

Annotated Submissions

Plan Change N°4 Fire Safety Rules (Land Use) (PC4) to the Kaipara District Plan

Project: Fire Safety Rules (Land Use)

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Online Submission

PC4: Fire Safety Rules (Land Use)

Submitter

Title: Miss

First Name: Kathy

Last Name: Newman

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

Submission Details

The specific parts of the proposal that my submission relates to are: [give details]

Fire fighting storage tanks by residents and planting set backs

My submission is:

[include

- **whether you support or oppose the specific provisions or wish to have them amended; and**
- **reasons for your views]**

(Begin typing here, the box will expand to include everything you wish to say.)

- ① Common sense has prevailed and I support the changes made to allow residential planting within 20 metres of a building and the doing away with water storage by residents for fire fighting purposes.
- ②

I seek the following decision from the local authority:[give precise details.]

(Begin typing here, the box will expand to include everything you wish to say.)

I hope this latest proposal of change is accepted

Online Submission

PC4: Fire Safety Rules (Land Use)

Submitter

Title: Mr

First Name: Antonius

Last Name: Perry

Email: antonius.perry@clear.net.nz

Primary phone: 09 4314578

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

Submission Details

The specific parts of the proposal that my submission relates to are: [give details]

① My water tank had the outlet hose shortened so 10,000 litres I cannot access.

Scenario: A fire has started in my house. To start fighting the fire, I have whatever is in the tank apart from the 10,000 litres. So at that stage I can sit down and watch to see my place go up in flames.

After about 15 minutes the Fire Brigade arrives and tries to rescue what is left of the building.

Had my hose not been shortened I could have kept fighting myself.

② Also, the Fire Service Regulations you are working with, appear to belong to cities with reticulated water supplies, hence the use of fire hydrants.

① I would suggest that the Fire Service would use water from the two adjoining properties as mine would be too hot to get near to.

As you can see, the whole idea is completely ridiculous and I hope common sense will prevail in the end.

Regards,

A.H. Perry

My submission is:

[include

- **whether you support or oppose the specific provisions or wish to have them amended; and**
- **reasons for your views]**

(Begin typing here, the box will expand to include everything you wish to say.)

I seek the following decision from the local authority:[give precise details.]

(As indicated above, the necessity for these rules are lacking common sense. It involves people spending a lot of money for no apparent benefit to themselves, the community or the country.

Please scrap.

Online Submission

PC4: Fire Safety Rules (Land Use)

Submitter

Title: Mr

First Name: Ian

Last Name: Fish

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

Submission Details

The specific parts of the proposal that my submission relates to are: [give details]

① I oppose the proposal in its entirety and support the withdrawal of Proposed Plan Change 4 in its entirety. I propose that it is replaced with a new Plan Change to delete any reference in the District Plan to Fire Safety Rules and the NZFS Code of Conduct.

My submission is:

② I support the submissions of Clive Richard Gerald Boonham

I seek the following decision from the local authority:[give precise details.]

Online Submission

PC4: Fire Safety Rules (Land Use)

Submitter

Title: Ms

First Name: carla

Last Name: Hood

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

Submission Details

The specific parts of the proposal that my submission relates to are: [give details]

(Begin typing here, the box will expand to include everything you wish to say.)

① I support the submission of Clive Richard Gerald Boonam

My submission is:

[include

- **whether you support or oppose the specific provisions or wish to have them amended; and**
- **reasons for your views]**

(Begin typing here, the box will expand to include everything you wish to say.)

I support the submission of Clive Richard Gerald Boonam

I seek the following decision from the local authority:[give precise details.]

(Begin typing here, the box will expand to include everything you wish to say.)

I support the submission of Clive Richard Gerald Boonam

Online Submission

PC4: Fire Safety Rules (Land Use)

Submitter

Title: Mr

First Name: Graham

Last Name: Drury

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

Submission Details

The specific parts of the proposal that my submission relates to are: [give details]

The Proposal in its entirety.

My submission is:

1. **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 Conduct.**
2. **Council** has failed to provide any evidence which either supports the changes proposed or that those changes are justified or necessary.
3. That the premises upon which the proposal is based are ill-conceived in that there is no legitimate statutory basis for them.
4. **That the** proposed changes are inappropriate for Mangawhai and other small villages and rural areas of Kaipara.
5. **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.
6. The practical application of the particulars of the proposal will cause an unnecessary and significantly detrimental loss of amenity to the communities affected by the proposal.

I seek the following decision from the local authority:[give precise details.]

Decline the proposal and replace Plan Change 4 with a Plan Change that:

- contains no reference to *the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008*.
- reflects the needs, wishes and circumstances of all the communities affected by the proposal.

Online Submission

PC4: Fire Safety Rules (Land Use)

Submitter

Title: Mr

First Name: Ian

Last Name: CLARKE

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: Yes

Submission Details

The specific parts of the proposal that my submission relates to are: [give details]

- ① Fire fighting regulations, creating a 'tank farm' community & vegetation restrictions around residential properties. Turning circles of fire-trucks. JUST STUPID!!!!
- ② Furthermore, complete support of Clive Boonham.

My submission is:

[include

- **whether you support or oppose the specific provisions or wish to have them amended; and**
- **reasons for your views]**

I fully support Clive Boonham's submission.

I seek the following decision from the local authority:[give precise details.]

as outlined by Clive.....

Online Submission

PC4: Fire Safety Rules (Land Use)

Submitter**Title:** Mr**First Name:** Stephan**Last Name:** sosich**Email:** ssosich@gmail.com**Primary phone:** 0272284085

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)

I oppose the proposal in its entirety and support the withdrawal of Proposed Plan Change 4 in its entirety. I propose that it is replaced with a new Plan Change to delete any reference in the District Plan to the NZFS Code of Practice for firefighting water supplies..

① The incorporation of the Fire Safety Rules in the KDC District Plan, based on the NZFS Code of Practice, was utterly ill-conceived. It was done by the KDC without any consideration of:

- The legal situation.
- The content of the Code and whether the contents were lawful.
- The ramifications that adoption of the Code has had for the amenity values of the district.
- The cost to the KDC (and ultimately the ratepayers) in implementing the Code and possible subsequent amendments.
- The necessity for legal and other opinions relating to the legality of obligations under the Code. Again at the cost of ratepayers.
- The cost to individuals in complying with the Code.

② If allowed to continue it will turn Mangawhai, as an example, into a Tank Town completely denuded of vegetation and trees. A perfect example is the development on the causeway on Molesworth Drive just opposite the Museum.

The commissioners side-stepped some of the draconian features of the Rules by allowing smaller water tanks and modified requirements in respect of access, but only on obtaining the appropriate resource consents, and at great cost.

③ The cost of complying with the Plan by providing the required tanks, fire vehicle access and hardstand and special couplings has been enormous and will continue to be enormous should this code be adopted in its entirety.

④ *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 and any other legislation which is relevant to local authorities. It stands on its own as a code of standards for nothing more than water mains.

⑤ The fire service act has been repealed and the fire and emergency nz bill is the process of being brought in and is with the select committee stage. Nothing should happen until this new bill is enacted as it provides for the code of practice water supplies for firefighting to be rewritten.

In summary, the Code of Practice is simply a set of standards for water mains and had no relevance to any other matters relating to firefighting and does not impose any requirements in respect of the RMA or the Building Act.

The cost to the Council and to its ratepayers has been enormous and I dare suggest that the fire safety in the district has not improved one iota despite the massive expenditure.

Online Submission

PC4: Fire Safety Rules (Land Use)

Submitter

Title: Mr

First Name: stephan

Last Name: Sosich

Email: ssosich@gmail.com

Primary phone: 0272284085

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

Submission Details

The specific parts of the proposal that my submission relates to are: [give details]

All

My submission is:

I oppose the proposal in its entirety and support the withdrawal of Proposed Plan Change 4 in its entirety. I propose that it is replaced with a new Plan Change to delete any reference in the District Plan to the NZFS Code of Practice for firefighting water supplies..

- ① The incorporation of the Fire Safety Rules in the KDC District Plan, based on the NZFS Code of Practice, was utterly ill-conceived. It was done by the KDC without any consideration of:
 - The legal situation.
 - The content of the Code and whether the contents were lawful.
 - The ramifications that adoption of the Code has had for the amenity values of the district.
 - The cost to the KDC (and ultimately the ratepayers) in implementing the Code and possible subsequent amendments.
 - The necessity for legal and other opinions relating to the legality of obligations under the Code. Again at the cost of ratepayers.
 - The cost to individuals in complying with the Code.
- ② If allowed to continue it will turn Mangawhai, as an example, into a Tank Town completely denuded of vegetation and trees. A perfect example is the development on the causeway on Molesworth Drive just opposite the Museum.
- ③ The commissioners side-stepped some of the draconian features of the Rules by allowing smaller water tanks and modified requirements in respect of access, but only on obtaining the appropriate resource consents, and at great cost.

The cost of complying with the Plan by providing the required tanks, fire vehicle access and hardstand and special couplings has been enormous and will continue to be enormous should this code be adopted in its entirety.

④ 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 and any other legislation which is relevant to local authorities. It stands on its own as a code of standards for nothing more than water mains.

⑤ The fire service act has been repealed and the fire and emergency nz bill is the process of being brought in and is with the select committee stage. Nothing should happen until this new bill is enacted as it has provides for the code of practice water supplies for firefighting to be rewritten.

The cost to the Council and to its ratepayers has been enormous and I dare suggest that the fire safety in the district has not improved one iota despite the massive expenditure.

⑥ I am a career firefighter of 30 years and can see no benefit in the proposal. There have been no fire fatalities in the area and a focus on fire safety education and the importance of having smoke alarms will go a long way further to saving lives than a wide driveway and a certain amount of water in a tank with a certain fitting. Of all the fire fatalities I have attended not one was as a result of the area not meeting the code of practices water supplies

I seek the following decision from the local authority:[give precise details.]

(Begin typing here, the box will expand to include everything you wish to say.)

In summary, the Code of Practice is simply a set of standards for water mains and had no relevance to any other matters relating to firefighting and does not impose any requirements in respect of the RMA or the Building Act. It simply has no place as it stands in the Kaipara district.

⑦ This submission maintains that 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.

⑧ This is clearly the role of the NZFS under the Fire Service Act at present. Rather than its authoritarian and unlawful approach in respect of the Code of Practice, it should be putting its energies into coordinating inquiry and research into alternative methods of providing water for firefighting (and other firefighting issues), as specifically required by the Fire Service Act and as stated in the soon to be Fire and Emergency NZ bill before the house.

Paula A. Hansen

From: Raro.Retreats <Raro.Retreats@xtra.co.nz>
Sent: Friday, 18 November 2016 3:46 p.m.
To: Council
Subject: Submission of Clive Boonham on Proposed Plan Change 4
Attachments: Plan change 4 subs CB.docx

Categories: CSC Hannah Davies

I am attaching my submission in this matter.
Kindly acknowledge receipt.
Clive Boonham

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

Name of submitter: Clive Richard Gerald Boonham

This is a submission on a Private Plan Change No.4 proposed to the Kaipara District Plan. The Proposal is to change the Fire Safety Rules (Land Use) for buildings and structures in the Rural, Residential, Business (Commercial and Industrial), and the two Maori Purposes Zones to remove the requirement to comply with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.

The Proposal seeks to add an issue statement, a specific objective and three policies and an Other Methods section to Chapter Two of the District Plan. Chapter Two applies district-wide. At present the District Plan does not contain a policy framework with regards to structural fires.

It is proposed to remove the setback requirement for buildings in the Residential and Business Zones to be located at least 20 metres from naturally occurring or deliberately planted area of shrub or shrubland, woodlot or forest. This also includes removing the provision of a building having to be 20 metres from the dripline of any tree.

It is proposed to remove the provision relating to a 1971 Model Bylaw for Fire Prevention. This model Bylaw does not now exist and was never replaced.

It is not proposed to remove references to the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 in the subdivision rules. However, this is open to submissions.

I could not gain an advantage in trade competition through this submission.

[*select one from the above sentence or delete entire sentence if you could not gain an advantage in trade competition through this submission.]

I am not 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 effects of trade competition.

The specific provisions of the proposal that my submission relates to are:

The whole proposal

My submission is:

(A) I oppose the proposal in its entirety and support the withdrawal of Proposed Plan Change 4 in its entirety. I propose that it is replaced with a new Plan Change to delete any reference in the District Plan to Fire Safety Rules and the NZFS Code of Conduct.

(B) REASONS FOR MY VIEWS

THE PAST

This is a perfect example of how local authorities squander the money of ratepayers.

① The incorporation of the Fire Safety Rules in the KDC District Plan, based on the NZFS Code of Practice, was utterly ill-conceived. It was done by the KDC without any consideration of:

- The legal situation.
- The content of the Code and whether the contents were lawful.
- The ramifications that adoption of the Code has had for the amenity values of the district.
- The cost to the KDC (and ultimately the ratepayers) in implementing the Code and possible subsequent amendments.
- The necessity for legal and other opinions relating to the legality of obligations under the Code. Again at the cost of ratepayers.
- The cost to individuals in complying with the Code.

It is a perfect example of out-of-touch bureaucracies - the NZ Fire Service and the KDC - imposing their will on the people of Kaipara, without any understanding of the legal situation, to the detriment of the amenity values of the district, and to the financial well-being of the residents, and contrary to all common sense.

② If allowed to continue it will turn Mangawhai, as an example, into a Tank Town completely denuded of vegetation and trees. A perfect example is the development on the causeway on Molesworth Drive just opposite the Museum.

③ The commissioners side-stepped some of the draconian features of the Rules by allowing smaller water tanks and modified requirements in respect of access, but only on obtaining the appropriate resource consents, and at great cost.

The cost of complying with the Plan by providing the required tanks, fire vehicle access and hardstand and special couplings has been enormous. The Evaluation shows that 177 or consents to reduce the size of the tanks were granted but there is no indication of how many applicants installed the standard 45,000 litre tanks.

This caused community frustration with the new rules, and the Evaluation states:

It is considered that requiring resource consents for this is a disproportionate mitigation measure when compared to risks.

That is an understatement.

PLAN CHANGE 4

The Council is now proposing an alternative amendment to the District Plan which includes parts of the Code of Practice but to a reduced extent.

It is noted that the KDC is removing the requirement for dedicated water tanks of any size even though the NZFS is adamant that unreticulated sites must have tanks and that they must be at least 45,000 litres.

- ④ Some of the changes are welcome but others simply perpetuate the confusion that surrounds the NZFS Code of Practice and whether it is legally applicable to the RMA and the Building Act.

Below I consider some of the changes planned for the District Plan.

Issues

2.3.14: This is a list of general statements that may or not be true but which take us nowhere.

- ⑤ It reiterates the special coupling requirement as if it is set in concrete. It has already been established that this requirement is ridiculous. If the purpose of dedicated tanks is for firefighting then why make them only available to the Fire Service which will likely arrive too late?

District-wide objectives

- ⑥ **2.4.15:** What does “encourage and promote mean”?

Policies

- ⑦ **2.5.17(a):** What does “ensure” mean? What is an “adequate supply”? What is “reasonably anticipated land use”?

- ⑧ **2.5.17(b):** What does “promote” mean? What is an “alternative supply”? How much and what rules attach to the requirement? Given that the Fire Truck may not arrive before the house is destroyed, is this a suggestion that the untrained occupants should keep an alternative supply of water with the implication that they are to be responsible for fighting the fire. But the occupants cannot use the water because of the special coupling. We end up with water which no one can use, which is acknowledged in the proposed 2.3.14.

I quote from the Evaluation:

As far as a permitted activity is concerned, legal test specify that they should be clear and certain to “enable the Plan user to judge the meaning and effect of the rule at face value without having to resort to using explanations or seeking advice from those who wrote it.”
[Source: Writing Effective and Enforceable Rules - Quality Planning Website.]

“Ensure”, “adequate”, “reasonably promote”, “alternative supply” etc are all vague terms that have no place in rules or policies.

Other methods

- ⑨ These are all pie in the sky dreams that have no basis in reality until they are thoroughly considered and concrete proposals adopted.

They are utterly meaningless in a District Plan.

- ⑩ In my understanding most house fires are caused by cooking accidents, heaters of open fire accidents, candles overturned, or electrical faults. The obvious methods to prevent structural fires would be to set rules that ban cooking and heating in houses, ban the use of candles in houses, and ban the use of electricity. Such rules would deal with the actual issues.

9 Methods of ensuring safety must be balanced against convenience. The risk of death or injury from a house fire is extremely remote. Death or injury in a motor vehicle accident is far more likely. Should we all be required to wear crash helmets in cars and should the speed limit be reduced to 15 k and hour?

11 Note all the vague words in these proposals: Investigate, promote, support. They should have no place in the District Plan.

Outcomes

12 2.7.13: Is this an outcome that is relevant to a District Plan?

Amendments – Rural and Maori Purpose zones

13 In para 6. the provision for movement and access for fire service vehicles has been retained. So has the 20 metre rule for vegetation and trees.

Neither has any place in a district plan.

The 20m rule has been deleted from urban areas. Why is it proposed to retain it for rural areas?

It will prevent rural dwellers from beautifying the garden immediately adjacent to their house. (See para 12.)

Why should rural residents be denied the enjoyment of a garden with trees and shrubs surrounding their houses?

And who is going to distinguish what is a garden and what is "scrub or shrubland" etc?

This provision is being retained because of wildfire potential in rural areas (see para 12.) Think about it clearly? How many rural residences in Kaipara have been destroyed by wildfire?

How many of those houses destroyed by wildfires have resulted from, or been acerbated by, the rose beds, the fruit trees and ornamental trees surrounding the house?

Is the KDC going to appoint an inspector of rural gardens to ensure that there is no vegetation within 20 metres of a house? Unbelievable.

The 20 metre set back is wholly inappropriate for NZ conditions and seems to be taken straight out of a Code of Practice for Victoria, Australia.

14 The "recommendation" in para 6 that a fire sprinkler system be installed has no place in a district plan. Recommendations are meaningless.

Amendments- Urban rules

15 Paras 7, 8, 9, 10 and 11: These rules should be deleted in toto.

The proposed changes are a mixture of general statements, vague statements of supposed best practice, with no clear requirements or obligations. They break all the rules of good drafting.

They would be a nightmare to interpret and every application for approval would result in massive bills from lawyers, consultants and the Fire Service.

They also open the door to endless legal disputes and applications to the court to clarify the rules. In my experience the courts would not deal kindly with such poorly drafted rules.

Paragraphs 7-11 are found in Section 1.3 of the Section 32 Evaluation Report. Paragraphs 7 & 8 relate to Urban Rules. Paragraphs 9-11 relate to Subdivision

Refer Attachment 1.

Refer also page 26 of this submission.

OUR SUBMISSION

The people of Kaipara were not impressed with the original incorporation of the Fire Safety Rules into the District Plan.

The commissioners attempt to water down the severity of the rules came at the expense of much forelock tugging and expensive consents.

The fact that the proposed amendment to the rules under Amendment 2 was soundly rejected by submitters, shows the feelings of ratepayers towards this issue.

The proposed Change 4, while an improvement on proposed change 2, fails to face up to the fundamental problems relating to the interaction between the Code of Practice and the District Plan, which is effectively a creature of the RMA.

The proposed change smacks of a compromise to appease the NZFS and ignores the legal status of the plan and all the complications that have arisen because, quite simply, the provisions of the Fire Service Act have been ignored. The legal situation has been further muddled by bureaucratic demands, posturing and pressure that have no legal basis.

The legal situation

Under 2, **The District Plan and the Code of Practice**, the Evaluation states:

Central to this Plan Change is the role that the Code of Practice should have in the District Plan in respect of performance standards in land use rules for permitted activities and as a matter for consideration at the time of subdivision.

That is the nub of the problem facing us.

We need to start with a full examination of what the law says about the role of the Code of Practice.

The Evaluation gives us a hint when it states on page 1:

17

8 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.

The Fire Services Act itself clarifies the situation.

18

Section 30 of the Fires Service Act deals with: **Use of water in mains for fire protection, fire fighting, and hazardous substance emergency purposes.**

Note that the s 30 deals solely with water mains and water mains only.

The duties of the National Commander in respect of water mains are set out in s 30(2), and under s 30(3) the National Commander is obliged to publish a Code of Practice specifying standards for water supply volume and pressure for **water mains**. (My emphasis)

This is the Code of Practice that we are talking about.

The Code of Practice has two essential features:

- It relates only to water mains.
- It is a set of standards. That means figures that relate to supply, volume and pressure of water mains.

It follows:

- The Code of Practice sets standards. It cannot therefore include suggestions or recommendations.
- 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 or trees around houses. It can only relate to water mains.

17

There is no interface between the Code of Practice in the Fire Service Act with any other legislation which is relevant to local authorities. It stands on its own as a code of standards for nothing more than water mains.

The Fire Service Act was enacted in 1975 and predated the RMA. The RMA makes no reference to the Fire Service Act and the Fire Service Act was not amended in any way to interact with the RMA when that was subsequently enacted.

The Fire Service Act therefore has no relevance in applying the provisions of the RMA.

19

Likewise, pursuant to s 21(6) of the Fire Service Act “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”. Consequently the Code of Practice can have no application to the issuing of building consents. (This provision is important when it comes to issuing building consents.)

The Code of Practice, as drafted, goes way beyond the limitations imposed by s 30(3). It goes well beyond setting standards for water mains and includes performance requirements for many extraneous matters relating to firefighting.

It also includes suggestions and recommendations etc which are clearly not standards.

Such extraneous matters are almost certainly ultra vires as the National Commander does not have the statutory power to include such matters in a s 30(3) Code of Practice.

17

In summary, the Code of Practice is simply a set of standards for water mains and had no relevance to any other matters relating to firefighting and does not impose any requirements in respect of the RMA or the Building Act.

Foreword to the Code

20

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' 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 fire fighting 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.

The KDC should not therefore be offering support for matters that are outside the ambit of a code of practice and which are clearly ultra vires.

It should be noted that including and reciting purported powers in a statutory document does not give them any legal authority if they are outside the scope of powers set down in the legislation.

The fundamental error that was made was for the NZFS to include extra powers in its Code of Practice that were not legally compliant. That error was compounded by the failure of the appropriate authorities to take issue with the situation. And, let it be said, the blind acquiescence of local authorities, like the KDC, encouraged the NZFS to wield its ultra vires powers. In such fertile soil the powers of the NZFS under the Code of Practice grew like the proverbial Topsy (mixed metaphor acknowledged) and have now created a legal mess that will be difficult to resolve

21 Certainly under s 21 of the Fire service 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 s 21(2). They relate to the dissemination of knowledge, education and publicity about fire safety, fire safety campaigns and research.

They do not include anything to do with setting obligatory guidelines or standards that relate to the supply of water for firefighting or the issue of consents under the RMA or in respect of subdivisions.

This misunderstanding of the legal nature of the Code of Practice had created a real legal mess. But there are other issues as well.

22 The Evaluation states that there is some doubt about the review of the Code of Practice. Whilst it is accepted practice that it 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.

The Evaluation also highlights the incomplete submission and hearing process for finalising the content of the Code.

23 More alarming is the fact that, under the RMA, a reference to the Code in the District Plan is treated as a reference to the Code in force at that time. If the Code is replaced or amended then there has to be a costly Plan amendment.

Also of huge concern is the obdurate approach adopted by the NZFS in its submission on Plan Change 2 that it will not budge from its stated capacity of 45,000 litres for dedicated water tanks.

The simple response to that is that the Code of Practice only relates to standards for water mains. It does not and cannot relate to stored water, no matter what the NZFS thinks.

This same arrogance is displayed in the NZFS' approach to structural fires. The Evaluation points out that under the RMA such fires are not a core concern because they are not natural hazards. But it also goes on to point out that the NZFS "believes it has responsibility to provide for fires fighting services under the legislation".

It can believe all it likes but the reality is that in law its powers are limited by the Fire Services Act. Its functions are set out in s 21(2).

RECOMMENDATION

24 The 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.

Ratepayers have had enough. To date the KDC has acted under presumed obligations in respect of the Code which have been contrary to the best interests of ratepayers, from both an amenity and financial point of view, and which have done nothing to improve the firefighting abilities in the district.

Rather than the new half-hearted amendments to the Plan and obscure, vague and meaningless provisions, ratepayers would prefer that all references to the Fire Safety Rules and the NZ Fire Service Code of Practice are omitted or deleted from the District Plan.

The Code of Practice, as it stands, and the practice surrounding it, is such a mess that local authorities should give it wide berth.

It is bureaucracy gone mad.

25 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.

The costs expended by the KDC alone are beyond contemplation. We read the Evaluation with utter amazement at the detailed legal analysis and the costs involved, including the Opus report and others, that one small local authority has been compelled to expend.

Compare that to the costs incurred by the FNDC and its ratepayers who have not spent a penny in complying with unlawful requirements, jumping through consent hoops, shelling out massive sums in consent fees and tank costs, and angling over consultants' reports and legal opinions.

It is totally unreasonable that small councils such as the KDC should be burdened with such complicated problems that are in reality a national problem. Fire safety is an issue throughout the country and the same problems face every district.

It is now the time for the KDC to assess its clear legal obligations and to ascertain how exactly it serves its people and their safety without blindly following the dictates of the NZFS which have no standing in law.

I seek the following decision from the local authority:

16 Accordingly, Plan Change 4 should be completely withdrawn and replaced with a new Plan Change that completely deletes any reference to Fire Rules based on the Code of Practice.

This relates both to land use and to subdivision under the RMA for the simple reason that the Code of Practice has no lawful relevance to the RMA.

Clearly the KDC, along with other local authorities, needs to consider rules in respect of fire safety and how they are to be incorporated into its consenting processes. That includes assessing whether, legally, the Code of Practice has can have any influence on the issuing of building consents.

25

This submission maintains that 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 the central government in association with the NZFS.

A nationwide standard is required and that is the responsibility of central government to put together.

Once the standard is adopted then all local authorities can simply incorporate it into their processes.

26

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 Services Act. Rather than its authoritarian and unlawful approach in respect of the Code of Practice it should be putting its energies into coordinating inquiry and research into alternative methods of providing water for firefighting, as specifically required by the Fire Services Act.

Until the government and the Fire Service get their acts together, local authorities should adopt the approach of the FNDC ensure that the Fire Service Code of Practice plays no part in its District Plan or in respect of issuing consents under the Building Act.

COMPLEXITY

This is an inordinately complex issue which will be beyond the grasp of the majority of ratepayers.

I am a retired lawyer but have no expertise or experience in respect of the RMA especially in relation to the Fire Service Act.

I have struggled to work out what has happened and why. However, it seems quite clear that the NZFS has overstepped its statutory powers in drafting the Code of Practice and the KDC has been misled or pressured into appeasing the NZFS by incorporating the provisions of an unlawful document into its District Plan.

The cost to the Council and to its ratepayers has been enormous and I dare suggest that the fire safety in the district has not improved one iota despite the massive expenditure.

I am making my submission available to ratepayers in the district, and, if they agree with my submissions, then I am inviting them to file their own separate submission stating that they support my submissions.

In the interests of fairness, and because of the complexity of the issue, I ask that the Council considers and treats each of those submissions as a separate submission.

I do not wish to be heard in support of my submission.

Clive Boonham

25 Alamar Crescent, Mangawhai Heads

Date: 18 November 2016

Address for service:

PO Box 401005 Mangawhai Heads, Mangawhai 0541

Telephone: 09 431 4723

Email address: raro.retreats@xtra.co.nz

Paula A. Hansen

From: Baz Clark <bazzclark@gmail.com>
Sent: Saturday, 19 November 2016 3:30 p.m.
To: Council
Subject: Submission

Categories: CSC Kylie Flood

B A & J Clark
108 Moir Point Road;
Mangawhai Heads

Hi

① We support the Submissions of Clive Richard Gerald Boonham

Regards Barry & Jan Clark

Paula A. Hansen

From: Corbett Robert <corbett@ihug.co.nz>
Sent: Saturday, 19 November 2016 10:07 a.m.
To: Council
Subject: Fire Safety Regulations
Categories: CSC Megan Thomas

To Whom it Concerns

As owner ratepayer of 10 Wintle St Mangawhai

① I wish to endorse and support the Submission by Clive Boonham (as attached.)

Thank you

Robert L Corbett

FIRE SAFETY RULES

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

Name of submitter: Clive Richard Gerald Boonham

This is a submission on a Private Plan Change No.4 proposed to the Kaipara District Plan. The Proposal is to change the Fire Safety Rules (Land Use) for buildings and structures in the Rural, Residential, Business (Commercial and Industrial), and the two Maori Purposes Zones to remove the requirement to comply with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.

The Proposal seeks to add an issue statement, a specific objective and three policies and an Other Methods section to Chapter Two of the District Plan. Chapter Two applies district-wide. At present the District Plan does not contain a policy framework with regards to structural fires.

It is proposed to remove the setback requirement for buildings in the Residential and Business Zones to be located at least 20 metres from naturally occurring or deliberately planted area of shrub or shrubland, woodlot or forest. This also includes removing the provision of a building having to be 20 metres from the dripline of any tree.

It is proposed to remove the provision relating to a 1971 Model Bylaw for Fire Prevention. This model Bylaw does not now exist and was never replaced.

It is not proposed to remove references to the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 in the subdivision rules. However, this is open to submissions.

I could not gain an advantage in trade competition through this submission.

I am not 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 effects of trade competition.

The specific provisions of the proposal that my submission relates to are:

The whole proposal

My submission is:

(A) I oppose the proposal in its entirety and support the withdrawal of Proposed Plan Change 4 in its entirety. I propose that it is replaced with a new Plan Change to delete any reference in the District Plan to Fire Safety Rules and the NZFS Code of Conduct.

(B) REASONS FOR MY VIEWS

THE PAST

This is a perfect example of how local authorities squander the money of ratepayers.

The incorporation of the Fire Safety Rules in the KDC District Plan, based on the NZFS Code of Practice, was utterly ill-conceived. It was done by the KDC without any consideration of:

- The legal situation.
- The content of the Code and whether the contents were lawful.
- The ramifications that adoption of the Code has had for the amenity values of the district.
- The cost to the KDC (and ultimately the ratepayers) in implementing the Code and possible subsequent amendments.
- The necessity for legal and other opinions relating to the legality of obligations under the Code. Again at the cost of ratepayers.
- The cost to individuals in complying with the Code.

It is a perfect example of out-of-touch bureaucracies - the NZ Fire Service and the KDC - imposing their will on the people of Kaipara, without any understanding of the legal situation, to the detriment of the amenity values of the district, and to the financial well-being of the residents, and contrary to all common sense.

If allowed to continue it will turn Mangawhai, as an example, into a Tank Town completely denuded of vegetation and trees. A perfect example is the development on the causeway on Molesworth Drive just opposite the Museum.

The commissioners side-stepped some of the draconian features of the Rules by allowing smaller water tanks and modified requirements in respect of access, but only on obtaining the appropriate resource consents, and at great cost.

The cost of complying with the Plan by providing the required tanks, fire vehicle access and hardstand and special couplings has been enormous. The Evaluation shows that 177 consents to reduce the size of the tanks were granted but there is no indication of how many applicants installed the standard 45,000 litre tanks.

This caused community frustration with the new rules, and the Evaluation states:

It is considered that requiring resource consents for this is a disproportionate mitigation measure when compared to risks.

That is an understatement.

PLAN CHANGE 4

The Council is now proposing an alternative amendment to the District Plan which includes parts of the Code of Practice but to a reduced extent.

It is noted that the KDC is removing the requirement for dedicated water tanks of any size even though the NZFS is adamant that unreticulated sites must have tanks and that they must be at least 45,000 litres.

Some of the changes are welcome but others simply perpetuate the confusion that surrounds the NZFS Code of Practice and whether it is legally applicable to the RMA and the Building Act.

Below I consider some of the changes planned for the District Plan.

Issues

2.3.14: This is a list of general statements that may or not be true but which take us nowhere.

It reiterates the special coupling requirement as if it is set in concrete. It has already been established that this requirement is ridiculous. If the purpose of dedicated tanks is for firefighting then why make them only available to the Fire Service which will likely arrive too late?

District-wide objectives

2.4.15: What does “encourage and promote mean”?

Policies

2.5.17(a): What does “ensure” mean? What is an “adequate supply”? What is “reasonably anticipated land use”?

2.5.17(b): What does “promote” mean? What is an “alternative supply”? How much and what rules attach to the requirement? Given that the Fire Truck may not arrive before the house is destroyed, is this a suggestion that the untrained occupants should keep an alternative supply of water with the implication that they are to be responsible for fighting the fire. But the occupants cannot use the water because of the special coupling. We end up with water which no one can use, which is acknowledged in the proposed 2.3.14.

I quote from the Evaluation:

As far as a permitted activity is concerned, legal test specify that they should be clear and certain to “enable the Plan user to judge the meaning and effect of the rule at face value without having to resort to using explanations or seeking advice from those who wrote it.” [Source: Writing Effective and Enforceable Rules - Quality Planning Website.]

“Ensure”, “adequate”, “reasonably promote”, “alternative supply” etc are all vague terms that have no place in rules or policies.

Other methods

These are all pie in the sky dreams that have no basis in reality until they are thoroughly considered and concrete proposals adopted.

They are utterly meaningless in a District Plan.

In my understanding most house fires are caused by cooking accidents, heaters of open fire accidents, candles overturned, or electrical faults. The obvious methods to prevent structural fires would be to set rules that ban cooking and heating in houses, ban the use of candles in houses, and ban the use of electricity. Such rules would deal with the actual issues.

Methods of ensuring safety must be balanced against convenience. The risk of death or injury from a house fire is extremely remote. Death or injury in a motor vehicle accident is far more likely. Should we all be required to wear crash helmets in cars and should the speed limit be reduced to 15 k and hour?

Note all the vague words in these proposals: Investigate, promote, support. They should have no place in the District Plan.

Outcomes

2.7.13: Is this an outcome that is relevant to a District Plan?

Amendments – Rural and Maori Purpose zones

In para 6. the provision for movement and access for fire service vehicles has been retained. So has the 20 metre rule for vegetation and trees.

Neither has any place in a district plan.

The 20m rule has been deleted from urban areas. Why is it proposed to retain it for rural areas?

It will prevent rural dwellers from beautifying the garden immediately adjacent to their house. (See para 12.)

Why should rural residents be denied the enjoyment of a garden with trees and shrubs surrounding their houses?

And who is going to distinguish what is a garden and what is “scrub or shrubland” etc?

This provision is being retained because of wildfire potential in rural areas (see para 12.) Think about it clearly? How many rural residences in Kaipara have been destroyed by wildfire?

How many of those houses destroyed by wildfires have resulted from, or been acerbated by, the rose beds, the fruit trees and ornamental trees surrounding the house?

Is the KDC going to appoint an inspector of rural gardens to ensure that there is no vegetation within 20 metres of a house? Unbelievable.

The 20 metre set back is wholly inappropriate for NZ conditions and seems to be taken straight out of a Code of Practice for Victoria, Australia.

The “recommendation” in para 6 that a fire sprinkler system be installed has no place in a district plan. Recommendations are meaningless.

Amendments- Urban rules

Paras 7, 8, 9, 10 and 11: These rules should be deleted in toto.

The proposed changes are a mixture of general statements, vague statements of supposed best practice, with no clear requirements or obligations. They break all the rules of good drafting.

They would be a nightmare to interpret and every application for approval would result in massive bills from lawyers, consultants and the Fire Service.

They also open the door to endless legal disputes and applications to the court to clarify the rules. In my experience the courts would not deal kindly with such poorly drafted rules.

MY SUBMISSION

The people of Kaipara were not impressed with the original incorporation of the Fire Safety Rules into the District Plan.

The commissioners attempt to water down the severity of the rules came at the expense of much forelock tugging and costly consents.

The fact that the proposed amendment to the rules under Amendment 2 was soundly rejected by submitters, shows the feelings of ratepayers towards this issue.

The proposed Change 4, while an improvement on proposed change 2, fails to face up to the fundamental problems relating to the interaction between the Code of Practice and the District Plan, which is effectively a creature of the RMA.

The proposed change smacks of a compromise to appease the NZFS and ignores the legal status of the plan and all the complications that have arisen because, quite simply, the provisions of the Fire Service Act have been ignored. The legal situation has been further muddled by bureaucratic demands, posturing and pressure that have no legal basis.

The legal situation

Under 2, **The District Plan and the Code of Practice**, the Evaluation states:

Central to this Plan Change is the role that the Code of Practice should have in the District Plan in respect of performance standards in land use rules for permitted activities and as a matter for consideration at the time of subdivision.

That is the nub of the problem facing us.

We need to start with a full examination of what the law says about the role of the Code of Practice.

The Evaluation gives us a hint when it states on page 1:

8 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.

The Fire Services Act itself clarifies the situation.

Section 30 of the Fire Service Act deals with: Use of water in mains for fire protection, fire fighting, and hazardous substance emergency purposes.

Note that the s 30 deals solely with water mains and water mains only.

The duties of the National Commander in respect of water mains are set out in s 30(2), and under s 30(3) the National Commander is obliged to publish a Code of Practice specifying standards for water supply volume and pressure for **water mains**. (My emphasis)

This is the Code of Practice that we are talking about.

The Code of Practice has two essential features:

- It relates only to water mains.
- It is a set of standards. That means figures that relate to supply, volume and pressure of water mains.

It follows:

- The Code of Practice sets standards. It cannot therefore include suggestions or recommendations.
- 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 or trees around houses. I repeat again, it can only relate to water mains.

There is no interface between the Code of Practice in the Fire Service Act and any other legislation which is relevant to local authorities. It stands on its own as a code of standards for nothing more than water mains.

The Fire Service Act was enacted in 1975 and predated the RMA. The RMA makes no reference to the Fire Service Act and the Fire Service Act was not amended in any way to interact with the RMA when that was subsequently enacted.

The Fire Service Act therefore has no relevance in applying the provisions of the RMA.

Likewise, pursuant to s 21(6) of the Fire Service Act *“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”*. Consequently the Code of Practice can have no application to the issuing of building consents. (This provision is important when it comes to issuing building consents.)

The Code of Practice, as drafted, goes way beyond the limitations imposed by s 30(3). It goes well beyond setting standards for water mains and includes performance requirements for many extraneous matters relating to firefighting.

It also includes suggestions and recommendations etc which are clearly not standards.

Such extraneous matters are almost certainly ultra vires as the National Commander does not have the statutory power to include such matters in a s 30(3) Code of Practice.

In summary, the Code of Practice is simply a set of standards for water mains and had no relevance to any other matters relating to firefighting and does not impose any requirements in respect of the RMA or the Building Act.

Foreword to the Code

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' 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 fire fighting 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.

The KDC should not therefore be offering support for matters that are outside the ambit of a code of practice and which are clearly ultra vires.

It should be noted that including and reciting purported powers in a statutory document does not give them any legal authority if they are outside the scope of powers set down in the legislation.

The fundamental error that was made was for the NZFS to include extra powers in its Code of Practice that were not legally permissible. That error was compounded by the failure of the appropriate authorities to take issue with the situation. And, let it be said, the blind acquiescence of local authorities, like the KDC, encouraged the NZFS to wield its ultra vires powers. In such fertile soil the powers of the NZFS under the Code of Practice grew like the proverbial Topsy (mixed metaphor acknowledged) and have now created a legal mess that will be difficult to resolve

Certainly under s 21 of the Fire Service 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 s 21(2). They relate to the dissemination of knowledge, education and publicity about fire safety, fire safety campaigns and research.

They do not include anything to do with setting obligatory guidelines or standards that relate to the supply of water for firefighting or the issue of consents under the RMA or in respect of subdivisions.

This misunderstanding of the legal nature of the Code of Practice had created a real legal mess. But there are other issues as well.

The Evaluation states that there is some doubt about the review of the Code of Practice. Whilst it is accepted practice that it 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.

The Evaluation also highlights the incomplete submission and hearing process for finalising the content of the Code.

More alarming is the fact that, under the RMA, a reference to the Code in the District Plan is treated as a reference to the Code in force at that time. If the Code is replaced or amended then there has to be a costly Plan amendment.

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It can believe all it likes but the reality is that in law its powers are limited by the Fire Services Act. Its functions are set out in s 21(2).

RECOMMENDATION

The 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.

Ratepayers have had enough. To date the KDC has acted under presumed obligations in respect of the Code which have been contrary to the best interests of ratepayers, from both an amenity and financial point of view, and which have done nothing to improve the firefighting abilities in the district.

Rather than the new half-hearted amendments to the Plan and obscure, vague and meaningless provisions, ratepayers would prefer that all references to the Fire Safety Rules and the NZ Fire Service Code of Practice are omitted or deleted from the District Plan,.

The Code of Practice, as it stands, and the practice surrounding it, is such a mess that local authorities should give it wide berth.

It is bureaucracy gone mad.

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.

The costs expended by the KDC alone are beyond contemplation. We read the Evaluation with utter amazement at the detailed legal analysis and the costs involved, including the Opus report and others, that one small local authority has been compelled to expend.

Compare that to the costs incurred by the FNDC and its ratepayers who have not spent a penny in complying with unlawful requirements, jumping through consent hoops, shelling out massive sums in consent fees and tank costs, and angsty over consultants' reports and legal opinions

It is totally unreasonable that small councils such as the KDC should be burdened with such complicated problems that are in reality a national problem. Fire safety is an issue throughout the country and the same problems face every district.

It is now the time for the KDC to assess its clear legal obligations and to ascertain how exactly it serves its people and their safety without blindly following the dictates of the NZFS which have no standing in law.

I seek the following decision from the local authority:

Accordingly, Plan Change 4 should be completely withdrawn and replaced with a new Plan Change that completely deletes any reference to Fire Rules based on the Code of Practice.

This relates both to land use and to subdivision under the RMA for the simple reason that the Code of Practice has no lawful relevance to the RMA.

Clearly the KDC, along with other local authorities, needs to consider rules in respect of fire safety and how they are to be incorporated into its consenting processes. That includes assessing whether, legally, the Code of Practice has can have any influence on the issuing of building consents.

This submission maintains that 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.

A nationwide standard is required and that is the responsibility of central government to put together.

Once the standard is adopted then all local authorities can simply incorporate it into their processes.

The Evaluation considers other sources of water for fighting fires in a non-reticulated area (such as community tanks and portable dams). Such ideas have no place in the District Plan. They are issues that are relevant to every local authority in New Zealand, not just Kaipara. They need to be tackled and considered on a nationwide basis. 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. Rather than its authoritarian and unlawful approach in respect of the Code of Practice, it should be putting its energies into coordinating inquiry and research into alternative methods of providing water for firefighting (and other firefighting issues), as specifically required by the Fire Service Act.

Until the government and the Fire Service get their acts together, local authorities should adopt the approach of the FNDC and ensure that the Fire Service Code of Practice plays no part in its District Plan or in respect of issuing consents under the Building Act.

COMPLEXITY

This is an inordinately complex issue which will be beyond the grasp of the majority of ratepayers.

I am a retired lawyer but have no expertise or experience in respect of the RMA especially in relation to the Fire Service Act.

I have struggled to work out what has happened and why. However, it seems quite clear on a basic examination that the NZFS has overstepped its statutory powers in drafting the Code of Practice and the KDC has been misled or pressured into appeasing the NZFS by incorporating the provisions of an unlawful document into its District Plan.

The cost to the Council and to its ratepayers has been enormous and I dare suggest that the fire safety in the district has not improved one iota despite the massive expenditure.

I am making my submission available to ratepayers in the district, and, if they agree with my submissions, then I am inviting them to file their own separate submission stating that they support my submissions.

In the interests of fairness, and because of the complexity of the issue, I ask that the Council considers and treats each of those submissions as a separate submission.

I do not wish to be heard in support of my submission.

Clive Boonham

25 Alamar Crescent, Mangawhai Heads

Date: 18 November 2016

Address for service:

PO Box 401005 Mangawhai Heads, Mangawhai 0541

Telephone: 09 431 4723

Email address: raro.retreats@xtra.co.nz

Paula A. Hansen

From: Prue Innes <prueinnes@xtra.co.nz>
Sent: Saturday, 19 November 2016 11:30 a.m.
To: Council
Subject: Support the submissions of Clive Richard Gerald Boonham
Categories: CSC Hannah Davies

① In Support the submissions of Clive Richard Gerald Boonham

Plan Change 4 should be completely withdrawn and replaced with a new Plan Change that deletes all references to the Code of Practice

Prue Innes

Paula A. Hansen

From: Patrick Sparks <patricksparks@hotmail.com>
Sent: Saturday, 19 November 2016 1:01 p.m.
To: Council
Subject: Fw: Fire regulations -Mangawhai

Categories: CSC Hannah Davies

To whom it may concern

We - Patrick Sparks and Vanessa Harland of No 1 Hillside Ave , Mangawhai Heads are officially informing you (Kaipara District Council)

① that we are in total support of Clive Richard Gerald Boonham's Submission on the Fire Safety Regulations and not the ludicrous money making scheme that you (the Council) propose !!!!

② Do you get together in a circle like at (playschool) and think "what can we do now to make some money or really **ss the ratepayers of Mangawhai off !!!!!!!? , it doesn't matter that they are paying are wages and we should be doing the best we can for them so stuff them haha..

Because I will tell you now that that is how a great deal of YOUR ratepayers are feeling right now !!

I suggest that you start earning your salaries and do the job you were employed to do , which is by the way ----- To do the best you can and to work with the ratepayers of your allotted Districts for the benefit of us all and to do it as economically as possible with as much input of the ratepayers (your employers) as possible .

Please respond .

Attched Clive Boonham's Submission

FIRE SAFETY RULES

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

Name of submitter: Clive Richard Gerald Boonham

This is a submission on a Private Plan Change No.4 proposed to the Kaipara District Plan. The Proposal is to change the Fire Safety Rules (Land Use) for buildings and structures in the Rural, Residential, Business (Commercial and Industrial), and the two Maori Purposes Zones to remove the requirement to comply with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.

The Proposal seeks to add an issue statement, a specific objective and three policies and an Other Methods section to Chapter Two of the District Plan. Chapter Two applies district-wide. At present the District Plan does not contain a policy framework with regards to structural fires.

It is proposed to remove the setback requirement for buildings in the Residential and Business Zones to be located at least 20 metres from naturally occurring or deliberately planted area of shrub or shrubland, woodlot or forest. This also includes removing the provision of a building having to be 20 metres from the dripline of any tree.

It is proposed to remove the provision relating to a 1971 Model Bylaw for Fire Prevention. This model Bylaw does not now exist and was never replaced.

It is not proposed to remove references to the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 in the subdivision rules. However, this is open to submissions.

I could not gain an advantage in trade competition through this submission.

I am not 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 effects of trade competition.

The specific provisions of the proposal that my submission relates to are:

The whole proposal

My submission is:

(A) I oppose the proposal in its entirety and support the withdrawal of Proposed Plan Change 4 in its entirety. I propose that it is replaced with a new Plan Change to delete any reference in the District Plan to Fire Safety Rules and the NZFS Code of Conduct.

(B) REASONS FOR MY VIEWS

THE PAST

This is a perfect example of how local authorities squander the money of ratepayers.

The incorporation of the Fire Safety Rules in the KDC District Plan, based on the NZFS Code of Practice, was utterly ill-conceived. It was done by the KDC without any consideration of:

- The legal situation.
- The content of the Code and whether the contents were lawful.
- The ramifications that adoption of the Code has had for the amenity values of the district.
- The cost to the KDC (and ultimately the ratepayers) in implementing the Code and possible subsequent amendments.
- The necessity for legal and other opinions relating to the legality of obligations under the Code. Again at the cost of ratepayers.
- The cost to individuals in complying with the Code.

It is a perfect example of out-of-touch bureaucracies - the NZ Fire Service and the KDC - imposing their will on the people of Kaipara, without any understanding of the legal situation, to the detriment of the amenity values of the district, and to the financial well-being of the residents, and contrary to all common sense. If allowed to continue it will turn Mangawhai, as an example, into a Tank Town completely denuded of vegetation and trees. A perfect example is the development on the causeway on Molesworth Drive just opposite the Museum.

The commissioners side-stepped some of the draconian features of the Rules by allowing smaller water tanks and modified requirements in respect of access, but only on obtaining the appropriate resource consents, and at great cost.

The cost of complying with the Plan by providing the required tanks, fire vehicle access and hardstand and special couplings has been enormous. The Evaluation shows that 177 consents to reduce the size of the tanks were granted but there is no indication of how many applicants installed the standard 45,000 litre tanks.

This caused community frustration with the new rules, and the Evaluation states:

It is considered that requiring resource consents for this is a disproportionate mitigation measure when compared to risks.

That is an understatement.

PLAN CHANGE 4

The Council is now proposing an alternative amendment to the District Plan which includes parts of the Code of Practice but to a reduced extent.

It is noted that the KDC is removing the requirement for dedicated water tanks of any size even though the NZFS is adamant that unreticulated sites must have tanks and that they must be at least 45,000 litres.

Some of the changes are welcome but others simply perpetuate the confusion that surrounds the NZFS Code of Practice and whether it is legally applicable to the RMA and the Building Act.

Below I consider some of the changes planned for the District Plan.

Issues

2.3.14: This is a list of general statements that may or not be true but which take us nowhere.

It reiterates the special coupling requirement as if it is set in concrete. It has already been established that this requirement is ridiculous. If the purpose of dedicated tanks is for firefighting then why make them only available to the Fire Service which will likely arrive too late?

District-wide objectives

2.4.15: What does “encourage and promote mean”?

Policies

2.5.17(a): What does “ensure” mean? What is an “adequate supply”? What is “reasonably anticipated land use”?

2.5.17(b): What does “promote” mean? What is an “alternative supply”? How much and what rules attach to the requirement? Given that the Fire Truck may not arrive before the house is destroyed, is this a suggestion that the untrained occupants should keep an alternative supply of water with the implication that they are to be responsible for fighting the fire. But the occupants cannot use the water because of the special coupling. We end up with water which no one can use, which is acknowledged in the proposed 2.3.14.

I quote from the Evaluation:

As far as a permitted activity is concerned, legal test specify that they should be clear and certain to “enable the Plan user to judge the meaning and effect of the rule at face value without having to resort to using explanations or seeking advice from those who wrote it.” [Source: Writing Effective and Enforceable Rules - Quality Planning Website.]

“Ensure”, “adequate”, “reasonably promote”, “alternative supply” etc are all vague terms that have no place in rules or policies.

Other methods

These are all pie in the sky dreams that have no basis in reality until they are thoroughly considered and concrete proposals adopted.

They are utterly meaningless in a District Plan.

In my understanding most house fires are caused by cooking accidents, heaters or open fire accidents, candles overturned, or electrical faults. The obvious methods to prevent structural fires would be to set rules that ban cooking and heating in houses, ban the use of candles in houses, and ban the use of electricity. Such rules would deal with the actual issues.

Methods of ensuring safety must be balanced against convenience. The risk of death or injury from a house fire is extremely remote. Death or injury in a motor vehicle accident is far more likely. Should we all be required to wear crash helmets in cars and should the speed limit be reduced to 15 k and hour?

Note all the vague words in these proposals: Investigate, promote, support. They should have no place in the District Plan.

Outcomes

2.7.13: Is this an outcome that is relevant to a District Plan?

Amendments – Rural and Maori Purpose zones

In para 6. the provision for movement and access for fire service vehicles has been retained. So has the 20 metre rule for vegetation and trees.

Neither has any place in a district plan.

The 20m rule has been deleted from urban areas. Why is it proposed to retain it for rural areas?

It will prevent rural dwellers from beautifying the garden immediately adjacent to their house. (See para 12.)

Why should rural residents be denied the enjoyment of a garden with trees and shrubs surrounding their houses?

And who is going to distinguish what is a garden and what is “scrub or shrubland” etc?

This provision is being retained because of wildfire potential in rural areas (see para 12.) Think about it clearly? How many rural residences in Kaipara have been destroyed by wildfire?

How many of those houses destroyed by wildfires have resulted from, or been exacerbated by, the rose beds, the fruit trees and ornamental trees surrounding the house?

Is the KDC going to appoint an inspector of rural gardens to ensure that there is no vegetation within 20 metres of a house? Unbelievable.

The 20 metre set back is wholly inappropriate for NZ conditions and seems to be taken straight out of a Code of Practice for Victoria, Australia.

The "recommendation" in para 6 that a fire sprinkler system be installed has no place in a district plan. Recommendations are meaningless.

Amendments- Urban rules

Paras 7, 8, 9, 10 and 11: These rules should be deleted in toto.

The proposed changes are a mixture of general statements, vague statements of supposed best practice, with no clear requirements or obligations. They break all the rules of good drafting.

They would be a nightmare to interpret and every application for approval would result in massive bills from lawyers, consultants and the Fire Service.

They also open the door to endless legal disputes and applications to the court to clarify the rules. In my experience the courts would not deal kindly with such poorly drafted rules.

MY SUBMISSION

The people of Kaipara were not impressed with the original incorporation of the Fire Safety Rules into the District Plan.

The commissioners attempt to water down the severity of the rules came at the expense of much forelock tugging and costly consents.

The fact that the proposed amendment to the rules under Amendment 2 was soundly rejected by submitters, shows the feelings of ratepayers towards this issue.

The proposed Change 4, while an improvement on proposed change 2, fails to face up to the fundamental problems relating to the interaction between the Code of Practice and the District Plan, which is effectively a creature of the RMA.

The proposed change smacks of a compromise to appease the NZFS and ignores the legal status of the plan and all the complications that have arisen because, quite simply, the provisions of the Fire Service Act have been ignored. The legal situation has been further muddled by bureaucratic demands, posturing and pressure that have no legal basis.

The legal situation

Under 2, **The District Plan and the Code of Practice**, the Evaluation states:

Central to this Plan Change is the role that the Code of Practice should have in the District Plan in respect of performance standards in land use rules for permitted activities and as a matter for consideration at the time of subdivision.

That is the nub of the problem facing us.

We need to start with a full examination of what the law says about the role of the Code of Practice.

The Evaluation gives us a hint when it states on page 1:

8 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.

The Fire Services Act itself clarifies the situation.

Section 30 of the Fire Service Act deals with: Use of water in mains for fire protection, fire fighting, and hazardous substance emergency purposes.

Note that the s 30 deals solely with water mains and water mains only.

The duties of the National Commander in respect of water mains are set out in s 30(2), and under s 30(3) the National Commander is obliged to publish a Code of Practice specifying standards for water supply volume and pressure for **water mains**. (My emphasis)

This is the Code of Practice that we are talking about.

The Code of Practice has two essential features:

- It relates only to water mains.
- It is a set of standards. That means figures that relate to supply, volume and pressure of water mains.

It follows:

- The Code of Practice sets standards. It cannot therefore include suggestions or recommendations.

• 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 or trees around houses. I repeat again, it can only relate to water mains. There is no interface between the Code of Practice in the Fire Service Act and any other legislation which is relevant to local authorities. It stands on its own as a code of standards for nothing more than water mains. The Fire Service Act was enacted in 1975 and predated the RMA. The RMA makes no reference to the Fire Service Act and the Fire Service Act was not amended in any way to interact with the RMA when that was subsequently enacted.

The Fire Service Act therefore has no relevance in applying the provisions of the RMA.

Likewise, pursuant to s 21(6) of the Fire Service Act *“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”*. Consequently the Code of Practice can have no application to the issuing of building consents. (This provision is important when it comes to issuing building consents.)

The Code of Practice, as drafted, goes way beyond the limitations imposed by s 30(3). It goes well beyond setting standards for water mains and includes performance requirements for many extraneous matters relating to firefighting.

It also includes suggestions and recommendations etc which are clearly not standards.

Such extraneous matters are almost certainly ultra vires as the National Commander does not have the statutory power to include such matters in a s 30(3) Code of Practice.

In summary, the Code of Practice is simply a set of standards for water mains and had no relevance to any other matters relating to firefighting and does not impose any requirements in respect of the RMA or the Building Act.

Foreword to the Code

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' 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 fire fighting 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.

The KDC should not therefore be offering support for matters that are outside the ambit of a code of practice and which are clearly ultra vires.

It should be noted that including and reciting purported powers in a statutory document does not give them any legal authority if they are outside the scope of powers set down in the legislation.

The fundamental error that was made was for the NZFS to include extra powers in its Code of Practice that were not legally permissible. That error was compounded by the failure of the appropriate authorities to take issue with the situation. And, let it be said, the blind acquiescence of local authorities, like the KDC, encouraged the NZFS to wield its ultra vires powers. In such fertile soil the powers of the NZFS under the Code of Practice grew like the proverbial Topsy (mixed metaphor acknowledged) and have now created a legal mess that will be difficult to resolve.

Certainly under s 21 of the Fire Service 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 s 21(2). They relate to the dissemination of knowledge, education and publicity about fire safety, fire safety campaigns and research.

They do not include anything to do with setting obligatory guidelines or standards that relate to the supply of water for firefighting or the issue of consents under the RMA or in respect of subdivisions.

This misunderstanding of the legal nature of the Code of Practice had created a real legal mess. But there are other issues as well.

The Evaluation states that there is some doubt about the review of the Code of Practice. Whilst it is accepted practice that it 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.

The Evaluation also highlights the incomplete submission and hearing process for finalising the content of the Code.

More alarming is the fact that, under the RMA, a reference to the Code in the District Plan is treated as a reference to the Code in force at that time. If the Code is replaced or amended then there has to be a costly Plan amendment.

Also of huge concern is the obdurate approach adopted by the NZFS in its submission on Plan Change 2 that it will not budge from its stated capacity of 45,000 litres for dedicated water tanks.

The simple response to that is that the Code of Practice only relates to standards for water mains. It does not and cannot relate to stored water, no matter what the NZFS thinks.

This same arrogance is displayed in the NZFS' approach to structural fires. The Evaluation points out that under the RMA such fires are not a core concern because they are not natural hazards. But it also goes on to point out that the NZFS "believes it has responsibility to provide for fires fighting services under the legislation".

It can believe all it likes but the reality is that in law its powers are limited by the Fire Services Act. Its functions are set out in s 21(2).

RECOMMENDATION

The 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.

Ratepayers have had enough. To date the KDC has acted under presumed obligations in respect of the Code which have been contrary to the best interests of ratepayers, from both an amenity and financial point of view, and which have done nothing to improve the firefighting abilities in the district.

Rather than the new half-hearted amendments to the Plan and obscure, vague and meaningless provisions, ratepayers would prefer that all references to the Fire Safety Rules and the NZ Fire Service Code of Practice are omitted or deleted from the District Plan.

The Code of Practice, as it stands, and the practice surrounding it, is such a mess that local authorities should give it wide berth.

It is bureaucracy gone mad.

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.

The costs expended by the KDC alone are beyond contemplation. We read the Evaluation with utter amazement at the detailed legal analysis and the costs involved, including the Opus report and others, that one small local authority has been compelled to expend.

Compare that to the costs incurred by the FNDC and its ratepayers who have not spent a penny in complying with unlawful requirements, jumping through consent hoops, shelling out massive sums in consent fees and tank costs, and angling over consultants' reports and legal opinions.

It is totally unreasonable that small councils such as the KDC should be burdened with such complicated problems that are in reality a national problem. Fire safety is an issue throughout the country and the same problems face every district.

It is now the time for the KDC to assess its clear legal obligations and to ascertain how exactly it serves its people and their safety without blindly following the dictates of the NZFS which have no standing in law.

I seek the following decision from the local authority:

Accordingly, Plan Change 4 should be completely withdrawn and replaced with a new Plan Change that completely deletes any reference to Fire Rules based on the Code of Practice.

This relates both to land use and to subdivision under the RMA for the simple reason that the Code of Practice has no lawful relevance to the RMA.

Clearly the KDC, along with other local authorities, needs to consider rules in respect of fire safety and how they are to be incorporated into its consenting processes. That includes assessing whether, legally, the Code of Practice has any influence on the issuing of building consents.

This submission maintains that 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.

A nationwide standard is required and that is the responsibility of central government to put together. Once the standard is adopted then all local authorities can simply incorporate it into their processes. The Evaluation considers other sources of water for fighting fires in a non-reticulated area (such as community tanks and portable dams). Such ideas have no place in the District Plan. They are issues that are relevant to every local authority in New Zealand, not just Kaipara. They need to be tackled and considered on a nationwide basis. 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. Rather than its authoritarian and unlawful approach in respect of the Code of Practice, it should be putting its energies into coordinating inquiry and research into alternative methods of providing water for firefighting (and other firefighting issues), as specifically required by the Fire Service Act.

Until the government and the Fire Service get their acts together, local authorities should adopt the approach of the FNDC and ensure that the Fire Service Code of Practice plays no part in its District Plan or in respect of issuing consents under the Building Act.

COMPLEXITY

This is an inordinately complex issue which will be beyond the grasp of the majority of ratepayers.

I am a retired lawyer but have no expertise or experience in respect of the RMA especially in relation to the Fire Service Act.

I have struggled to work out what has happened and why. However, it seems quite clear on a basic examination that the NZFS has overstepped its statutory powers in drafting the Code of Practice and the KDC has been misled or pressured into appeasing the NZFS by incorporating the provisions of an unlawful document into its District Plan.

The cost to the Council and to its ratepayers has been enormous and I dare suggest that the fire safety in the district has not improved one iota despite the massive expenditure.

I am making my submission available to ratepayers in the district, and, if they agree with my submissions, then I am inviting them to file their own separate submission stating that they support my submissions.

In the interests of fairness, and because of the complexity of the issue, I ask that the Council considers and treats each of those submissions as a separate submission.

I do not wish to be heard in support of my submission.

Clive Boonham

25 Alamar Crescent, Mangawhai Heads

Date: 18 November 2016

Address for service:

PO Box 401005 Mangawhai Heads, Mangawhai 0541

Telephone: 09 431 4723

Email address: raro.retreats@xtra.co.nz

Yours sincerely
Patrick Sparks

Paula A. Hansen

From: tessap@xtra.co.nz
Sent: Saturday, 19 November 2016 7:54 a.m.
To: Council
Subject: You have a new enquiry on your website

Categories: CSC Kylie Flood

You have received a new enquiry from your website. The details are as follows:

Subject: Submissions to District Plan
From: Theresa Pearson <tessap@xtra.co.nz>
Enquiry date: 19-Nov-2016 07:53AM
Referer: https://www.google.co.nz/
Query: I would like to support Clive Richard Gerald Boonhams submission to the councils fire plan.

① We strongly suggest you [click here to log into your website](#) and process this enquiry. This will ensure that your response is recorded against the enquiry in a centralised area inside your website administration.

Paula A. Hansen

From: justwilliam@xtra.co.nz
Sent: Sunday, 20 November 2016 10:11 a.m.
To: Council
Subject: Submission Fire Safety Regulations

Categories: CSC Hannah Davies

Dear Council,

① I support the submissions of Clive R. G. Boonham from Mangawhai i.e. Plan Change 4 should be completely withdrawn and replaced with a new Plan Change that deletes all references to the Code of Practice.

② This relates to the removal of your proposal for setback requirements for buildings to be 20m from trees.

I do not wish to be heard in support of Mr Boonham's submission.

Bill Butterfield

Paula A. Hansen

From: Grant Douglas <grant.douglas@beachshadow.com>
Sent: Sunday, 20 November 2016 6:36 p.m.
To: Council
Subject: submission to proposed plan change 4 - fire safety rules
Attachments: Objection to proposed plan 4 fire safety rules.pdf
Categories: CSC Hannah Davies

To whom it may concern,

Please find attached a pdf file regarding our submission to the proposed plan change 4 - fire safety rules. We do not wish to be heard in respect of this submission.

Yours sincerely,

Grant and Fiona Douglas

Grant and Fiona Douglas
59 Cheviot Street
Mangawhai Heads

grant@beachshadow.com

19 November 2016

Kaipara District Council
Private Bag 1001
Dargaville 0340
Grant and Fiona Douglas

council@kaipara.govt.nz

Objection to Proposed Plan Change 4 – Fire Safety rules

To Kaipara Council,

① We object to the Plan Change 4 of the Fire Safety Rules. I will outline the reason as to this objection and look at some alternate views on fire protection.

② 1/ The inclusion of a set rules from the New Zealand Fire Service Firefighting Water Supplies Code of Practice is purely an advisory document. However it would appear that the council has taken upon itself to propose that this document be inclusive in the District Plan as an enforceable local law. Looking at the document in more detail;

a. The preface highlights the value of fire protection;

③ *The code recognises the value of fixed fire protection systems, and particularly sprinkler installations, both in commercial structures and in homes. The Fire Service accepts that its firefighting water requirements can be tailored to a much lower demand in these structures.*

b. In the Forward it clearly states what the purpose of the document is for;

④ *This code of practice was developed to provide direction on what constitutes a sufficient supply of water for firefighting in urban fire districts. This code of practice is not intended to provide specifications for the water supply required for the effective operation of fire protection systems.*

c. Further to this it intends that the document will form a partnership of some nature;

⑤ *It is intended that the code of practice will form the basis of a partnership between the New Zealand Fire Service, territorial authorities, water supply authorities and developers so that the code may be used as a basis for territorial authority and water supply authority (WSA) conditions of supply or be called up, for example, by territorial authorities in rules regulating subdivisions in the district plan.*

d. The general aims of the document state that;

⑥ *Compliance with this code of practice does not guarantee that in each and every case the Fire Service can control or extinguish a fire with the water supply available.*

e. The document guidance is further stated in Paragraph 1 General Aims in that;

⑦ *This code of practice provides techniques to define a sufficient firefighting water supply that may vary according to circumstances. It relates to the Fire*

Service requirements only; territorial authorities and building owners may choose to exceed the provisions. SNZ PAS 4509 is written in a way that will encourage flexibility and provide different options for developers and territorial authorities. The legal content of this is further stated; This code of practice is non-mandatory but could be incorporated into relevant bylaws.

2/ The notion of prevention would be of a greater benefit to limiting fires in the first place. Currently there are prevention measures in place such as; a fire ban in summer and during dry periods, fire alarms and portable fire extinguishers. Additionally, residents have the options of installing fire suppression and alarms connected to the internet to allow earlier response times. Further to this (and in Mangawhai's case as in a residential area), all houses have a water tank and neighbours' in the area would be more than happy to allow the NZFS to use this resource should a fire occur within the local vicinity.

3/ If any discussion is to take place in a Local Plan then it should be of an advisory nature based upon the NZFS Firefighting Water Supplies Code of Practice and, the location of where our firefighters are based relative to their operational ability. The NZFS document in question highlights one such example;

The Fire Service recommends the installation of automatic fire detection devices such as smoke detection systems and fire protection systems such as sprinklers in buildings (irrespective of the water supply) to provide maximum protection for life and property.

Further to this, the location of the fire service appliances within a certain radius such as 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. Isolated properties of a significant distance from the fire appliances should be advised to implement additional fire prevention/extinguishing systems to reduce a fire but only in an advisory capacity. Insurance companies should be the driver of installing such systems and consequently reducing premiums as an incentive.

In summary the council is being too prescriptive in their handling of NZFS Water Supplies Code of Practice document, 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. If any input into future plans require an input on Fire matters, reference should be made to the document as it was intended, a code of practice with its content encouraged to be considered in future development rather than prescribed in some ill-thought out local law.

Yours sincerely,

Grant and Fiona Douglas

19/11/2016

Kaipara District Council,
42 Hokianga Road,
Dargaville 0340



To whom it may concern,

① We do support the submissions of Clive Richard Gerald Boonham.

A handwritten signature in black ink, appearing to read "Henk and Christa van der Woerd". The signature is fluid and cursive, with a long horizontal stroke at the end.

Henk and Christa van der Woerd
14 Ti Kouka Way,
RD2,
Kaiwaka 0573



November 21, 2016.

46 Wintle St,

Mangawhai Heads.

To: Kaipara District Council.

Private Bag , Dargaville.

Re: Submissions on Proposed Plan Change 4.

Council,

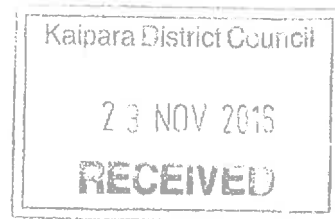
①

We, the undersigned, being ratepayers in the area of Kaipara District wish to record that we very strongly support the submission filed by Clive Richard Gerald Boonham in rejection of the proposed Plan Change 4,

Yours faithfully,

Douglas Lloyd Somers-Edgar

Anne Beverley Somers-Edgar



FIRE SAFETY RULES

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

Name of submitter: Philip and Beverley Revell

12 Findlay Street

Mangawhai Heads

Valuation No.: 01221 - 56800

This is a submission on a Private Plan Change No.4 proposed to the Kaipara District Plan. The Proposal is to change the Fire Safety Rules (Land Use) for buildings and structures in the Rural, Residential, Business (Commercial and Industrial), and the two Maori Purposes Zones to remove the requirement to comply with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.

The Proposal seeks to add an issue statement, a specific objective and three policies and an Other Methods section to Chapter Two of the District Plan. Chapter Two applies district-wide. At present the District Plan does not contain a policy framework with regards to structural fires.

① *We support the submission of Clive R G Boonham dated 18 November 2016*

We do not wish to be heard in support of this submission

We could not gain an advantage in trade competition through this submission.

We are not 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 effects of trade competition.

A handwritten signature in black ink, appearing to read 'Philip and Beverley Revell', written in a cursive style.

Philip and Beverley Revell

12 Findlay Street

Mangawhai Heads

Address for Service:

12 Findlay Street

Mangawhai Heads

Email: philrevell@yahoo.com

Online Submission

PC4: Fire Safety Rules (Land Use)

Submitter

Title: Dr

First Name: Jorg

Last Name: Nordmeier

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

Submission Details

The specific parts of the proposal that my submission relates to are: [give details]

The whole proposal

My submission is:

[include

- **whether you support or oppose the specific provisions or wish to have them amended; and**
- **reasons for your views]**

I would like my submission to be the same that Mr Clive Richard Gerald Boonham has submitted, dated Nov.18, 2016

I seek the following decision from the local authority:[give precise details.]

Same as in Mr. Boonhams submission

Paula A. Hansen

From: Brian Hurring <bandahnz@xtra.co.nz>
Sent: Tuesday, 22 November 2016 5:38 p.m.
To: Council
Subject: Fire Safety Regulations

Categories: CSC Pam White

With reference to the above fire safety regulations and the requirement for submissions by 24 November:

We, Bryan Hurring and Annette Hurring, 17 Mangawhai Heads Road, say:

We support the submissions of Clive Richard Gerald Boonham. Plan Change 4 should be completely withdrawn and replaced with a new Plan Change that deletes all references to the Code of Practice.

*Yours faithfully
Annette & Bryan Hurring*

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

Name of submitter: *Mrs. Ulylla Farlane* [Full name]

This is a submission on a Private Plan Change No.4 proposed to the Kaipara District Plan. The Proposal is to change the Fire Safety Rules (Land Use) for buildings and structures in the Rural, Residential, Business (Commercial and Industrial), and the two Maori Purposes Zones to remove the requirement to comply with the *New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008*.

The Proposal seeks to add an issue statement, a specific objective and three policies and an Other Methods section to Chapter Two of the District Plan. Chapter Two applies district-wide. At present the District Plan does not contain a policy framework with regards to structural fires.

It is proposed to remove the setback requirement for buildings in the Residential and Business Zones to be located at least 20 metres from naturally occurring or deliberately planted area of shrub or shrubland, woodlot or forest. This also includes removing the provision of a building having to be 20 metres from the dripline of any tree.

It is proposed to remove the provision relating to a 1971 Model Bylaw for Fire Prevention. This model Bylaw does not now exist and was never replaced.

It is not proposed to remove references to the *New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008* in the subdivision rules. However, this is open to submissions.

I **wish / do not wish** to be heard in support of my submission.

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

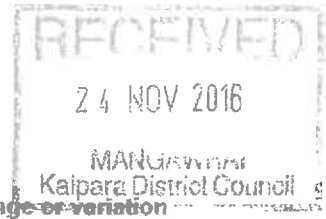
*[*Delete if you would not consider presenting a joint case.]*

Signature of submitter
(or person authorised to sign on behalf of submitter)

23-11-16
Date



Street or PO Box	<i>P.O. Box 168</i>
Town and postcode	<i>Ellenborough 0540</i>
Telephone:	<i>09-431-5221</i>
Email address:	
Contact person: <small>[name and designation, if applicable]</small>	<i>Ulylla Farlane</i>



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

Name of submitter: Ian David Chisholm [full name]

This is a submission on a Private Plan Change No.4 proposed to the Kaipara District Plan. The Proposal is to change the Fire Safety Rules (Land Use) for buildings and structures in the Rural, Residential, Business (Commercial and Industrial), and the two Maori Purposes Zones to remove the requirement to comply with the *New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008*.

The Proposal seeks to add an issue statement, a specific objective and three policies and an Other Methods section to Chapter Two of the District Plan. Chapter Two applies district-wide. At present the District Plan does not contain a policy framework with regards to structural fires.

It is proposed to remove the setback requirement for buildings in the Residential and Business Zones to be located at least 20 metres from naturally occurring or deliberately planted area of shrub or shrubland, woodlot or forest. This also includes removing the provision of a building having to be 20 metres from the dripline of any tree.

It is proposed to remove the provision relating to a 1971 Model Bylaw for Fire Prevention. This model Bylaw does not now exist and was never replaced.

It is not proposed to remove references to the *New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008* in the subdivision rules. However, this is open to submissions.

I ~~could~~ **could not** * gain an advantage in trade competition through this submission.

*[*select one from the above sentence or delete entire sentence if you could not gain an advantage in trade competition through this submission.]*

I ~~am~~ **am not** † 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 effects of trade competition.

[†select one from the above sentence]

The specific provisions of the proposal that my submission relates to are:
[give details].

THE WHOLE PROPOSAL

My submission is:

[include a) whether you support or oppose the specific provisions or wish to have them amended; and
b) reasons for your views].

① I OPPOSE THE PROVISIONS ALTOGETHER

MY REASONS : I SUPPORT THE REASONS
SET OUT IN THE SUBMISSIONS OF
CLIVE RICHARD GERALD BOONHAM
REF : 1614161

I seek the following decision from the local authority [give precise details]

PLAN CHANGE 4 SHOULD BE COMPLETELY
WITHDRAWN @ REPLACED WITH A NEW PLAN CHANGE
PROPOSAL THAT COMPLETELY DELETES ANY
REFERENCE TO FIRE RULES BASED ON THE
CODE OF PRACTICE

I ~~wish~~ do not wish to be heard in support of my submission.

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

[*Delete if you would not consider presenting a joint case.]



Signature of submitter
(or person authorised to sign on behalf of submitter)

Date

Note: A signature is not required if you make your submission by electronic means.

Address for service of submitter

179 Taylor Rd RD2 Waimahua

Street or PO Box	179 Tayler Rd
Town and postcode	Waimaui
Telephone:	4118316 0274941342
Email address:	chisholms@xtc.com
Contact person: <i>[name and designation, if applicable]</i>	Dave Chisholm



KaiparaConcerns

Home	Fire Safety Rules	Who do we pick for Mayor?	KDC v A-G	New Bylaw	Court of Appeal	Sabin	
Draft Annual Plan 2014/15	Voices of Kaipara	Validation Bill	Judicial Review	Legal Eagle's Posts			
Ratepayers Forum	Council Meeting	McKerchar Deed	MRRRA opinion	Rates Strike	The March (photos)	Cover Up	
Final Council Meeting	Hearings	Last Decisions	Meeting with Council	New rates	Letter to Council		
SUIP Problems	Draft Annual Plan 2013/14	Minister's Review Team	More illegalities	Audit Report (LTP)			
Legal Liability	Auditor General Minister	Q&A	Legal Eagle	Independent first principles review	SUIP Guidelines		
Financial Reports	Archives	2012 Posts	Cartoons	2011 posts	Home archives	Home 2014	Archives 1
Archives 23.02.16 to 05.07.2016		Archives: 08.04.2015 to 26.11.2015	new				

FIRE SAFETY RULES

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

Name of submitter: Clive Richard Gerald Boonham

This is a submission on a Private Plan Change No.4 proposed to the Kaipara District Plan. The Proposal is to change the Fire Safety Rules (Land Use) for buildings and structures in the Rural, Residential, Business (Commercial and Industrial), and the two Maori Purposes Zones to remove the requirement to comply with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.

The Proposal seeks to add an issue statement, a specific objective and three policies and an Other Methods section to Chapter Two of the District Plan. Chapter Two applies district-wide. At present the District Plan does not contain a policy framework with regards to structural fires.

It is proposed to remove the setback requirement for buildings in the Residential and Business Zones to be located at least 20 metres from naturally occurring or deliberately planted area of shrub or shrubland, woodlot or forest. This also includes removing the provision of a building having to be 20 metres from the dripline of any tree.

It is proposed to remove the provision relating to a 1971 Model Bylaw for Fire Prevention. This model Bylaw does not now exist and was never replaced.

It is not proposed to remove references to the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 in the subdivision rules. However, this is open to submissions.

I could not gain an advantage in trade competition through this submission.

I am not 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 effects of trade competition.

The specific provisions of the proposal that my submission relates to are:

The whole proposal

My submission is:

(A) I oppose the proposal in its entirety and support the withdrawal of Proposed Plan Change 4 in its entirety. I propose that it is replaced with a new Plan Change to delete any reference in the District Plan to Fire Safety Rules and the NZFS Code of Conduct.

(B) REASONS FOR MY VIEWS

THE PAST

This is a perfect example of how local authorities squander the money of ratepayers.

① The incorporation of the Fire Safety Rules in the KDC District Plan, based on the NZFS Code of Practice, was utterly ill-conceived. It was done by the KDC without any consideration of:

- The legal situation.
- The content of the Code and whether the contents were lawful.
- The ramifications that adoption of the Code has had for the amenity values of the district.
- The cost to the KDC (and ultimately the ratepayers) in implementing the Code and possible subsequent amendments.
- The necessity for legal and other opinions relating to the legality of obligations under the Code. Again at the cost of ratepayers.
- The cost to individuals in complying with the Code.

It is a perfect example of out-of-touch bureaucracies - the NZ Fire Service and the KDC - imposing their will on the people of Kaipara, without any understanding of the legal situation, to the detriment of the amenity values of the district, and to the financial well-being of the residents, and contrary to all common sense.

② If allowed to continue it will turn Mangawhai, as an example, into a Tank Town completely denuded of vegetation and trees. A perfect example is the development on the causeway on Molesworth Drive just opposite the Museum.

③ The commissioners side-stepped some of the draconian features of the Rules by allowing smaller water tanks and modified requirements in respect of access, but only on obtaining the appropriate resource consents, and at great cost.

The cost of complying with the Plan by providing the required tanks, fire vehicle access and hardstand and special couplings has been enormous. The Evaluation shows that 177 consents to reduce the size of the tanks were granted but there is no indication of how many applicants installed the standard 45,000 litre tanks.

This caused community frustration with the new rules, and the Evaluation states:

It is considered that requiring resource consents for this is a disproportionate mitigation measure when compared to risks.

That is an understatement.

PLAN CHANGE 4

The Council is now proposing an alternative amendment to the District Plan which includes parts of the Code of Practice but to a reduced extent.

It is noted that the KDC is removing the requirement for dedicated water tanks of any size even though the NZFS is adamant that unreticulated sites must have tanks and that they must be at least 45,000 litres.

④ Some of the changes are welcome but others simply perpetuate the confusion that surrounds the NZFS Code of Practice and whether it is legally applicable to the RMA and the Building Act.

Below I consider some of the changes planned for the District Plan.

Issues

⑤ 2.3.14: This is a list of general statements that may or not be true but which take us nowhere.

It reiterates the special coupling requirement as if it is set in concrete. It has already been established that this is

requirement is ridiculous. If the purpose of dedicated tanks is for firefighting then why make them only available to the Fire Service which will likely arrive too late?

District-wide objectives

⑥ 2.4.15: What does "encourage and promote mean"?

Policies

⑦ 2.5.17(a): What does "ensure" mean? What is an "adequate supply"? What is "reasonably anticipated land use"?

2.5.17(b): What does "promote" mean? What is an "alternative supply"? How much and what rules attach to the requirement? Given that the Fire Truck may not arrive before the house is destroyed, is this a suggestion that the untrained occupants should keep an alternative supply of water with the implication that they are to be responsible for fighting the fire. But the occupants cannot use the water because of the special coupling. We end up with water which no one can use, which is acknowledged in the proposed 2.3.14.

⑧ I quote from the Evaluation:

As far as a permitted activity is concerned, legal test specify that they should be clear and certain to "enable the Plan user to judge the meaning and effect of the rule at face value without having to resort to using explanations or seeking advice from those who wrote it." [Source: Writing Effective and Enforceable Rules - Quality Planning Website.]

"Ensure", "adequate", "reasonably promote", "alternative supply" etc are all vague terms that have no place in rules or policies.

Other methods

⑨ These are all pie in the sky dreams that have no basis in reality until they are thoroughly considered and concrete proposals adopted.

They are utterly meaningless in a District Plan.

⑩ In my understanding most house fires are caused by cooking accidents, heaters of open fire accidents, candles overturned, or electrical faults. The obvious methods to prevent structural fires would be to set rules that ban cooking and heating in houses, ban the use of candles in houses, and ban the use of electricity. Such rules would deal with the actual issues.

⑨ Methods of ensuring safety must be balanced against convenience. The risk of death or injury from a house fire is extremely remote. Death or injury in a motor vehicle accident is far more likely. Should we all be required to wear crash helmets in cars and should the speed limit be reduced to 15 k and hour?

⑪ Note all the vague words in these proposals: Investigate, promote, support. They should have no place in the District Plan.

Outcomes

⑫ 2.7.13: Is this an outcome that is relevant to a District Plan?

Amendments – Rural and Maori Purpose zones

⑬ In para 6. the provision for movement and access for fire service vehicles has been retained. So has the 20 metre rule for vegetation and trees.

Neither has any place in a district plan.

The 20m rule has been deleted from urban areas. Why is it proposed to retain it for rural areas?

It will prevent rural dwellers from beautifying the garden immediately adjacent to their house. (See para 12.)

Why should rural residents be denied the enjoyment of a garden with trees and shrubs surrounding their houses?

And who is going to distinguish what is a garden and what is "scrub or shrubland" etc?

This provision is being retained because of wildfire potential in rural areas (see para 12.) Think about it clearly? How many rural residences in Kaipara have been destroyed by wildfire?

How many of those houses destroyed by wildfires have resulted from, or been acerbated by, the rose beds, the fruit trees and ornamental trees surrounding the house?

Is the KDC going to appoint an inspector of rural gardens to ensure that there is no vegetation within 20 metres of a house? Unbelievable.

The 20 metre set back is wholly inappropriate for NZ conditions and seems to be taken straight out of a Code of Practice for Victoria, Australia.

14

The "recommendation" in para 6 that a fire sprinkler system be installed has no place in a district plan. Recommendations are meaningless.

Amendments- Urban rules

15 +
16

Paras 7, 8, 9, 10 and 11: These rules should be deleted in toto.

The proposed changes are a mixture of general statements, vague statements of supposed best practice, with no clear requirements or obligations. They break all the rules of good drafting.

They would be a nightmare to interpret and every application for approval would result in massive bills from lawyers, consultants and the Fire Service.

They also open the door to endless legal disputes and applications to the court to clarify the rules. In my experience the courts would not deal kindly with such poorly drafted rules.

MY SUBMISSION

The people of Kaipara were not impressed with the original incorporation of the Fire Safety Rules into the District Plan.

The commissioners attempt to water down the severity of the rules came at the expense of much forelock tugging and costly consents.

The fact that the proposed amendment to the rules under Amendment 2 was soundly rejected by submitters, shows the feelings of ratepayers towards this issue.

The proposed Change 4, while an improvement on proposed change 2, fails to face up to the fundamental problems relating to the interaction between the Code of Practice and the District Plan, which is effectively a creature of the RMA.

The proposed change smacks of a compromise to appease the NZFS and ignores the legal status of the plan and all the complications that have arisen because, quite simply, the provisions of the Fire Service Act have been ignored. The legal situation has been further muddled by bureaucratic demands, posturing and pressure that have no legal basis.

The legal situation

Under 2, **The District Plan and the Code of Practice**, the Evaluation states:

Central to this Plan Change is the role that the Code of Practice should have in the District Plan in respect of performance standards in land use rules for permitted activities and as a matter for consideration at the time of subdivision.

That is the nub of the problem facing us.

We need to start with a full examination of what the law says about the role of the Code of Practice.

The Evaluation gives us a hint when it states on page 1:

17

8 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.

The Fire Services Act itself clarifies the situation.

18

Section 30 of the Fire Service Act deals with: Use of water in mains for fire protection, fire fighting, and hazardous substance emergency purposes.

Note that the s 30 deals solely with water mains and water mains only.

The duties of the National Commander in respect of water mains are set out in s 30(2), and under s 30(3) the National Commander is obliged to publish a Code of Practice specifying standards for water supply volume and pressure for **water mains**. (My emphasis)

Paragraphs 7-11 are found in Section 1.3 of the Section 32 Evaluation Report. Paragraph 7+8 relate to urban rules. Paragraphs 9-11 relate to subdivision. Refer Attachment 1. Refer also to page 70 of this submission.

This is the Code of Practice that we are talking about.

The Code of Practice has two essential features:

- It relates only to water mains.
- It is a set of standards. That means figures that relate to supply, volume and pressure of water mains.

It follows:

- The Code of Practice sets standards. It cannot therefore include suggestions or recommendations.
- 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 or trees around houses. I repeat again, it can only relate to water mains.

17

There is no interface between the Code of Practice in the Fire Service Act and any other legislation which is relevant to local authorities. It stands on its own as a code of standards for nothing more than water mains.

The Fire Service Act was enacted in 1975 and predated the RMA. The RMA makes no reference to the Fire Service Act and the Fire Service Act was not amended in any way to interact with the RMA when that was subsequently enacted.

The Fire Service Act therefore has no relevance in applying the provisions of the RMA.

19

Likewise, pursuant to s 21(6) of the Fire Service Act "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". Consequently the Code of Practice can have no application to the issuing of building consents. (This provision is important when it comes to issuing building consents.)

The Code of Practice, as drafted, goes way beyond the limitations imposed by s 30(3). It goes well beyond setting standards for water mains and includes performance requirements for many extraneous matters relating to firefighting.

It also includes suggestions and recommendations etc which are clearly not standards.

Such extraneous matters are almost certainly ultra vires as the National Commander does not have the statutory power to include such matters in a s 30(3) Code of Practice.

17

In summary, the Code of Practice is simply a set of standards for water mains and had no relevance to any other matters relating to firefighting and does not impose any requirements in respect of the RMA or the Building Act.

Foreword to the Code

The Foreword to the Code tends to embellish the powers that the NZFS derives from the Code of Practice.

20

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' 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 fire fighting 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.

The KDC should not therefore be offering support for matters that are outside the ambit of a code of practice and which are clearly ultra vires.

It should be noted that including and reciting purported powers in a statutory document does not give them any legal authority if they are outside the scope of powers set down in the legislation.

The fundamental error that was made was for the NZFS to include extra powers in its Code of Practice that were not legally permissible. That error was compounded by the failure of the appropriate authorities to take issue with the situation. And, let it be said, the blind acquiescence of local authorities, like the KDC, encouraged the NZFS to wield its ultra vires powers. In such fertile soil the powers of the NZFS under the Code of Practice grew like the proverbial Topsy (mixed metaphor acknowledged) and have now created a legal mess that will be difficult to resolve

21 Certainly under s 21 of the Fire Service 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 s 21(2). They relate to the dissemination of knowledge, education and publicity about fire safety, fire safety campaigns and research.

They do not include anything to do with setting obligatory guidelines or standards that relate to the supply of water for firefighting or the issue of consents under the RMA or in respect of subdivisions.

This misunderstanding of the legal nature of the Code of Practice had created a real legal mess. But there are other issues as well.

22 The Evaluation states that there is some doubt about the review of the Code of Practice. Whilst it is accepted practice that it 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.

The Evaluation also highlights the incomplete submission and hearing process for finalising the content of the Code.

23 More alarming is the fact that, under the RMA, a reference to the Code in the District Plan is treated as a reference to the Code in force at that time. If the Code is replaced or amended then there has to be a costly Plan amendment.

Also of huge concern is the obdurate approach adopted by the NZFS in its submission on Plan Change 2 that it **will** not budge from its stated capacity of 45,000 litres for dedicated water tanks.

The simple response to that is that the Code of Practice only relates to standards for water mains. It does not and cannot relate to stored water, no matter what the NZFS thinks.

This same arrogance is displayed in the NZFS' approach to structural fires. The Evaluation points out that under the RMA such fires are not a core concern because they are not natural hazards. But it also goes on to point out that the NZFS "believes it has responsibility to provide for fires fighting services under the legislation".

It can believe all it likes but the reality is that in law its powers are limited by the Fire Services Act. Its functions are set out in s 21(2).

RECOMMENDATION

24 The 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.

Ratepayers have had enough. To date the KDC has acted under presumed obligations in respect of the Code which have been contrary to the best interests of ratepayers, from both an amenity and financial point of view, and which have done nothing to improve the firefighting abilities in the district.

Rather than the new half-hearted amendments to the Plan and obscure, vague and meaningless provisions, ratepayers would prefer that all references to the Fire Safety Rules and the NZ Fire Service Code of Practice are omitted or deleted from the District Plan.

The Code of Practice, as it stands, and the practice surrounding it, is such a mess that local authorities should give it wide berth.

It is bureaucracy gone mad.

25 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.

The costs expended by the KDC alone are beyond contemplation. We read the Evaluation with utter amazement at the detailed legal analysis and the costs involved, including the Opus report and others, that one small local authority has been compelled to expend.

Compare that to the costs incurred by the FNDC and its ratepayers who have not spent a penny in complying with unlawful requirements, jumping through consent hoops, shelling out massive sums in consent fees and tank costs, and angsting over consultants' reports and legal opinions.

It is totally unreasonable that small councils such as the KDC should be burdened with such complicated problems that are

In reality a national problem. Fire safety is an issue throughout the country and the same problems face every district.

It is now the time for the KDC to assess its clear legal obligations and to ascertain how exactly it serves its people and their safety without blindly following the dictates of the NZFS which have no standing in law.

I seek the following decision from the local authority:

16 Accordingly, Plan Change 4 should be completely withdrawn and replaced with a new Plan Change that completely deletes any reference to Fire Rules based on the Code of Practice.

This relates both to land use and to subdivision under the RMA for the simple reason that the Code of Practice has no lawful relevance to the RMA.

Clearly the KDC, along with other local authorities, needs to consider rules in respect of fire safety and how they are to be incorporated into its consenting processes. That includes assessing whether, legally, the Code of Practice has can have any influence on the issuing of building consents.

25 This submission maintains that 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.

A nationwide standard is required and that is the responsibility of central government to put together.

Once the standard is adopted then all local authorities can simply incorporate it into their processes.

26 The Evaluation considers other sources of water for fighting fires in a non-reticulated area (such as community tanks and portable dams). Such ideas have no place in the District Plan. They are issues that are relevant to every local authority in New Zealand, not just Kaipara. They need to be tackled and considered on a nationwide basis. 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. Rather than its authoritarian and unlawful approach in respect of the Code of Practice, it should be putting its energies into coordinating inquiry and research into alternative methods of providing water for firefighting (and other firefighting issues), as specifically required by the Fire Service Act.

Until the government and the Fire Service get their acts together, local authorities should adopt the approach of the FNDC and ensure that the Fire Service Code of Practice plays no part in its District Plan or in respect of issuing consents under the Building Act.

COMPLEXITY

This is an inordinately complex issue which will be beyond the grasp of the majority of ratepayers.

I am a retired lawyer but have no expertise or experience in respect of the RMA especially in relation to the Fire Service Act.

I have struggled to work out what has happened and why. However, it seems quite clear on a basic examination that the NZFS has overstepped its statutory powers in drafting the Code of Practice and the KDC has been misled or pressured into appeasing the NZFS by incorporating the provisions of an unlawful document into its District Plan.

The cost to the Council and to its ratepayers has been enormous and I dare suggest that the fire safety in the district has not improved one iota despite the massive expenditure.

I am making my submission available to ratepayers in the district, and, if they agree with my submissions, then I am inviting them to file their own separate submission stating that they support my submissions.

In the interests of fairness, and because of the complexity of the issue, I ask that the Council considers and treats each of those submissions as a separate submission.

~~I do not wish to be heard in support of my submission.~~

~~Clive Boonham~~

~~28 Alamar Crescent, Mangawhai Heads~~

STEVE FITT

11/24/2016 24 Nov 2016

KaiparaConcerns

Date: ~~18 November 2016~~

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MANGAWHAI P.O.

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Paula A. Hansen

From: Jim Bremner <jamesbremner@xtra.co.nz>
Sent: Thursday, 24 November 2016 11:31 p.m.
To: Council
Subject: Fire safety regulations

Categories: CSC Glenis Martin

As an original submitter on the matter and having just returned to NZ I understand further submissions to the proposed plan change 4 close at midnight tonight. Because of the afore mentioned reason I do not have sufficient time to re-submit a further submission however having read the submissions of Clive Richard Gerald Boonham I fully endorse the entirety and wish it to be recorded as a Rate Payer that I totally am in favour of the full submission.

James A G Bremner
262 Molesworth Dr.
Mangawhai Heads

Paula A. Hansen

From: Robin Johnson <glopak.technology@gmail.com>
Sent: Thursday, 24 November 2016 4:38 p.m.
To: Council
Subject: plan change 4
Attachments: Kaipara District Council fire fighting water supplies..docx

Categories: CSC Glenis Martin

please find submission attached

robin Johnson

109 Cornwall Way

Mangawhai

Kaipara District Council.

Plan change4

The objective of introducing rules relating to fire safety can be summarized as firstly saving life and secondarily preserving property.

① **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, doesn't will be toast long before the brigade arrives. The incidence of domestic fires is strongly correlated with deprivation. Providing working smoke alarms coupled with regular checking to the most deprived areas, if done through community groups would be the single-most effective action to prevent loss of life from domestic fires and would cost a fraction of the money currently being spent on water supplies in higher socio-economic areas.

Property protection

② The fire service record of saving buildings over much of the Kaipara is low due to brigade response and travel times. In respect to property we do need protection from is "the great fire of London" This means the brigade simply aims to prevent the spread of fire from one property to the next. To do this the brigade does need access to water. In the case of Mangawhai, the main area affected by the rule, there is little dedicated fire water storage available in the older developed areas and a proliferation of dedicated tanks in new subdivisions. Mangawhai like other towns without council water supplies is therefore in need of a tanker water supply for the foreseeable future. Investing in a new larger tanker would provide a guaranteed supply to the whole of the area served by the brigade at a fraction of the cost of the tanks installed so far. (Previous submissions have pointed this out.

SNZ PAS 4509:2008

③ 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 within 90 metres 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 Gisbourne 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 neighbor installs a tank there is no reason for me to do the same.

Deleting all references to SNZ PAS 4509:2008 and simply adding a couple of rules regarding supply and fitting smoke detectors including regular servicing to at least all houses in lower socioeconomic areas with a commitment to providing and maintaining water tankers to brigades

in the area will give improved outcomes at much less cost – costs would be recovered through rates thus distributing the cost over all ratepayers rather than the high imposts on new properties.



**Far North
District Council**

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25 November 2016

Planning Department
Kaipara District Council
Private Bag 1001
Dargaville 0340

ATTN: Robert Schlotjes

FAR NORTH DISTRICT COUNCIL SUBMISSION ON THE KAIPARA DISTRICT COUNCIL PLAN CHANGE 4 – FIRE SAFETY RULES (LAND USE)

Our District

The Far North District has the third largest land area of any territorial authority in the North Island and the 12th highest population of all district and unitary authorities. The scale, geography, climate, high percentage of conservation land, combine to create a particular set of challenges for delivering efficient and effective services to the predominantly rural based district.

The population is dispersed throughout the district, with smaller settlements dotted around the expansive coastline. The Far North has 18 settlements with a public or private reticulated water supply, some with insufficient fire flow. There are a large number of smaller settlements with a heavy reliance on fire fighting volunteers. The district is unique in that approximately 30 percent is covered in vegetation with a range of flora and fauna which requires protection.

General Comments

The Far North District Council (FNDC) welcomes the opportunity to provide a submission on the Kaipara District Council (KDC) proposed Plan Change 4.

FNDC is currently undertaking a consolidated review of the Far North District Plan (FNDCP) and will be reviewing its fire safety rules. Submitting on this plan change provides an important opportunity to ensure where feasible that our district plan approaches are consistent with neighbouring districts. Consistent implementation of the Resource Management Act 1991 provides certainty for developers and the public.

Council conducted an extensive consultation exercise in the first half of 2016 as part of the district plan review. This consultation process identified that people are in support of measure for the avoidance and mitigation of fire hazards but would like some flexibility as to how this is achieved. It is considered that the proposed plan change has been generally undertaken to address similar issues to those identified by FNDC as part of its consolidated review.

Submission Points

1.0 General submission points on PC4

① 1.1 FNDC is supportive of the inclusion of a policy structure relating to structural fires. Currently the FNDC framework is like that of KDC, only including wildfire risk. This issue will form part of the FNDC review.

1.2 *Relief sought:*
Retain the inclusion of a policy structure for structural fires.

② 1.3 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.

1.4 *Relief Sought*
Consider including a cross reference in Chapter 7 Natural Hazards.

2.0 Issues

③ 2.1 Issue 2.3.14 clearly highlights that structural fires are an issue for KDC and it sets the scene for the policy cascade for structural fire risk.

2.2 *Relief sought:*
Retain this issue.

3.0 Objectives

④ 3.1 Objective 2.4.15 states that KDC is going to encourage and promote fire safety measures. FNDC is supportive of the introduction of this objective.

3.2 *Relief sought:*
Retain this objective.

4.0 Policies

⑤ 4.1 Policy 2.5.17(a) assumes that KDC will be able to supply new reticulated sites within the reticulated services boundary, with an adequate supply of water for fire fighting purposes. In July 2014 FNDC engaged Opus to conduct an assessment to define the available fire flow in its reticulated network. It was found that a large number of the reticulated areas have deficient flows to address fires. It is unclear from the Section 32 report if KDC has undertaken a similar study and therefore there could be implications with the flow rates for fire fighting purposes even in urban reticulated areas.

4.2 *Relief sought*
Only retain this policy if there is appropriate water flow for fire fighting available.

5.0 Other methods

⑥ 5.1 Other methods 2.6.2.5, 2.6.2.6, 2.6.2.7, 2.6.2.8 recognise that there are methods other than the district plan that can be used to assist the minimisation of structural fire risk. It is noted that these have been carefully considered in the Section 32 report and are important when fire safety (land use) triggers are removed.

5.2 *Relief sought:*
Retain the inclusion of other methods.

6.0 Rule Amendments

6.1 Rules 12.1.26, 15A.10.25, 15B.10.25, 13.10.26 and 14.10.26 propose to amend existing Fire Safety Rules (Land use) in the Rural; Residential; Business (Commercial and Industrial); Maori purposes: Maori land and Maori purposes: Treaty Settlement Land Zones. There is no longer reference to the New Zealand Fire Service Fire Fighting Water supplies Code of Practice SNZ PAS 4509:2008 or reference to the outdated Fire Prevention Bylaw in the rules. This is consistent with the FNDP. The Section 32 report has provided some good avenues to explore as to how to address fire safety (land use) as part of the FNDP review.

6.2 *Relief sought:*
Retain the wording in rules 12.1.26, 15A.10.25, 15B.10.25, 13.10.26 and 14.10.26 related to the removal of reference to the Fire Service Fire Fighting Water supplies Code of practice and bylaw for fire prevention in the rules if the other methods, notes and subdivision performance standards are retained through the plan change process.

6.3 Rules 12.1.26, 15A.10.25 and 15B.10.25 include Note 1 around setback for buildings from the dripline of any tree and Note 2 relating to the installation of fire sprinklers. Rules 13.10.26 and 14.10.26 include Note 1 around the installation of fire sprinklers. The inclusion of these notes is important when other land use triggers are removed.

6.4 *Relief Sought:*
Retain the notes for rules 12.1.26, 15A.10.25, 15B.10.25, 13.10.26 and 14.10.26.

6.5 Rules 13.10.26 and 14.10.26 (urban rules) propose to delete the rule for **buildings** to be set back 20 metres from vegetation. The FNDP currently has a similar rule but the setback applies to residential units.

"Residential units shall be located at least 20m away from the dripline of any trees in a naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest."

6.6 The retention of a rule for setback from vegetation for residential units would provide a separation distance from vegetation and help safeguard vegetation from a structural fire. Those who cannot achieve the requirement can seek resource consent where applications will be assessed on their merits. Clarity around the interpretation of what a '*naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest*' is in the form of a guidance note would be beneficial.

6.7 *Relief sought:*
Consider amending the rules 13.10.26 and 14.10.26 to link the setback from vegetation to residential use regardless of the underlying zone and provide guidance on the interpretation of the rule wording.

6.8 Rules 12.10.26, 15A.10.25 and 15B.10.25 (rural rules) include the retention of the building setback from vegetation rule. As mentioned above the FNDP currently has a similar rule but the setback applies only to residential units.

- 6.9 *Relief sought:*
Consider amending rules 12.10.26, 15A.10.25 and 15B.10.25 to link the setback from vegetation to residential use regardless of the underlying zone and provide guidance on the interpretation of the rule.
- 6.10 It is proposed to retain reference to the code of practice in the subdivision performance standards. This is an important time to implement fire safety measures when land use triggers are removed. FNDC in its subdivision chapter refers to compliance with “*Engineering standards and guidelines*” which reference the New Zealand Fire Service’s Code of Practice.
- 6.11 *Relief sought:*
Retain reference to the New Zealand Fire Fighting Supplies Code of Practice as a performance standard for subdivision in the rural, residential, business (commercial and industrial) and Maori Purposes: Treaty settlement zones.

Conclusion

FNDC could not gain an advantage in trade competition through this submission, nor are we directly affected by an effect of the subject matter of the submission that adversely affects the environment, and does not relate to trade competition of the effects of trade competition. FNDC does not wish to be heard in support of its submission.

We appreciate your consideration of this submission. The FNDC District Plan Team looks forward to continuing to work with the KDC Policy Department. Please do not hesitate to contact Sarah Trinder, Policy Planner if you require any further information on this submission at Sarah.Trinder@fndc.govt.nz or 0800 920 029.

Yours sincerely.


Greg Wilson
Manager District Planning

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:

① 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.¹ 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.

② 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.

③ 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

¹ 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.

4 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.

5 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.”*

6 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.

7 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.

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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, new Issue 2.3.14	Support in part	<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"> 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; is inconsistent with the level of detail, specificity and manner of expression in all other issues in section 2.3 of the District Plan; inappropriately confines the issue to a consideration of fires in buildings and structures and does not consider the potential effects of fire spread; fails to recognise the importance of swift access to firefighting water at the time a fire crew arrives at the site of a fire; 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 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. 	Delete proposed Issue 2.3.14 in its entirety.

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Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
<p>Chapter 2 - District Wide Resource Management Issues, 2.4 District Wide Objectives, new Objective 2.4.15</p>	<p>Support in part</p>	<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"> • 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; • recognises the risk of all fires; • aligns with the Commission's statutory responsibility under the FSA; • 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; • 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. 	<p>Amend proposed Objective 2.4.15 as follows: "2.4.15 To encourage and promote fire safety measures for buildings and structures to minimise fire risk to life, property and the environment."</p>
<p>Chapter 2 - District Wide Resource Management Issues, 2.5 District Wide Policies, new Policies 2.5.17(a), (b) and (c)</p>	<p>Support in part</p>	<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"> • fails to recognise that the Code of Practice as one of the primary fire risk reduction tools used by the NZFS; • fails to recognise the broader adverse effects of fire by only addressing the risk of fire spread. <p>The Commission seek limited amendments to the Policies and accompanying explanatory text to:</p>	<p>Amend proposed Policies 2.5.17 (a), (b) and (c) as follows: "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; 2.5.17(b) To promote 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; 2.5.17(c) To encourage education on fire hazard and on fire risk reduction</p>

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Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
		<ul style="list-style-type: none"> • better give effect to Policy 7.1.1 of the RPS; • is the most appropriate way to achieve proposed Objective 2.4.15 (including as amended by this submission); • better enable the Commission to meet its statutory obligations; • 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 • 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. 	<p>measures.</p> <p><i>The District Plan includes can promote measures at land use and subdivision stages to avoid or minimise the potential adverse effects of fire on people, property and the environment, assist in minimising fire risk spread for the community. 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. 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 provide static supplies for fire fighting purposes in the form of tanks situated at strategic locations that can service a wider area."</i></p>
<p>Chapter 2 - District Wide Resource Management, 2.6 Methods, 2.6.2 Other Methods, new Methods 2.6.2.5, 2.6.2.6, 2.6.2.7 and 2.6.2.8</p>	<p>Support in part</p> <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"> • 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; • 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); • 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; 	<p>Amend proposed new Other Methods 2.6.2.5, 2.6.2.6, 2.6.2.7 as follows:</p> <p>"2.6.2.5 Investigate the provision of additional water supply for fire fighting purposes consistent with New Zealand Fire Service Firefighting Supplies Code of Practice SNZ PAS 4509:2008 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</p>	

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Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
		<ul style="list-style-type: none"> 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; 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 support for the NZFS's education initiatives is acknowledged and appreciated. 	<p>brigades with mobile tankers or portable;</p> <p>2.6.2.6 Implementation of the Building Code at the time of building consents;</p> <p>2.6.2.7 Promote the installation of Sprinkler Systems by including an Advice Note on resource consents and/or all Building Consents; ..."</p>
<p>Chapter 2 - District Wide Resource Management Issues, 2.7 Outcomes, new Outcome 2.7.13</p>	<p>Support in part</p>	<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"> the Commission's statutory obligations; the Objective and Policies of Proposed Plan Change 4 as amended by this submission; Policy 7.1.1 of the RPS; and the sustainable management purpose of the RMA. 	<p>Amend proposed Outcome 2.7.13 as follows:</p> <p>"2.7.13 A community where the risks to life, property and the surrounding environment from fire is <u>are</u> minimised."</p>
<p>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)</p>	<p>Support in part</p>	<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"> 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; is not consistent with the importance afforded to firefighting water by section 14(3)(e) of the RMA; is not the most appropriate way to achieve proposed Objective 2.4.15 (including as amended by this submission); does not appropriately implement proposed Policies 2.5.17(a), (b) and (c) (including as amended by this submission); does not give effect to Policy 7.1.1 of the RPS; 	<p>Retain 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>Delete Clause (c) in Rules 12.10.26, 15A.10.25 and 15B.10.25 as proposed.</p> <p>Include Advice Note 2 in Rules 12.10.26, 15A.10.25 and 15B.10.25 as proposed.</p>

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Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
		<ul style="list-style-type: none"> • does not enable the Commission to meet its statutory obligations; • does not appropriately mitigate natural hazards and the adverse effects of fire on people, communities, property and the environment; and • does not enable people and communities to provide for their health and safety and therefore does not achieve the purpose of the RMA. <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"> • 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>”; • 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); • 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; • 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); • 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 	

Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
		<ul style="list-style-type: none"> 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. <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>	
Rule 13.10.26 (Residential), Rule 14.10.26 (Commercial and Industrial)	Support in part	<p>For the reasons set out above, the Commission:</p> <ul style="list-style-type: none"> 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; supports the proposed deletion of the clause in the Rules that requires compliance with NZS 9231:1971; and supports the proposed Advice Note that recommends the installation of sprinklers. <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>Retain Clause (b) in the Operative Plan Rules 13.10.26 and 14.10.26, do not delete Clause (b) as proposed.</p> <p>Delete Clause (c) in Rules 13.10.26 and 14.10.26 as proposed.</p> <p>Include Advice Note 1 in Rules 13.10.25 and 14.10.25 as proposed.</p>

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Proposed Plan Change Provision	Support/ Oppose	Submission	Decision Sought
<p>15</p> <p>Rule 15A.10.3b(c)</p>	<p>Oppose</p>	<p>proximity of vegetation to buildings and does not oppose their deletion given that the rules apply in urban environments.</p> <p>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).</p>	<p>Retain reference to the Code of Practice as it is currently included in Operative Plan Rule 15A.10.3b(c).</p>
<p>16</p> <p>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).</p>	<p>Support</p>	<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"> • is consistent with the importance afforded to firefighting water by section 14(3)(e) of the RMA; • is the most appropriate way to achieve proposed Objective 2.4.15 (including as amended by this submission); • appropriately implements proposed Policies 2.5.17(a), (b) and (c) (including as amended by this submission); • gives effect to Policy 7.1.1 of the RPS; • enables the Commission to meet its statutory obligations; • appropriately mitigate natural hazards and the adverse effects of fire on people, communities, property and the environment; and • achieves the purpose of the RMA by enabling people and communities to provide for their health and safety. 	<p>Retain the Operative Plan Performance Standards in Rules 12.15.4, 13.14.4, 4.13.4 and 15B.14.4 as proposed.</p>
<p>17</p> <p>References to the Kaipara District Council Engineering Standards 2011</p>	<p>Support</p>	<p>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).</p>	<p>Retain references to the Kaipara District Council Engineering Standards 2011 throughout the District Plan.</p>

To: Kaipara District Council

Name of submitter: JG Larsen

This is a submission on a change proposed to the following plan (the proposal):

Kaipara District Plan - Proposed Plan Change 4

I could not gain an advantage in trade competition through this submission.

The specific provisions of the proposal that my submission relates to are:

as attached.

My submission is:

as attached.

I seek the following decision from the local authority:

as attached.

I wish to be heard in support of my submission.

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



JG Larsen

24 November 2016

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Telephone: 021 185 8389

Email: jglarsen.nz@gmail.com (Please copy all correspondence by email)

Contact person: JG Larsen

1.0. Introduction

1.1. My name is Jonathan Larsen. I have been a full time professional firefighter for 16 years. I hold a bachelor of Science degree, National Certificates in Fire and Rescue Services (Urban Fire and Rescue Operations) (levels 2 and 4), and a National Certificate in Fire and Rescue Services (Structural and Industrial) (Level 3).

1.2. I hold the following Unit Standards relating to urban and rural fire operations -

- 3267 Drive fire and rescue vehicles in emergency situations
- 20387 Operate self-propelled pumps for fire fighting
- 3307 Demonstrate knowledge of elements of construction and loads in fixed and mobile property fires
- 10618 Rescue casualties using rescue techniques
- 16934 Apply legislation in fire and rescue services
- 16949 Apply rescue techniques for the extrication of entrapped people from vehicle wreckage
- 16937 Demonstrate knowledge of community risk management elements in fire and rescue services
- 16947 Practice casualty care in fire and rescue services during rescue and extrication activities
- 20395 Wear and operate breathing apparatus in specialist emergencies
- 10612 Operate heavy pumps for fire fighting purposes
- 23406 Provide first aid for trauma and medical emergency situations
- 20385 Demonstrate hydraulic knowledge for fire fighting
- 4651 Apply knowledge of structural fire behaviour
- 3274 Carry out station duties
- 3312 Carry out decontamination procedures
- 3275 Carry out tests on fire and rescue equipment
- 3288 Load water and additives for aerial operations
- 3272 Wear and operate breathing apparatus in general emergencies
- 3287 Suppress vegetation fires with water and with water with additives
- 3285 Demonstrate knowledge of protection of personal safety at vegetation fires
- 14555 Carry out defensive control of structure and vehicle fires
- 16952 Apply salvage and overhaul techniques in fire and rescue services
- 16936 Demonstrate knowledge of community risk management elements in fire and rescue services
- 16946 Demonstrate knowledge of the establishment and maintenance of a rescue tools staging area
- 16933 Describe the legislative process and the legislation empowering response to fire and emergencies

- 16943 Identify principles of fire development in structures and compartments and smoke impact on people
- 20392 Protect and preserve a fire scene
- 20386 Operate portable pumps for fire fighting
- 20388 Work safely with aircraft at emergency incidents
- 20393 Enter and suppress fire in a fire-affected building
- 20394 Apply basic ventilation techniques to assist fire and rescue operations
- 10620 Operate medium pumps for fire fighting purposes
- 3286 Control vegetation fire using dry fire fighting techniques
- 3306 Suppress urban fire with water and water with additives
- 3270 Establish and deliver water supplies for fire fighting
- 3309 Carry out and report on inspections for fire and rescue risk planning
- 3283 Demonstrate knowledge of personal safety at fire and emergency incidents
- 10614 Use ladders in fire and rescue situations
- 10616 Use knots and lines in fire and rescue situations
- 3268 Operate light pumps for fire and rescue purposes
- 3310 Check hydrants and water supplies
- 3282 Enter and protect fire-affected buildings
- 3278 Demonstrate knowledge of command and control structure of an emergency service provider
- 1213 Communicate in the event of forest emergencies
- 6400 Manage first aid in emergency situations
- 6401 Provide first aid
- 6402 Provide resuscitation level 2
- 497 Protect health and safety in the workplace
- 4573 Communicate in the outdoors using two-way radio
- 20536 Demonstrate awareness of rope rescue operations and hazards

2.0. Original rule process had no regard to fundamental relevant facts

- 2.1. The original decision on the fire safety rule (the rule) was imposed without any consideration as to whether there was an existing problem or whether the rule would address any such problem if one existed.
- 2.2. No assessment was carried out of the incidence in the district of dwellings and other buildings being lost to fire as a result of inadequate on-site firefighting water supplies.
- 2.3. No assessment was carried out of the incidence in the district of dwellings or other buildings being lost to fire as a result of wildfire.
- 2.4. This is a fundamental flaw in the original process of imposing the rule.

2 3.0. **The rule change proposal fails to deal with the failings of the original rule**

3.1. The proposal does not make a proper assessment of whether there are any relevant problems or environmental effects that the rule addresses, or whether the rules controls would remedy any such problem or environmental effect if it did exist.

3.2. In failing to undertake any such assessment the Council has perpetuated the fundamental failings of the original rule.

4.0. **Background to fire safety rule**

3 3 4.1. The rule as notified in the proposed district plan dated October 2009 was a fairly innocuous rule that didn't draw much attention.

4.2. The Council decision on the rule made such significant changes to the rule that it should have been re-notified at the time to allow public submissions on the changes.

4.3. The incorporation by reference of the "New Zealand Fire Service Code of Practice for Firefighting Water Supplies" (Code of Practice) was as a result of a submission from the New Zealand Fire Service.

4.4. The reference to setbacks from vegetation was inserted as a result of a submission from the Department of Conservation.

4.5. Neither of these matters were included in the rule as originally notified.

4.6. By failing to re-notify the rule at that time the public were deprived of the opportunity to make submissions on the significantly changed rule.

4.7. It is my contention that the Council made the decision to include the setback requirements from vegetation without undertaking any proper analysis of whether there was any problem or environmental effect that needed to be addressed.

5.0. **Requirements for incorporation of documents by reference ignored again**

4 4 5.1. The proposal includes the continued incorporation by reference of the Code of Practice.

5.2. The requirements for the incorporation of documents by reference in plans and proposed plans are set out in part 3 of schedule 1 of the Act.

5.3. The Council failed to undertake the public consultation required by clause 34 of Schedule 1 of the Act. The Council failed to make the proposed material available, failed to give the required public notice regarding the material, and failed to allow reasonable opportunity for comment or consider comments made as required by clause 34.

5.4. By breaching these statutory obligations the Council once again deprived the public of the opportunity to comment on the material proposed to be incorporated.

6.0. The Code of Practice is a flawed document

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6.1. The NZFS Code of Practice for Firefighting Water Supplies is a document developed for the urban environment. An attempt has been made to convert it to the rural environment by specifying static water supplies that supposedly somehow equate to what might be expected in terms of reticulated water supplies in an urban environment.

6.2. As has been acknowledged, the volumes of the specified water supplies are grossly excessive especially when applied to residential dwellings. The incorporation of static water supplies is however the only change that has been made to the Code of Practice to try to adapt it to the rural environment.

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6.3. Other parts of the Code of Practice are also completely inappropriate for the rural environment. For example the requirement to accommodate access for 20 tonne appliances. In a rural situation there are no such appliances on the turnouts. These types of appliances are large aerial appliances used for multi-storey buildings in the central business districts of cities. In the rural environment much smaller rural utility appliances are used that are lighter, narrower and have smaller turning circles.

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6.4. Furthermore 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%.

6.5. 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.

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6.6. 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.

9 7.0. The actual facts in relation to incidence of fire

7.1. If Council had undertaken a proper assessment the incidence of fire it would have determined that the incidence of structure fires with damage is actually very low.

7.2. By way of example it is known that for the Mangawhai appliance's first response calls, the incidence of structure fires with damage is about 3 to 4 incidents per

year. Damage to a structure can range for example from some burning around a fuse board from an electrical fault, damage to a deck or weatherboards by a malfunctioning barbeque, or a fully involved fire damaging multiple areas of a structure. The level of analysis carried out by the Council is insufficient to determine the actual outcomes of the quoted call rates.

- 7.3. By extrapolation, and all other factors being the same, it is reasonable to assume that the likelihood of a fire occurring is the same or similar to the immediate historical incidence.
- 7.4. If one assumes that there are say 2000 dwellings and other buildings in the urban Mangawhai and Mangawhai Heads area, and conservatively another 500 dwellings and other buildings in the surrounding rural area to which Mangawhai responds as first appliance, then this total of 2500 can be used to calculate the likelihood of such an incident.
- 7.5. On that basis any one building would be expected to be damaged in some way by a fire once every 625 to 833 years.
- 7.6. Any impartial evaluation would conclude that a requirement for a dedicated water supply is completely out of all proportion to any potential risk.

8.0. The actual facts in relation to response to incidents

- 8.1. The entire Kaipara district area is covered by volunteer fire brigades.
- 8.2. 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.
- 8.3. 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 <https://www.youtube.com/watch?v=piofZLySsNc>. Following flashover in the room of origin the fire spread will rapidly occur into other non-fire separated parts of the structure.
- 8.4. 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.

- 8.5. 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.
- 8.6. 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.
- 8.7. This is in no way a criticism of Fire Service volunteers who do a great job in their communities. It is just a fact that the logistics of volunteer turnouts in rural areas are such that buildings are not easily saved in the event of a fire.
- 8.8. Dwellings in non-reticulated areas whether urban or rural almost invariably have rainwater tanks.
- 8.9. Normal rural firefighting practice involves utilising the first arriving appliance's on-board 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 method of providing a water supply used throughout the country.
- 8.10. This is the practice that will continue to be used on all existing dwellings and other buildings in the Kaipara district in the unlikely event of a fire.
- 8.11. 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 firefighting water supply.

9.0. Issue 2.3.14

9.1. *'The District is served by a number of volunteer fire fighting forces...'* The term fire fighting forces is wrong and should be corrected.

9.2. *'Where there may be a [sic] domestic water tanks onsite dedicated for fire fighting purposes, special couplings are required by the Fire Service to enable this water to be used.'* This statement is completely incorrect and should be deleted or amended.

9.3. It is not clear why the Council needs to be making all of these statements in the District Plan about something that is not an RMA matter in the first place.

10.0. Issue 2.4.15

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- 10.1. The Council proposes inserting an issue stating *'To encourage and promote fire safety measures for buildings and structures to minimise fire risk to life, property and the environment'*
- 10.2. The Council in doing so is unnecessarily granting itself a mandate well outside its obligations under the RMA. The promotion of fire safety is the role of the Fire Service through its statutory instruments including the Fire Service Act 1975 and the Fire Safety and Evacuation of Buildings Regulations 2006 (as will be the case for FENZ through the Fire and Emergency New Zealand Bill and related legislation).
- 10.3. Council has enough responsibilities of its own without wading into the roles of other entities as will.
- 10.4. Therefore this unnecessary wording should be deleted.

11.0. Policy 2.5.17(b)

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- 11.1. The Council proposes the insertion of the policy *'To promote in non-reticulated areas that there is an adequate alternative supply of water for fire fighting purposes for the reasonably anticipated land use'*
- 11.2. It is not at all clear what this statement means in real terms. However in the absence of any guidance it can only reasonably mean that the Council will default back to the Fire Service's flawed (in relation to non-reticulated areas) Code of Practice.
- 11.3. Given that it is already acknowledged that the Code of Practice is an unreasonable imposition, this policy then contradicts the position already taken by Council.
- 11.4. Therefore this policy as drafted should not be included in the District Plan.

12.0. Policy 2.5.17(c)

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- 12.1. The Council proposes inserting a policy to *'encourage education on fire hazard [sic]...'*
- 12.2. The policy states *'Council or the community for areas where there is no reticulated water can provide static supplies for fire fighting purposes in the form of tanks situated at strategic locations that can serve a wider area'*
- 12.3. The idea of providing water tanks all around the district is an unreasonable financial imposition on ratepayers.

12.4. It will achieve nothing because once again Council is ignoring the fact that structure fires are rare events, that volunteer response times are generally too long to allow buildings to be saved regardless of the available water supply, that houses in non-reticulated areas all have rainwater tanks that typically provide a water supply in the unlikely event that there is a fire, and that the Fire Service Act 1975 provides the powers to take water from neighbouring properties (which also typically have rainwater tanks) for the purposes of extinguishing fire.

12.5. This idea is completely impractical and will simply impose unnecessary cost on ratepayers for no benefit.

12.6. Therefore this wording should be deleted.

13.0. Other method 2.6.2.5

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13.1. The Council proposes inserting the wording '*Investigate the provision of additional water supply [sic] for fire fighting purposes 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 brigades with mobile tankers or portable dams*'.

13.2. It is not clear what is expected to be achieved by this. Mangawhai, Dargaville and Te Kopuru already have tankers at their disposal, and Mangawhai's tanker is responded to the Kaiwaka first pump area as required. The idea of community water tanks will achieve nothing as explained in relation to Policy 2.5.17(c) above, and it is not clear what the intention of Council providing portable dams would be (over and above what already exist) nor how those dams would be filled or how this process would ever save a structure involved in fire.

13.3. The whole method is illogically and incorrectly conceived and should be deleted.

14.0. Incorrect terminology and grammar

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14.1. The reporting continually refers to '*fire fighting*'. Even Microsoft accepts that in normal usage this should be a conjunction.

14.2. There is also continual reference to '*structural*' fires. I have not heard this term used before – the term '*structure*' fires is the norm. Using structural rather than structure in this context is akin to using vegetational rather than vegetation.

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15.0. Rules 12.10.26, 15A.10.25 and 15B.10.25 Performance Standards

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15.1. Sub clause a) is based on the ill-conceived assumption that fire appliances need to be in close proximity to a structure in order to extinguish a fire. In fact this is neither necessary nor desirable, as firefighting deliveries can be easily run over

reasonably long distances, and close proximity to structure fires actually places the appliance at risk.

- 15.2. There is also an incorrect assumption that a fire appliance needs to be able to park in close proximity to a water tank in order to draught water from it. This is not usually possible or desirable as given the configuration of down pipes and water tanks, the tanks are typically close to buildings. Normal practice is to draw water from tanks using a portable pump or ejector pump (such as a B-type or Water Dragon) which can then feed the appliance for firefighting purposes. These all operate without having to have the appliance in close proximity to the water tank. In fact one would not want to be wasting valuable time trying to line up and connect an appliance to a coupling on a tank using hard suction when you would have a much faster get-to-work using the portable pump to feed the appliance. Virtually every water tank will not have a hard suction coupling and valve connected, and the requirement for one would be impractical, expensive and unnecessary.
- 15.3. By leaving this unclear and ill-conceived reference in the District Plan, matters relating to *'the movement of fire service vehicles or equipment'* and *'access for firefighting purposes'* become a matter of interpretation for the Council. The Council, having no idea what these terms mean in practice, will have to defer to the opinion of the Fire Service. The Fire Service's position will be that the (flawed) Code of Practice must be complied with.
- 15.4. It is also completely illogical to state that a building can block access to itself for firefighting purposes. An adjacent fence or wall could conceivably restrict access to the rear of a building, but that is certainly not unusual. In fact it is quite normal for buildings to have tall fences around them and for the brigade to gain access with a ladder or bolt cutters in the event of a fire (given the powers granted by the Fire Service Act 1975 section 28).
- 15.5. Therefore the inclusion of sub clause a), despite the deletion of the reference to the Code of Practice in sub clause b) simply creates a completely confusing, contradictory and unworkable situation.
- 15.6. On that basis alone sub clause a) should be deleted.
- 15.7. The deletion of the reference to the code of practice in sub clause b) is supported.
- 22 15.8. The deletion of the reference to the model bylaw in sub clause c) is supported.
- 23 15.9. The retention of sub clause d) (now labelled sub clause b) [and incorrectly shown as strikethrough] is not supported for many reasons.
- 15.10. There is no established problem with "wildfire" as claimed by the Council. The Council has not provided any evidence that any such wildfire has ever resulted in the loss of a single Kaipara dwelling.

- 15.11. It is my contention that Council has come to an ill-informed opinion about bush fires as a result of media coverage of forest fires in Australia and the USA. The conditions and vegetation in those countries are in no way comparable to New Zealand and cannot be reasonably used as a comparable example. Whilst localised scrub and grass fires occur in dry and windy conditions, established native bush is unlikely to burn.
- 15.12. In order for a forest fire to become established it requires light and medium fuels in the ground and sub canopy areas, which acts as the 'kindling' for a fire which is then pushed along by the wind. In an Australian eucalyptus forest the small and medium fuels are provided by very dry and hot ground conditions and a large volume of dry naturally shed branches, bark and leaves as small fuels and dead branches and peeling bark above as medium fuels.
- 15.13. By comparison in New Zealand a native forest has a wet humus layer on the ground of decomposing leaf litter along with lush undergrowth of ferns, mosses and green shrubs etc. This is not a suitable substrate for starting or maintaining a fire, particularly with the high rainfall conditions of Northland.
- 15.14. In any event there is no evidence to suggest there is a problem with dwellings being lost to any such fires. The alleged problem is an imagined fiction.
- 15.15. In addition to this, the requirement to provide large buffer zones around buildings for no good reason detracts from and conflicts with the ability of landowners to provide amenity planting and for the encouragement and protection of native flora and ecosystems. The enhancement of amenity values and native ecosystems are key objectives of the district plan. The imposition of the rule directly and unnecessarily contradicts these objectives.
- 15.16. It is interesting to note that Auckland's Waitakere Ranges have many hundreds of dwellings in close proximity to native bush. The rules for clearing any trees around those houses are very restrictive, limiting allowable clearance without consent to within 3m of the dwelling. Yet there is no problem with fire from the bush affecting the houses or fire from houses affecting the bush. This is so much a non-issue that the Fire Service, despite having made substantial submissions to the Auckland Unitary Plan, did not even mention in those submissions any desire for a rule requiring a setback distance for buildings from vegetation in the Ranges.
- 15.17. The Council proposes removing the setback distance in residential, commercial and industrial zones but retaining it in rural and Maori-purposes zones, and yet at the same time claims that the District Plan is effects based. That is not an effects based approach – it is completely prescriptive.
- 15.18. Despite there being no demonstrable problem to address, if Council deems that such buffer zones are required, then logically Council must also regulate to require

that such zones must also be maintained in perpetuity. What this would mean in real terms is that no building in the rural or Maori purposes zones could have woody vegetation established within 20 metres around it as this is deemed to be unsafe. However, perversely, all buildings in urban, commercial and industrial zones can have any amount of such vegetation around them with no setback.

15.19. The whole concept is contradictory, unworkable, unnecessary and should be abandoned.

16.0. **Rules 12.10.26, 15A.10.25 and 15B.10.25 Assessment Criteria**

24 16.1. Assessment criterion i) states –

'Where an activity is not permitted by this Rule, Council has restricted its discretion over the following matters when considering and determining an application for resource consent:

i) The extent of consultation that has been undertaken with the New Zealand Fire Service and their response (or whether their written approval has been obtained);'

16.2. The Council as it advises has consulted with the Fire Service over the proposed changes. The Council incorporated the Fire Service's Code of Practice without any due diligence at the behest of the Fire Service.

16.3. If a ratepayer applies to vary the situation the Council then uses this assessment criterion to effectively hand its decision making obligations back to the Fire Service. The Fire Service is not going to give its approval to a building that does not comply with the already predetermined agreement. The Council in practice will not exercise its discretion to grant consent to a building that does not have the written approval of the Fire Service. This then subjects the property owner to the need for a Court appeal in order to try to achieve some level of impartiality – and all this over a rule for which no evidential basis has been provided.

16.4. Despite having removed the reference to the Code of Practice from the Performance Standards, the Fire Service on referral from the Council of a proposal is simply going to reassume its standard position that the Code of Practice must be complied with.

16.5. In effect Council through using this assessment criterion has handed control of decision making over to a non-Council entity with no statutory powers under the RMA.

16.6. Assessment criterion ii) states –

25 *'ii) Whether and the extent to which the **building** is assessed as a low fire hazard and risk;'*

16.7. The Council will simply bow to whatever the Fire Service tells it in regard to any such assessment.

16.8. The remaining assessment criteria are –

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- iii) Any mitigation measures proposed to reduce the fire risk;*
- iv) The adequacy of the water supply; and*
- v) The accessibility of the water supply to fire service vehicles.'*

16.9. These are also matters which the Council does not have the ability to independently assess, and it will simply defer to whatever the Fire Service says.

16.10. Once again, the Fire Service will of course default to its (flawed) Code of Practice in prescribing the requirements for water supply and access.

16.11. The matters dealt with by this rule are issues that the Council is unqualified to regulate under the RMA, and which should be left to the likes of the Building Act and the Fire Safety and Evacuation of Buildings Regulations.

17.0. Rules 12.10.26, 15A.10.25 and 15B.10.25 Notes

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17.1. Note 1 referring to a Fire Service recommendation is redundant in the context of a rule and should be deleted. If the Fire Service wants to make such recommendations then it can do so itself. Likewise if the Fire Service has the ability to impose such restrictions on private property then it can use its own powers to do so.

17.2. Note 2 refers to a driving distance of over five minutes being the measure of whether or not a sprinkler system is recommended. Firstly it is not the Council's business to be making such recommendations. Secondly this is a flawed metric – the correct metric would be the response time of the neighbouring brigade. The delay in turning out is not related to a five minute drive, but more to the time it takes for volunteer to travel to the station to man the appliance after the alert. In any event the note serves no purpose in the context of the rule. This type of advice should be left to the Fire Service to provide.

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18.0. Rules 12.15.4, 13.14.4, 14.13.4 and 15B.14.4 Retention of reference to Code of Practice

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18.1. The Council has come to the conclusion that the requirements of the Code of Practice are disproportionate to the risks posed.

18.2. As previously explained the presence of a dedicated firefighting water supply as required by the Code of Practice is not a relevant factor in saving buildings from fire in non-reticulated areas of Kaipara.

- 18.3. Furthermore as previously explained the standards in the Code of Practice for on-site hard stand and turning areas are inappropriate for rural areas and small towns.
- 18.4. Depending on the activity being undertaken in commercial and industrial zones, there will be merit in having a water supply in non-reticulated areas. However by referring to the Code of Practice as a document that must be complied with, all of its contents are imposed, including for example requirements to accommodate 20 tonne appliances. Reference to the Code of Practice should be retained relating to water supplies for commercial and industrial activities in reticulated areas, and should be considered for commercial and industrial activities in non-reticulated areas on a case by case basis.
- 18.5. Therefore retaining reference to the Code of Practice in these rules is illogical especially for non-reticulated areas in the residential, rural and Maori purposes zones. By retaining reference to the Code of Practice in these rules the Council is contradicting itself and imposing an unreasonable and illogical burden on future applicants.
- 18.6. Whilst some guidance may be able to be drawn from the Code of Practice, it should not be incorporated by reference as a standard that must be complied with. It is a flawed non-statutory document and incorporating it into the District Plan gives it statutory power that imposes an unreasonable and unnecessary burden on ratepayers. It was only incorporated in the first place because the previous Council did not read it or understand the implications of its content.
- 18.7. If the Council is now opposed to the complete removal of the Code of Practice from the District Plan, then a more reasonable approach might be to use a 'Note' in the District Plan to draw attention to the existence of the Code of Practice as a guide that may be referred to.
- 18.8. Reference to the Code of Practice in these rules should be removed. If Council deems it necessary it could include a note in the District Plan drawing attention to the existence of the Code of Practice as a possible guide.
- 19.0. **Rule 15A.10.3b(c)**
- 19.1. If there is a requirement to meet the requirements of the Building Act 2004, then such requirements are enforceable under the Building Act 2004. Including this reference in this rule is an unnecessary and redundant restatement of what is already required.
- 19.2. The statement '*be adequate for fire fighting purposes*' is left very much open to interpretation. The Council doesn't know what this means, and the Fire Service standard advice will be that it complies with the flawed and ineffective Code of Practice. Therefore we get back into the same circular argument.

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19.3. In the event of a fire in any of these remote locations, the building will almost certainly be a total loss regardless of the adequacy of any water supply.

19.4. The only rational and workable remedy is to delete the rule.

20.0. Summary

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20.1. The Council has been inadvertently drawn into trying to impose regulations relating to fire safety that are outside of its statutory mandate or area of expertise.

20.2. This only happened in the first instance because the Council agreed to incorporate the Code of Practice into the District Plan, without reading the Code of Practice or understanding its content.

20.3. The regulations that it has devised to try to appease the desires of the Fire Service are contradictory, illogical, unnecessary and unworkable.

20.4. The Council can have regard to the non-statutory recommendations of the Fire Service, but it should not continue to have these recommendations formally incorporated into its District Plan.

20.5. The New Zealand Fire Service has a statutory mandate to administer matters relating to fire safety (as will its successor). The Fire Service can use its statutory powers as it sees fit to achieve its desired outcomes. This does not have to, and should not, be done by proxy through the Council RMA based District Plan.

21.0. The Solution

21.1. All that the Council needs to do to provide accessible water supplies that can be used for firefighting is to require new domestic buildings to have a 75mm cam lock coupling and ball or gate valve fitted say 300mm above the base of the domestic water tank. This is the most affordable and useful fitting for this purpose.

21.2. Each local brigade can then have one adaptor on their appliance that will adapt whatever portable pump coupling they use to the cam lock coupling. In many instances no adaption will be required as 75mm cam lock is the standard for the Rural Fire Authority and the Fire Service is following suit in this regard.

21.3. If existing property owners want to make this facility available then they can simply retrofit the cam lock coupling and valve to their existing tank.

22.0. I seek the following decision from the local authority:

- 22.1. Make the amendments and deletions to the Issues, Objectives, Policies, Other Methods and Outcomes as detailed in this submission.
- 22.2. Remove formal reference to the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 from rules 12.15.4, 13.14.4, and 15B.14.4.

22.3. Delete rule 15A.10.3b(c)

22.4. Delete rules 12.10.26, 13.10.26, 14.10.26, 15A.10.25 and 15B.10.25 from the district plan

OR

22.5. Delete rule 12.10.26 d), 15A.10.25 d) and 15B.10.25 d), and rewrite clause 12.10.26 a), 15A.10.25 a) and 15B.10.25 a) so that it is clear in meaning to the satisfaction of the submitter.

OR

22.6. Amend rule 12.10.26 as follows -

(1) Any **building** is permitted if:

- a) It does not impede the movement of fire service vehicles or equipment or generally restrict access for fire fighting purposes; and
- ~~b) Water supply for fire fighting and access to this supply complies with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008~~
- ~~c) The use of the building 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~~
- db) The building is located at least 20m away from naturally occurring or deliberately planted area of scrub or shrubland, woodlot or forest.

(2) Except that the standards required by rule 12.10.26 (1) a) and b) do not apply to Lots 1 and 2 DP 316175, Lots 1 to 3 DP 157189, and Lots 2 to 6 DP 324788 or any subsequent Lots resulting from these specified Lots.

OR

22.7. Provide other such decision in consultation with, and to the satisfaction of, the submitter.