of the FENZ bill will take time to develop. Given the length of time likely to pass until a new Code of Practice is developed and approved, the current Code of Practice, as included within the Operative District Plan is still the most appropriate means of providing water for firefighting purposes.	Disallow in part
	PC4.24.23	Legislation	Under the RMA, a reference to the Code in the District Plan is treated as a reference to the Code in force at the time. If the Code is replaced or amended then there has to be a costly Plan amendment.	Oppose in Part	The superseding of documents and replacement with an updated version is a risk to all documents referenced in District Plans but is not a valid reason for the document to not be included within a Plan. If a new Code of Practice is developed, the existing Code can remain as the relevant document until such time as the Plan is reviewed.	Disallow in part

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
	PC4.24.24	Costs to Comply	KDC has spent a fortune in ratepayers' money on trying to come to terms with this issue and work out what the Code actually says, how it applies, and what its legal obligations are in respect of the Code. Unless the matter is put to bed once and for all it is going to cost the KDC many millions of dollars on an ongoing basis to keep up to date with the vagaries of the NZFS, with absolutely no benefit to the community.	Neutral	The NZFS disagrees the implementation of the Code of Practice has no benefit to the community.	Acknowledge Submission
	PC4.24.25	Miscellaneous	The Evaluation notes the different approaches of local authorities throughout the country to this issue. It is ludicrous that each council in the country should be faced with dealing with such a complex issue separately, at huge expense for each individually. It is totally unreasonable that small councils such as the KDC should be burdened with such complicated problems. The whole question of fire safety and the powers of the NZFS should not be a matter for each individual council but a national issue which is the responsibility of central government in association with the NZFS.	Neutral	The Commission agrees that a national approach to water for firefighting is the most appropriate method of management to what is a consistent resource management issue across the country. The Code of Practice provides consistent regulations to be applied across the country. In the absence of an existing central government requirement, the NZFS considers implementation of the Code of Practice through District Plans throughout the country to be the most appropriate means of a consistent approach.	Acknowledge Submission
PC4.26 Robin Johnson	PC4.26.1	Miscellaneous	The objective of introducing rules relating to fire safety can be summarised as firstly saving life and secondly preserving property. Life Safety. This is totally unrelated to provision of water supplies. If a fire breaks out in a house life safety is best served by the provision of working smoke alarms and immediate evacuation of the premises. Anyone who can't or doesn't will be toast long before the brigade arrives. The incidence of domestic fires is strongly correlated with deprivation.	Oppose	NZFS supports the submitters comment of implementing and installing smoke alarms within the Kaipara District as a form of saving lives. However, a single factor approach is not sufficient when it comes to fire safety and the protection of property. Availability of fire fighting water supplies is another important consideration. Water supply is able to be addressed under the Resource Management Act and is essential for minimising risks in event of a fire.	Disallow submission
	PC4.26.3	Other Methods	SNZ PAS 4509:2008 - Council has proposed adopting this standard and have implemented a piecemeal approach so far. The proposal now presented does not improve the situation. The problem lies in the standard. For houses not served by public water supply the requirement of 45,000 litres of water in 90m is farcical. While the council has reduced this to 11,000 litres (the rationale for this is unclear - certainly no justification has been provided for this in the documentation provided). The solutions advanced in Gisborne may have some merit although the idea that the volume required is proportional to the number of houses is of course a fallacy. The past practice of council of requiring each property to install a tank is similarly flawed, the standard required a tank within 90 metres so if my neighbour installs a tank there is no reason for me to do the same.	Oppose	The NZFS does not support the removal of the Code in its entirety within the District Plan. It is essential that the NZFS is able to meet its responsibility of providing efficient and effective emergency services to all New Zealanders, in order to avoid, remedy or mitigate the adverse effects of fire and other emergencies. The Commission's main areas of concern are the provision of firefighting water supplies and the provision of firefighting access in new developments to enable the New Zealand Fire Service (NZFS) to operate effectively and efficiently in an emergency. In order to achieve this, the Commission seeks compliance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 (Code of Practice).	Disallow submission
Jonathan Larsen	PC4.29.7	Role of Code in the District Plan	The requirements of the Code of Practice contradict the District Plan's permitted activity standards. For example the Code of Practice specifies minimum access widths of 4m and maximum gradients of 16%.  In practice of course the Fire Service safely operates on accesses less than 4m wide and steeper in gradient than 16%, both in the immediate area and around the country.	Oppose	The NZFS acknowledges that this conflict exists. The NZFS seeks accessways that are consistent with the requirements of the Code of Practice. This was a matter sought during development of the Kaipara District Plan, that was not accepted in the Operative Plan. The NZFS can drive down some accessways narrower than 4m. However, a minimum of 4m is required to allow firefighters to get in and out of vehicles, and manoeuvre around appliances. In event of an emergency the NZFS will seek to access and fight a fire even with a narrower accessway. However having inadequate access can result in time delays and restrict the ability for an efficient response.	Disallow submission

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
	PC4.29.8	Role of Code in the District Plan	The Code of Practice is a non-statutory document that has no regard to the matters that are supposed to be considered by the Council in instituting a rule into a statutory District Plan. The Council has arbitrarily adopted the Code of Practice without having proper regard to whether there is an actual problem or environmental effect to be addressed, nor whether the proposed remedy will address any such problem or environmental effect even if it did exist.	Oppose	The implementation of the Code of Practice is an appropriate means of avoiding, remedying and mitigating potentially significant adverse effects. There have been many cases where the Environment Court has imposed conditions requiring firefighting water supply on consents, for example <i>Puwera Maori Ancestral Land Unincorporated Group v Whangarei DC [2016] NZEnvC 94</i> ; and <i>Sustainable Ventures Ltd v Tasman District Council [2015 NZEnvC 174]</i> . This confirms that implementing the Code of Practice through the Resource Management Act is appropriate.	Disallow submission
	PC4.29.10	Miscellaneous	<p>The actual facts in relation to response to incidents:</p> <p>The entire Kaipara district area is covered by volunteer fire brigades. In the event that a fire occurs, the volunteers are alerted by pager and siren, and make their way to the fire station from their work, home or leisure location in order to respond to the incident. Once a full crew has arrived to man the appliance they then respond to the incident.</p> <p>If a genuine fire breaks out in a normal modern fire-loaded structure, the development of the fire and fire spread occurs very quickly. If a fire starts in a normal room in the absence of an accelerant, all of the contents of the room can be expected to be fully involved in fire (flashover) within about two and a half minutes. For an example see <a href="https://www.youtube.com/watch?v=piofZLySsNc">https://www.youtube.com/watch?v=piofZLySsNc</a> Following flashover in the room of origin the fire spread will rapidly occur into other non-fire separated parts of the structure.</p> <p>In a city where there are professional crews on duty 24/7, buildings can be saved or partially saved when this occurs. In this situation crews are responding to incidents within very short periods of time, and stations located within short distances of each other. Even in this situation buildings are often damaged by fire and smoke, including partial roof collapse, to the extent that they are demolished and rebuilt.</p> <p>The situation in Kaipara is very different. For example at Mangawhai it is known that the average time from the start of structure fire incident resulting in damage to the arrival of the appliance at the incident is almost 15 minutes. In a normal building when a fire has become established, there will be no chance of saving the building after this sort of time period of time has elapsed.</p>	Oppose	<p>When a fire appliance arrives at a site, delays in obtaining a water source can have significant implications on the ability to effectively fight fires. In addition, an onsite water supply can help extinguish fire on an existing building and also prevent fire spread to neighbouring properties or vegetation. To provide some perspective, each fire appliance that attends a fire carries in the order of 3,000L of water. A tanker may carry an additional 6,000L. Even a 10,000L water tank can consequently almost double the available water supply for a two appliance and tanker response to a fire.</p> <p>It is also important to recognise that fire behaviour is not uniform and slow smouldering fires can occur that do not reach flashover before the arrival of appliances, whether paid or volunteer.</p>	Disallow submission

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
	PC4.29.11	Miscellaneous	<p>Dwellings in non-reticulated areas whether urban or rural almost invariably have rainwater tanks.</p> <p>Normal rural fire fighting practice involves utilising the first arriving appliance's onboard water, rain water tanks of the affected building, the tanks of adjacent neighbours, swimming pools, brigade or other water tankers, subsequent arriving appliances' water, and appliance water shuttles and water relays. This is the status quo of providing a water supply used throughout the country.</p> <p>This practice will continue to be used on all existing dwellings and other buildings in the Kaipara District in the unlikely event of a fire.</p> <p>Neither the formulation of the original rule, nor the analysis of the proposal acknowledges that there has been a single incident in Kaipara where a building was not saved because it didn't have a dedicated fire fighting water supply.</p>	Oppose	When a fire appliance arrives at a site, delays in obtaining a water source can have significant implications on the ability to effectively fight fires. The Code of Practice provides flexibility to enable a variety of water sources to be provided for firefighting. These may include swimming pools. The NZFS is unable to rely upon domestic potable tanks unless a dedicated water supply is provided. For example the recent drought in Northland resulted in many Mangawhai occupants running out of water in their domestic tanks.	Disallow submission
	PC4.8.1	Role of Code in the District Plan	Incorporation of Fire Safety Rules based on NZFS Code of Practice was illconceived and done without consideration of the legal situation; whether contents of the code were lawful; ramifications on amenity values of the district; cost to individuals to comply with the code and possible subsequent amendments.	Support in part	<p>The NZFS supports the withdrawal of Proposed Plan Change 4, due to the current plan already providing reference to the NZFS Code of Practice (the Code).</p> <p>The NZFS opposes the request to remove the Code in its entirety within the District Plan. It is essential that the NZFS is able to meet its responsibility of providing efficient and effective emergency services to all New Zealanders, in order to avoid, remedy or mitigate the adverse effects of fire and other emergencies. The production of the Code of Practice is a mandatory requirement under the Fire Service Act and has been Gazetted by the National Commander.</p>	Allow in part
	PC4.8.2	Amenity	If allowed to continue it will turn Mangawhai, as an example, into a Tank Town denuded of vegetation and trees as is the case on the causeway on Molesworth Drive opposite the museum	Oppose	The New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 (Code of Practice) requires water to be accessible for firefighting via a connection point, but does not state the connection point has to be directly on any tank provided for firefighting purposes. This enables flexibility in the location of tanks, if tanks are installed for firefighting purposes.	Disallow submission
	PC4.8.3	Costs to Comply	Rules were side-stepped to allow smaller tanks and modified requirements in respect of fire vehicle access, hard stand and special couplings but only on obtaining resource consents at great cost. Costs will continue to be enormous should the code be adopted in its entirety.	Oppose in Part	The Code of Practice allows applicants to submit their own alternative methods of obtaining a sufficient water supply. The NZFS then reviews alternative proposals on a case by case basis to confirm if they will meet the firefighting needs. This flexibility is enabled through Section 4.4. of the Code of Practice. Depending on circumstances examples of alternatives may include smaller tanks, swimming pools or permanent ponds or streams.	Disallow in part

Submitter	Specific Submission Number	Subject	Summary	Support / Oppose	Explanation for Support/Oppose	Allow / Disallow Submission (in whole or in part)
	PC4.8.4	Role of Code in the District Plan	The Code of Practice is not a statutory document and it is not mandatory for Council to include it in rules in the District Plan. There is no interface between the Code of Practice under the Fire Services Act and any other legislation relevant to local authorities. It stands on its own as a standard for nothing more than water mains.	Oppose	The implementation of the Code of Practice is an appropriate means of avoiding, remedying and mitigating potentially significant adverse effects. There have been many cases where the Environment Court has imposed conditions requiring firefighting water supply on consents, for example <i>Puwerā Maori Ancestral Land Unincorporated Group v Whangarei DC [2016] NZEnvC 94</i> ; and <i>Sustainable Ventures Ltd v Tasman District Council [2015 NZEnvC 174]</i> . This confirms that implementing the Code of Practice through the Resource Management Act is appropriate.	Disallow submission
	PC4.8.5	Legislation	The Fire Service Act has been repealed and the Fire and Emergency NZ Bill is [in] the process of being brought in and is with the select committee stage.	Oppose	Whilst the Fire and Emergency New Zealand (FENZ) Bill is yet to be enacted, the Fire Service Act is the current and appropriate legislation at this time. Clause 31A of Schedule 1 to the FENZ bill confirms the provisions of the current Code of Practice will continue to apply until a new Code of Practice is developed. Any replacement code of practice developed following enactment of the FENZ bill will take time to develop. This will likely be a lengthy process given the extensive consultation throughout the development. Given the length of time likely to pass until a new Code of Practice is developed, the current Code of Practice, as included within the Operative District Plan is still the most appropriate means of providing water for firefighting purposes.	Disallow submission
	PC4.8.7	Miscellaneous	The whole question of fire safety and the powers of NZFS should not be a matter for each individual council but a national issue which is the responsibility of central government in association with the NZFS.	Oppose	The Commission agrees that a national approach to water for firefighting is the most appropriate method of management to what is a consistent resource management issue across the country. The Code of Practice provides consistent regulations to be applied across the country. In the absence of an existing central government requirement, the NZFS considers implementation of the Code of Practice through District Plans throughout the country to be the most appropriate means of a consistent approach.	Disallow submission
	PC4.8.8	Legislation	The NZFS under the Fire Services Act should be putting its energies into coordinating inquiry and research into alternative methods of providing water for firefighting (and other firefighting issues) as required under the Fire Safety Act and the soon Fire and Emergency Bill.	Oppose	The Code of Practice provides flexibility to the means of compliance by enabling alternative water supplies such as swimming pools, permanent ponds and lakes.	Disallow submission

**Appendix B - Council's Decision on Proposed Plan**

**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 report<sup>1</sup> 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

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<sup>1</sup> Section 42A 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 Service<sup>2</sup>, 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 Larsen<sup>3</sup>
- Clive Boonham<sup>4</sup>
- 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 Council<sup>5</sup>, 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.*

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<sup>2</sup> Submitter 28

<sup>3</sup> Submitter 29

<sup>4</sup> Submitter 9

<sup>5</sup> 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](http://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 Guide<sup>6</sup> 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.*

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<sup>6</sup> 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 respect<sup>7</sup>:

*'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

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<sup>7</sup> 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 following<sup>8</sup>:

*'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, notably<sup>9</sup>:

*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 that<sup>10</sup>:

*'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 life<sup>11</sup>. It is noted in the report that taking the average of 25 structural fires within the Kaipara district over the last five years

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<sup>8</sup> Submission at the hearing by Thomas Parsons, penultimate paragraph

<sup>9</sup> Perri Duffy, Evidence in Chief at [14]

<sup>10</sup> Ibid at [18]

<sup>11</sup> 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 months<sup>12</sup>. 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 high<sup>13</sup>.

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 Reaburn 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 concerned<sup>14</sup>. 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 report<sup>15</sup>. 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

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<sup>12</sup> Ibid at [3.2.1]

<sup>13</sup> Ibid at [3.2.2]

<sup>14</sup> Section 42A report at [18]

<sup>15</sup> 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 <b>building</b> 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) <del>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;</del></p> <p>b) <del>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</del></p> <p>c) <del>The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest.</del></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> <p><b>Note 2:</b> 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"> <li>• NZS 4517 (Fire Sprinkler Systems for Houses); or</li> <li>• NZS 4541 (Automatic Fire Sprinkler Systems); or</li> <li>• NZS 4515 (Fire Sprinkler Systems for Life Safety in Sleeping Occupancies up to 2,000m<sup>2</sup>).</li> </ul>
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**Chapter 15A: Maori Purposes: Maori Land**

15A.10.25	Fire Safety	<p>Any <b>building</b> 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) <del>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;</del></p> <p>b) <del>The use of buildings shall at all times be in accordance with the fire safety</del></p>
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		<p>requirements specified in New Zealand Standard NZS 9231:1971 'Model Bylaw for Fire Prevention'; and</p> <p>c) <del>The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest.</del></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> <p><b>Note 2:</b> 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"> <li>• NZS 4517 (Fire Sprinkler Systems for Houses); or</li> <li>• NZS 4541 (Automatic Fire Sprinkler Systems); or</li> <li>• NZS 4515 (Fire Sprinkler Systems for Life Safety in Sleeping Occupancies up to 2,000m<sup>2</sup>).</li> </ul>
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#### Chapter 15B: Maori Purposes: Treaty Settlement Land

15B.10.25	Fire Safety	<p>Any <b>building</b> 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) <del>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;</del></p> <p>b) <del>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</del></p> <p>c) <del>The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest.</del></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> <p><b>Note 2:</b> 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"> <li>• NZS 4517 (Fire Sprinkler Systems for Houses); or</li> <li>• NZS 4541 (Automatic Fire Sprinkler Systems); or</li> <li>• NZS 4515 (Fire Sprinkler Systems for Life Safety in Sleeping Occupancies up to 2,000m<sup>2</sup>).</li> </ul>
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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 <b>building</b> 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) <del>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;</del></p> <p>b) <del>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</del></p> <p>c) <del>The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest.</del></p> <p><b>Note:</b> 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"> <li>• NZS 4517 (Fire Sprinkler Systems for Houses); or</li> <li>• NZS 4541 (Automatic Fire Sprinkler Systems); or</li> <li>• NZS4515 (Fire Sprinkler Systems for Life Safety in Sleeping Occupancies up to 2,000m<sup>2</sup>).</li> </ul>
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**Chapter 14: Business (Commercial and Industrial)**

14.10.26	Fire Safety	<p>Any <b>building</b> 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) <del>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;</del></p> <p>b) <del>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</del></p> <p>c) <del>The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest.</del></p> <p><b>Note:</b> 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"> <li>• NZS 4517 (Fire Sprinkler Systems for Houses); or</li> <li>• NZS 4541 (Automatic Fire Sprinkler Systems); or</li> <li>• NZS 4515 (Fire Sprinkler Systems for Life Safety in Sleeping Occupancies up to 2,000m<sup>2</sup>).</li> </ul>
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8. Rule 15A.10.3b(c)

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

<p><b>15A.10.3b(c)</b></p>	<p><b>Dwelling Infrastructure</b></p>	<p><b>(1) Construction of a dwelling is a Permitted Activity if:</b></p> <p>a) Minimum floor levels are designed in accordance with the following Standards:</p> <ul style="list-style-type: none"> <li>- 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</li> <li>- In addition to the minimum floor level any new dwelling shall be: <ul style="list-style-type: none"> <li>- 5.0m above mean sea level in the West Coast and East Coast Overlays; or</li> <li>- 3.0m above mean sea level in the Mangawhai Harbour Overlay; or</li> <li>- 3.5m above mean sea level in the Kaipara Harbour Overlay; or</li> <li>- 3.5m above mean sea level in Dargaville as defined by the Drainage District boundary as at 21 October 2009.</li> </ul> </li> </ul> <p>b) Where a Council water supply is available:</p> <ul style="list-style-type: none"> <li>- 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;</li> <li>- All dwellings are provided, within their net site area, with a connection to the Council water supply; and</li> <li>- The water supply is designed and constructed in accordance with the specific requirements of the Council water supply system; and</li> <li>- All water pipelines vested with Council shall be protected by an Easement in favour of Council;</li> </ul> <p>c) Where a public supply is not available, water supplies to all dwellings shall:</p> <ul style="list-style-type: none"> <li>- Meet the requirements of the Building Act 2004; and</li> <li><del>- Be adequate for firefighting purposes in accordance with the New Zealand Fire Service's Code of Practice SNZ PAS 4509:2008;</del></li> </ul> <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"> <li>– A wastewater system for individual properties designed in accordance with AS/NZS1547:2008 “Onsite Wastewater Management Standards”; or</li> <li>– A 1,500m<sup>2</sup> 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.</li> </ul>
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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**

<b>12.15.4</b>	<b>Water Supply</b>	<p><b>(1) Where a Council water supply is available :</b></p> <p>a) The written approval of <b>Council’s</b> asset manager is obtained and provided with the application to confirm that the Council water supply can be extended to serve the <b>subdivision</b>;</p> <p>b) All <b>allotments</b> are provided, within their <b>net site area</b>, 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><b>(2) Where a public supply is not available, water supplies to all developments shall:</b></p> <p>d) Meet the requirements of the Building Act 2004; <del>and</del></p> <p>e) <del>Be adequate for fire fighting purposes in accordance with the New Zealand Fire Service’s Code of Practice SNZ PAS 4509:2008.</del></p>
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**Rule 13.14.4 (Residential)**

<b>13.14.4</b>	<b>Water Supply</b>	<p><b>(1) Where a Council water supply is available :</b></p> <p>a) The written approval of <b>Council’s</b> asset manager is obtained and provided with the application to confirm that the Council water supply can be extended to serve the <b>subdivision</b>;</p> <p>b) All <b>allotments</b> are provided, within their <b>net site area</b>, 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>
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		<p><b>(2) Where a public supply is not available, water supplies to all developments shall:</b></p> <p>a) Meet the requirements of the Building Act 2004; and</p> <p>b) <del>Be adequate for fire fighting purposes in accordance with the New Zealand Fire Service's Code of Practice SNZ-PAS 4509:2008.</del></p>
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**Rule 14.13.4 (Business: Commercial and Industrial)**

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

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

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

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	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**

**Appendix C - names and addresses of persons to be served with a copy of this notice**

**Proposed Plan Change 4**  
**to the**  
**Kaipara District Plan**  
**Fire Safety**

**Schedule of Addresses**

## Index of Submitters Including Addresses and Contact Details

Submitter Name	Submitter #	Submitter's Address / Contact Details
Miss Kathy Newman	1 FS 7	20 Mangawhai Heads Road Mangawhai 0505 <a href="mailto:kathynewman@xtra.co.nz">kathynewman@xtra.co.nz</a>
Mr Antonius Perry	2 FS 49	19 Kedge Drive Mangawhai 0505 <a href="mailto:antonius.perry@clear.net.nz">antonius.perry@clear.net.nz</a>
Mr Ian Fish	3 FS 5	<a href="mailto:ian@debsandian.com">ian@debsandian.com</a>
Ms Carla Hood	4 FS 12	4 Sandy Lane Mangawhai Heads 0505 <a href="mailto:crshood@gmail.com">crshood@gmail.com</a>
Mr Graham Drury	5 FS 55	17 Awatea Street Mangawhai Heads 0505 <a href="mailto:graham@ggd.net.nz">graham@ggd.net.nz</a>
Mr Ian Clarke	6 FS 39	<a href="mailto:ccclarky@gmail.com">ccclarky@gmail.com</a>
Mr Stephan Sosich	7, 8 FS 54	<a href="mailto:ssosich@gmail.com">ssosich@gmail.com</a>
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Prue Innes	12 FS 9	P O Box 173 Mangawhai 0540 <a href="mailto:prueinnes@xtra.co.nz">prueinnes@xtra.co.nz</a>
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Bill Butterfield	15	57 Jack Boyd Drive RD2 Kaiwaka 0573 <a href="mailto:justwilliam@xtra.co.nz">justwilliam@xtra.co.nz</a>
Mr Grant and Mrs Fiona Douglas	16	C/- Flight Operations (Fc2283) PO Box 92 Dubai United Arab Emirates <a href="mailto:grant.douglas@beachshadow.com">grant.douglas@beachshadow.com</a>
Henk and Christa van der Woerd	17	14 Ti Kouka Way RD 2 Kaiwaka 0573
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Robin Johnson	26 FS 23	109 Cornwall Way Mangawhai 0505 <a href="mailto:glopak.technology@gmail.com">glopak.technology@gmail.com</a>
Far North District Council	27 FS 57	Private Bag 752 Kaikohe 0440 <a href="mailto:plan.changes@fndc.govt.nz">plan.changes@fndc.govt.nz</a>
New Zealand Fire Service	28 FS 56	PO Box 6345 Auckland 1141 <a href="mailto:jaiman.patel@beca.com">jaiman.patel@beca.com</a>
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