

Before the Environment Court
At Wellington

IN THE MATTER OF The Resource Management Act 1991 (Act)
AND
IN THE MATTER OF appeal under clause 14 of the First Schedule of the Act
against the Gisborne District Council Combined Regional Land
and District Plan

BETWEEN **FEDERATED FARMERS OF NEW ZEALAND INC.**
(ENV-2006-WLG-000261)
Appellant

AND **HIKURANGI FOREST FARMS LTD.**
(ENV-2006-WLG-000265)
Appellant

AND **MINISTER OF CONSERVATION**
(ENV-2006-WLG-000438)
Appellant

AND **ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW
ZEALAND INC.**
(ENV-2006-WLG-000262)
Appellant

AND **TAIRAWHITI EARTH CENTRE**
(Successor to Gisborne Environmental Centre Inc.)
(ENV-2006-WLG-000271)
Appellant

AND **GISBORNE DISTRICT COUNCIL**
Respondent

AND **NEW ZEALAND TRANSPORT AGENCY**
(Successor to Transit New Zealand)
Party pursuant to section 271A of the Act

AND **ERNSLAW ONE LTD**
Party pursuant to section 271A of the Act

AND **FISH AND GAME NEW ZEALAND (EASTERN REGION)**
Party pursuant to section 271A of the Act

AND **HORTICULTURE NEW ZEALAND LTD**
(Successor to VegFed)
Party pursuant to section 271A of the Act

May it please the Court:

1. The Gisborne District Council ("Council") publicly notified its Proposed Combined Regional Land and District Plan ("the Plan") in November 1997. On 16 January 2002, Council notified its decisions including decisions on provisions in Chapter 4 – Natural Heritage of the Plan. Several appeals were lodged against the decisions on Chapter 4.
2. Court assisted mediation into appeals on Chapter 4 - Natural Heritage of the Plan began in April 2009. Mediation has resolved all appeal points on Chapter 4 – Natural Heritage with the exception of provisions in Chapter 4.9 Protection Management Area ("PMA") Overlay.
3. This memorandum to the Court addresses appeal items against Chapter 4.9 of the Plan. It describes the references, the positions adopted by the parties during mediation and the proposed resolutions.
4. All the parties have agreed to the matters set out in this memorandum and the attached proposed consent orders. A version of Chapter 4.9 of the Plan showing proposed tracked changes to the Plan is attached to this memorandum, for the information of the Court.
5. The parties respectfully request that the Court make the proposed consent orders in the form agreed. The parties would prefer that the Court consider this issue off the papers, but are prepared to be heard if the Court requires.
6. The parties accept that the appeals should otherwise be dismissed, to the extent that they relate to Chapter 4.9 of the Plan or to any other provision essential to the effect of the PMA Overlay.
7. Please note that Appendix 8 of the Plan, which lists and describes the individual PMAs, is operative save for one specific PMA site (which remains subject to an outstanding appeal item). The Urban and Rural planning maps, which identify the PMA boundaries, are also operative save for the outstanding specific PMA appeal mentioned above.

1.0 INTRODUCTION

The PMA Overlay implements Method 4.5.6(2)(c) of the Plan, to establish a regulatory overlay that identifies and maps areas of significant indigenous vegetation and significant habitats of indigenous fauna, and provides for their protection in accordance with Section 6 (c) of the Resource Management Act 1991 ("the Act"). The PMA Overlay scheme involves general provisions in Chapter 4.0, Policy 4.4.1, associated definitions, the Appendix 8 schedule of PMA sites and maps of the individual sites in the Urban and Rural Planning Maps.

The Plan recognises that the mapped PMAs do not identify all significant natural areas in the District. The PMA Overlay provisions integrate with the rest of Chapter 4 of the Plan, which contains other overlays addressing wetlands, riparian areas etc., as well as provisions in Chapter 4.12 for addressing significance of (as yet) unidentified areas of native vegetation on a case by case basis.

Policy 4.4.1 specifically provides for protection management of significant natural areas. It addresses *inter alia* the establishment of PMAs, and the assessment of consent applications affecting PMAs.

The provisions of Chapter 4.9 of the Plan address various forms of vegetation clearance, land disturbance, and structure land use activities within the identified PMAs. A series of activities are permitted (4.9.1), based on the minor nature of effects, the feasibility of enforcement, and the cost of compliance relative to the natural heritage benefit gained to the District.

The PMA Overlay provides for the clearance of plantation forestry as the sole Controlled Activity (4.9.2), retaining controls relating to vegetation retention and revegetation *inter alia*, in

acknowledgement that the issue of plantation species within PMAs will be a diminishing issue over time.

The remaining provisions in Chapter 4.9 describe Restricted Discretionary Activities (4.9.3) for: selective tree felling; land disturbance; the erection of new structures; alteration or additions to existing structures; and any other vegetation clearance within PMAs that is not otherwise provided for in Chapter 4.9. Discretion is retained over matters relevant to the protection of significant natural areas, such as the potential effects of the activity on natural character, biodiversity and significant habitat values. Discretion is also retained as to the retention of any vegetation or revegetation type and density.

2.0 GENERAL APPEALS AGAINST THE PMA OVERLAY

Appellants	Section 271A Parties
Hikurangi Forest Farms	Federated Farmers Fish and Game Minister of Conservation

Content of Appeal

Although the appeal is against the entire overlay, the content of the appeal (grounds and relief sought) is issue-specific. The Hikurangi appeal focuses on the controls and discretions that have been retained by the consent authority over revegetation of PMAs post-vegetation clearance activities, including plantation forest harvesting operations. The reference states the provisions go beyond the protection of natural character and other matters set out in the RMA.

Hikurangi's original submission held that "by definition there should be no plantation forestry included in a PMA and therefore there is no need for rule 4.9.1¹"

Hikurangi sought the deletion of the Controlled Activity rule 4.9.2.1 and amendment of the Restricted Discretionary Rule 4.9.3.1 by removing the references to plantation forestry. The Council's decision on submissions retained the Controlled Activity rule in regard to plantation forestry, and retained a renumbered Restricted Discretionary Activity rule provided for vegetation clearance, other than that specifically permitted or authorised by another rule. The specific reference to plantation forestry in the previous title of the Restricted Discretionary Rule 4.9.3.1 was removed, however plantation forestry is not precluded from the ambit of the rule.

Mediation

A concern over the accuracy of the mapped PMAs was revealed as the key issue. Because the appeal affects all provisions in Chapter 4.9 the issue recurs throughout this memorandum. It is discussed in depth in following paragraphs, and merely referenced in later parts of this memorandum.

The presence of plantation forest trees within mapped PMAs was discussed. Hikurangi believe that PMAs that include plantation forest species have been incorrectly mapped, while the Department of Conservation believe that PMA boundaries have been assessed for ecological significance notwithstanding that some areas may also support plantation forestry.

Discussion ranged around the accuracy of the PMA mapping (bearing in mind that Appendix 8 and the Planning Map provisions are beyond challenge apart from one outstanding site). If the PMA boundaries could be accepted as accurate, then Hikurangi's concern around clearance of plantation forestry would be alleviated to some extent.

¹ Rule 4.9.1 in the proposed Plan was a controlled activity rule, renumbered in the decisions on the Plan as rule 4.9.2.1.

The following factors were raised during mediation as influences on the accuracy of PMA boundaries:

- Vegetation clearance occurring between the identification of the sites in the base information ², and the notification of PMAs in the Plan had not been acknowledged;
- Planting of plantation forest species has occurred (prior to notification of the Plan) in some areas subsequently adopted as PMAs;
- Discrepancies arising as a result of transferring hand drawn lines in the PNAP reports, onto Council's more sensitive GIS system used to generate the Urban and Rural Planning Maps;
- Anomalies made visible by subsequent technology improvements in orthophotography coverage of the district. While orthophotos have been useful in assessing PMA issues in the field during Council's decision process and subsequent appeal negotiations, flexibility is required in interpreting and translating information from the legally binding planning maps onto orthophotographs.

Several potential solutions arose during mediation including corrections to boundaries to provide certainty to landowners as to the actual PMA boundary. These are all procedural solutions, and are unable to be remedied by specific modifications to the provisions of Chapter 4.9.

Outcome

For the information of the Court, separate processes have been reached between parties regarding a procedure for improving the accuracy of (and confidence in) maps showing PMA boundaries. This involves ecological re-assessment prior to or as part of the consent process, combined with minor amendments to plans and/or plan changes as resources allow. It is acknowledged that this is a procedural remedy, and is outside of the jurisdiction of the Court in determining these appeal matters against the provisions of Chapter 4.9 of the Plan.

All parties otherwise agree to retain the permitted and controlled activity rules as they appropriately implement Objective 4.3.2, Policy 4.4.1 and Method 4.5.6(2)(c).

3.0 PERMITTED ACTIVITIES

Appellant	Section 271A Parties
Minister of Conservation	New Zealand Transport Agency

Content of Appeal

Appeals against several provisions within 4.9.1.4 (permitted activity rules for vegetation clearance) were resolved by consent order in June 2006:

- 4.9.1.4(a) vegetation comprising exotic trees or shrubs scattered amongst pasture;
- 4.9.1.4 (b) clearance being by grazing;
- 4.9.1.4 (f) clearance is land preparation by discing, ploughing or ripping; and
- 4.9.1.4 (g) clearance for fencing.

Two matters remained at mediation: the thinning of plantation forestry, rule 4.9.1.4(c), and felling of understorey within a plantation forest, rule 4.9.1.4(h).

The appeal by the Minister maintains that the instances of plantation forest within PMAs are few and involve only small areas of plantation forestry located within PMAs. Where this does occur is "largely on the margins or narrow fingers lying well within the habitat which has been identified as significant". The appeal suggests it is necessary to retain control over how thinning (4.9.14 (c))

² The notified PMAs were based largely on the Department of Conservation's Recommended Areas for Protection (RAPs) contained in Protected Natural Areas Programme (PNAP) reports.

or felling of such vegetation or its understorey (4.9.14 (h)) is carried out, in order to protect the values of the PMA.

The Minister's appeal seeks the deletion of rules 4.9.14(c) and (h), which would remove forestry thinning and plantation forest understorey clearance from the list of permitted activities in a PMA.

Mediation

The Minister was of the opinion that the permitted activity rules in regard to thinning of plantation forest (4.9.1.4 (c)) and felling of understorey (4.9.1.4 (h)) are largely redundant, given that the Plan was publicly notified in 1997 and landowners were by now well aware of the requirements of the PMA rules in the Plan.

The Minister's stance was recognised. There is a disincentive to planting plantation species within a PMA, via the restricted discretionary activity classification for clearance of plantation forest planted subsequent to the notification of the Plan. However the Council held that the permitted activities acknowledge recognised plantation forest management and harvesting practice, and would therefore be reasonable for as long as there are plantation species in PMAs that were planted prior to notification of the Plan.

Council maintains that appropriate control or discretion for the protection of the values of the PMA can be exercised at harvesting time, via rule 4.9.2.1 for plantation forest trees established prior to Plan notification or rule 4.9.3.1 for plantation forest trees established subsequent to Plan notification.

In addition, Council maintained that permitted activity 4.9.1.4 (c) would have an ongoing practical validity in the (unlikely) case where a controlled or restricted discretionary consent to harvest might be granted without exercising the control/discretion over vegetation to be retained.

The Minister's representatives agreed that as plantation forestry activity is not encouraged within PMAs, these two permitted activity rules could be retained in the interim, while boundary issues and clarity as to the ecological values within PMAs are addressed separately.

Outcome

The appellant and respondent agree to retain the permitted activity rules 4.9.1.4 (c) and 4.9.1.4 (h) as given in the Council's decisions on submissions.

4.0 CONTROLLED ACTIVITIES

Appellants	Section 271A Party
Minister of Conservation	New Zealand Transport Agency
Federated Farmers	Fish and Game Minister of Conservation
Hikurangi Forest Farms	Federated Farmers Fish and Game Minister of Conservation

Content of Appeal

The controlled activity in the PMA Overlay addresses the clearance of plantation forest planted prior to the notification of the Plan. All other vegetation clearance in a PMA is a restricted discretionary activity (unless specifically permitted).

The controlled activity acknowledges that plantation forest species planted prior to notification of the Plan in 1997 were done so with an expectation of being able to harvest in the future. The purpose of the PMA Overlay is to "provide for protection management of areas of significant indigenous vegetation and significant habitats of indigenous fauna...". The controlled activity retains controls designed to protect the PMA values as far as possible, such as the retention of vegetation and revegetation.

The terms and standards for the provision provide for a threshold of 2 contiguous hectares of clearance or 2 hectares of clearance within 12 months.

Federated Farmers appeal is based on Chapter 4.9 in general. They believe the proposed rules are too restrictive and unworkable, with the economic impacts outweighing the environmental benefits and that the rules go beyond the mandate provided by Part 2 of the RMA. They seek all activities be clarified as permitted unless captured by another rule and that any rules are effects based and reduce impacts on common farming practices.

The Hikurangi appeal on Chapter 4 in general is concerned at Council retaining control and discretion over revegetation type and density in each PMA. This is considered to go beyond the role of protecting natural character as set out in the RMA. The appeal seeks the deletion of Council's ability to consider revegetation type or density in the rules, specifically rule 4.9.2.1.

The Minister's appeal maintains that it is unlikely that the PMAs identified in Appendix B and the maps to the Plan contain more than 2 hectares of plantation forest. However the felling of less than 2 hectares of plantation forest may still have a significant impact on the values of the PMA and should be assessed as such. The controlled activity status is considered inappropriate.

Mediation

Discussion resulted in a general agreement that the reassessment of PMA boundaries should be undertaken, with a view to excluding plantation forest species from PMAs where appropriate.

The Minister initially sought the deletion of this rule, holding that it would be redundant, once PMA boundaries are adjusted to the satisfaction of the parties. Fish and Game had no firm view on the matter.

Hikurangi maintained that the rule should be deleted, or at least the consent authority's control should not include clause (d) related to revegetation type and density. Hikurangi seeks certainty around their ability to revegetate areas in plantation species subsequent to harvesting. An agreement to correct the mapping of individual PMAs may provide this certainty, although disagreement as to the ecological values in the PMA sites supporting plantation forest could possibly still occur.

The controlled activity rule is of less concern to Federated Farmers as the rule focuses on plantation forest clearance. The parties recognise that some farms may include woodlots within or adjacent to PMAs which may be captured by rule 4.9.2.1.

The Council's view remains that the rule (including the current 2 hectare threshold) provides a practical means of assessing and avoiding, remedying or mitigating the effects of significant areas of plantation forestry clearance from within PMAs. The ability to control revegetation is necessary given the policy objectives of the PMA Overlay.

The parties discussed and agreed a pragmatic approach to addressing issues around inaccurate PMA boundaries and plantation forest revegetation with PMAs. Corrections to PMA maps and revegetation options can be discussed during or in advance of the resource consent application. It is acknowledged that this is a procedural remedy, and is outside of the jurisdiction of the Court in determining these appeal matters against the provisions of Chapter 4.9 of the Plan. It is presented here for the general information of the Court.

The parties agreed to retain existing rule 4.9.2.1, as written in the Council's decisions.

Outcome

Rule 4.9.2.1 is retained as written in the Council's decisions, including the retention of clause (d).

Note that a separate memorandum of understanding has been reached providing for resolution of PMA mapping inaccuracies.

5.0 RESTRICTED DISCRETIONARY ACTIVITIES

Appeals on restricted discretionary activity rules are considered usefully under three topics:

- Activity classification and notification (4.9.3.1 and 4.9.3.2)
- Selective tree felling (4.9.3.2)
- Land Disturbance (4.9.3.3)

Activity Classification and Notification (4.9.3.1 and 4.9.3.2)

Appellants	Section 271A Parties
Forest and Bird	Fish and Game Federated Farmers
Federated Farmers	Fish and Game Minister of Conservation
Tairāwhiti Earth Centre	New Zealand Transport Agency Federated Farmers Ernslow One

The appeals relating to the classification of different vegetation clearance activities are inextricably linked to appeals against the notification (or non-notification) of the restricted discretionary activities. So the appeals on these two matters are considered together.

The restricted discretionary activity rules in the PMA Overlay are not supplemented by any presumptive provisions regarding public notification. The decisions over whether to notify or not are made on a case by case basis, in accordance with the notification provisions of the RMA.

Content of Appeals

Forest and Bird's appeal contends that regulation of indigenous vegetation clearance allows Council to better meet its functions under the RMA and that appropriate rules should be in place to effectively avoid, remedy or mitigate effects. Given that Council has identified nationally (sic) significant areas in the Plan, Forest and Bird considers it appropriate and reasonable that a discretionary activity status should be used to examine the actual or potential adverse effects of an activity in the PMA Overlay. The appeal seeks deletion of the restricted discretionary rules 4.9.3.1 and 4.9.3.2 and the inclusion of new discretionary activity rules providing for any activity not otherwise provided for in the PMA Overlay.

Federated Farmers believe the proposed rules are too restrictive and unworkable, with the economic impacts outweighing the environmental benefits. They maintain that the rules go beyond the mandate provided by Part 2 RMA. They seek all activities be clarified as permitted unless captured by another rule and that any rules are effects based and reduce impacts on common farming practices.

The Earth Centre's appeal is against the restricted discretionary rules stating that "public notification will ensure community participation in important ecological decisions. Such

participation will promote good economic and environmental practices". They seek that restricted discretionary rules be amended to include a presumption that notification will occur.

Mediation

The Minister supported Forest and Bird's appeal seeking full discretionary status for vegetation clearance within PMAs, voicing a concern that the matters of restricted discretion may not be broad enough to adequately provide for the protection of PMA values. Further exploration during mediation confirmed that the matters of restricted discretion are broad enough and have enough supporting policy to allay the Minister's concerns.

As mediation progressed it became evident that matters relating to vegetation clearance activity status of the rule and notification were closely linked in achieving a wider outcome. For instance, appeals seeking to reclassify restricted discretionary activities to discretionary, were largely on the basis that such consent applications would then be publicly notified as a matter of course. Federated Farmers were against the reclassification of restricted discretionary activities as discretionary activities, for the same reason.

The parties previously seeking a discretionary activity status for vegetation clearance (4.9.3.1) and selective tree felling (4.9.3.2) were satisfied that it would be sufficient to insert a provision supporting appropriate notification of restricted discretionary activities in the PMA Overlay (i.e. Rules 4.9.3.1 and 4.9.3.2) rather than to change the classification of the activities in the PMA Overlay.

The Council held that, given the significance of PMAs it is likely that an application for vegetation clearance in accordance with the rules in 4.9.3 would involve adverse effects that are more than minor, requiring public notification of the application unless all affected persons have provided written approval. The Council maintained that reliance on the notification provisions of the RMA is satisfactory. The Council was also concerned to ensure that the Plan doesn't attempt to inappropriately fetter the ability to consider notification in accordance with the circumstances where limited or non-notification may be appropriate, as prescribed in the RMA.

Two significant changes to the notification regime in the RMA have occurred since the appeals were lodged. The concept of limited notification was introduced during the period of appeal negotiation and mediation of these appeals. The Resource Management (Simplifying and Streamlining) Amendment Act has further changed the legislative framework for notification.

A notification provision for the vegetation clearance and selective tree felling rules was outlined at the mediation of 16 July 2009. It takes into account section 95 and sections 95A-F of the RMA. The determination on public notification of a resource consent application includes tests as to adverse effects being more than minor (section 95A(2)(a)) and whether special circumstances exist (Section 95A(4)), which will need to be made on a case by case basis. It is also acknowledged that the amended legislation provides for a limited notification route.

Outcome

The parties have agreed that restricted discretionary rules 4.9.3.1 and 4.9.3.2 be retained, with the addition of a notification clause reflecting the RMA process.

Selective Tree Felling (4.9.3.2)

Appellants	Section 21A Parties
Forest and Bird	Fish and Game Federated Farmers
Federated Farmers	Fish and Game Minister of Conservation

Rule 4.9.3.2 addresses the selective felling of indigenous vegetation from within PMAs. The purpose of the provision is to provide for the protection of significant natural values. It was recognised that the terms and standards for selective tree felling elsewhere in the PMA Overlay are not adequate as they are generally based on area thresholds for clearance (e.g. square metres or hectares)

The rules use a roundwood threshold expressed in cubic metres. The terms and standards for the rule apply to a "rating assessment block", the unit at which Council exercises its rating powers. The rule includes a list of indigenous species considered under logging pressure in the Gisborne District, but allows for the removal of individual trees in specific circumstances (e.g. dead standing vegetation, windthrow and vegetation that has become dangerous).

Content of Appeals

Forest and Bird's appeal contends that regulation of indigenous vegetation clearance allows Council to better meet its functions under the RMA and that appropriate rules should be in place to effectively avoid, remedy or mitigate effects. Given that Council has identified nationally (sic) significant areas in the Plan, Forest and Bird considers it appropriate and reasonable that a discretionary activity status should be used to examine the actual or potential adverse effects of an activity in the PMA Overlay. The appeal seeks deletion of the restricted discretionary rules 4.9.3.1 and 4.9.3.2 and the inclusion of new discretionary activity rules providing for any activity not otherwise provided for in the PMA Overlay.

Federated Farmers appeal contends that the rules are too restrictive and unworkable, the economic impact will outweigh the environmental benefits, and that the rules exceed the mandate conferred by Part 2 RMA. Their appeal seeks the rules for vegetation clearance (including the restricted discretionary activity rules) be deleted or increased in area and volumes to allow practical sizes of vegetation to be cleared or felled. The reference seeks that the removal of dead, dying or diseased vegetation (along with vegetation posing a threat to property or life) be permitted and removed from the rules.

The Minister's appeal comments on three aspects regarding the selective tree felling rule 4.9.3.2:

- the clearance of up to 50 m³ of roundwood in PMAs as a permitted activity (inferred by rule 4.9.3.2.(1)) may result in significant adverse effects on the integrity of PMAs;
- the list of tree species in 4.9.3.2(2) is not comprehensive - there may be other species targeted for selective felling; and
- dead or dying trees can have important natural values (e.g. habitat for native species) and it is inappropriate that they be excluded from any assessment in terms of applications for selective tree felling, as per rule 4.9.3.2(3).

The Minister seeks deletion of the rules pertaining to 50 m³ of roundwood and the description of specific tree species. The Minister also seeks the amendment of the qualification in rule 4.9.3.2 (3) limiting it to: "the trees have become dangerous to human life or property as a result of natural causes".

Mediation

Federated Farmers sought retention of rule 4.9.3.2 as a restricted discretionary activity, in the face of other views seeking to re-classify it as a discretionary activity. Their general concern regarding rule clarity was satisfied by General Rule 4.6.1, which states that subject to any other rule in the Plan, activities affecting natural heritage are permitted.

Concerns over the volume of roundwood that can be extracted from a PMA as a permitted activity were debated. The Council's decision provided that up to 50m³ of indigenous vegetation could be selectively logged from each rating assessment block within a PMA every

ten years as a permitted activity. The Minister's representative reiterated the appeal, stating that the permitted volume for roundwood clearance could have significant adverse effects on the integrity of a PMA.

The parties considered the appropriateness of a volume threshold for clearance and the point was made that a percentage clearance threshold for any particular species would be a useful addition to the rule. Environmental interests proposed that no more than 10% of any species exceeding 30 cm d.b.h. should be able to be extracted (over the same ten year period) without requiring a restricted discretionary consent.

Since the Council's decision on the Plan, a landowner had had one of their rates assessment blocks divided into several rates assessment blocks subsequently increasing the volume of roundwood to be selectively felled as a permitted activity. The use of the "rating assessment block" as a term in rule 4.9.3.2 (1) was held to be counter to the purpose of the rule. The parties agree that the term "rating unit" (accompanied by a definition for the purpose of Rule 4.9.3.2 (1)) is a better option.

The mediation addressed the Minister's concern that the list of native species in 4.9.3.2(2) had potential gaps. The parties agreed to rewording rule 4.9.3.2.2 to read: "the trees to be felled include but are not limited to...". However resolving rule 4.9.3.2(1), the proposed inclusion of a threshold of 10% of any species, has removed the need for a permitted activity threshold based on a detailed list of species.

The vegetation exempted from consideration in rule 4.9.3.2(3) was raised by the Minister and Federated Farmers. The mediation resulted in a proposal to narrow down the excluded vegetation, so that the exemption would not only apply to windthrow, or dead standing vegetation, but would still apply to vegetation that has become dangerous to human life or property as a result of natural causes.

Outcome

The parties agreed to include a percentage-based threshold for the selective felling of indigenous species within a PMA as well as the deletion of the (subsequently redundant) species list in rule 4.9.3.2(2).

The parties agree that the term "rates assessment block" in rule 4.9.3.2(1) should be replaced by the term "rating unit" and that a definition of the term should be inserted to Chapter 24 – Glossary as a consequential amendment.

The parties agreed to narrow the vegetation excluded from the rule 4.9.3.2(3), by excluding windthrow and dead standing vegetation from the terms and standards of the rule, but retaining the reference to vegetation that has become dangerous. The parties agreed that consequential re-numbering of this rule would be necessary.

The parties agree that the amendments proposed above constitute appropriate relief for the appeals against rule 4.9.3.2 and will improve the effectiveness of rule 4.9.3.2 in implementing Objective 4.3.2, Policy 4.4.1 and Method 4.5.6.2(c).

Land Disturbance (4.9.3.3)

Appellant	Section 271A Party
Federated Farmers	Fish and Game Minister of Conservation

Rule 4.9.3.3 states a discretionary activity status for the exposure or disturbance of more than 100m² of earth within a PMA in any 3 month period. The rule complements rules on structures and vegetation clearance, acknowledging that although land disturbance is usually linked to

These other activities, it may occur with other activities such as stopbanks, drainage, or landscaping etc. The thresholds for exposure or disturbance are measured using a 'horizontal plane' view of the activity.

Other parts of the Plan address sustainable management of soil and water, but this rule implements Policy 4.4.1, the protection management of significant natural areas identified as PMAs in the Plan.

Content of Appeal

The Federated Farmers appeal contends that the rules are too restrictive and unworkable, that the economic impact will outweigh the environmental benefits and that the rules exceed the mandate conferred by Part 2 RMA.

Federated Farmers seeks all activities be clarified as permitted unless rules are otherwise in place and that if rules are included they are written in a way as to be effects based and reduce impacts on common farming practices.

Federated Farmers sought amendment or deletion of the rule 4.9.3.3 Land Disturbance.

Mediation

Federated Farmers indicated that they no longer have a concern with Rule 4.9.3.3.

Council considers that Rule 4.9.3.3 appropriately implements Objective 4.3.2, Policy 4.4.1 and Methods 4.5.6(1) and (2)(c) in respect of land disturbance within the PMA Overlay.

Outcome

Rule 4.9.3.3 is proposed to be retained as written in Council's decision.

Date: _____

Hamish Cave
Provincial President Gisborne Branch
For Federated Farmers of New Zealand Incorporated
Appellant

Craig Stevens
Partner, DLA Phillips Fox
For Hikurangi Forest Farms Ltd
Appellant

Henry Weston
Conservator – East Coast/Bay of Plenty Conservancy
For the Minister of Conservation
Appellant

Mark Bellingham
North Island Conservancy Manager
For Royal Forest and Bird Society of New Zealand Inc
Appellant

Murray Palmer
Chair
For Tairāwhiti Earth Centre
Appellant

Mark Kinvig
State Highway Manager
For New Zealand Transport Agency
Section 271A Party

Rob Pitkeithley
Regional Manager
For Fish and Game New Zealand (Eastern Fish and Game)
Section 271A Party

Richard Heikell
North Island Environmental Manager
For Ernslaw One Ltd
Section 271A Party

Chris Keenan
Business Manager: Resource Management Advocacy
For Horticulture New Zealand
Section 271A Party

Hans van Kregten
Environment and Planning Manager
For Gisborne District Council
Respondent

IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN HIKURANGI FOREST FARMS LTD.

(ENV-2006-WLG-000265)

Appellant

AND GISBORNE DISTRICT COUNCIL

Respondent

AND FEDERATED FARMERS OF NEW ZEALAND INC.

Pursuant to section 271A/274 of the Act

AND FISH AND GAME NEW ZEALAND (EASTERN REGION
FISH AND GAME COUNCIL)

Pursuant to section 271A of the Act

AND MINISTER OF CONSERVATION

Pursuant to section 271A of the Act

BEFORE THE ENVIRONMENT COURT

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

IN CHAMBERS at Wellington

CONSENT ORDER

Introduction

- [1] The Court has read and considered the appeal and the memorandum of the parties dated 15 July 2010.
- [2] The following parties gave notice of an intention to become parties under s271 A/s274 and have signed the memorandum setting out the relief sought:
- Federated Farmers of New Zealand Inc.;
 - Fish and Game New Zealand (Eastern Region Fish and Game Council); and
 - Minister of Conservation.
- [3] The Court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:
- (a) All parties to the proceedings have executed the memorandum requesting this order; and
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

- [4] The Court orders, by consent, that Gisborne District Council is directed to modify the Gisborne District Council Part-operative Combined Regional Land and District Plan as follows:

Words to be inserted are shown as <u>underlined></u> . Words to be deleted are shown as struck through .	
PROVISION	AMENDMENT
Chapter 4.9 – Protection Management Area Overlay	No change.
4.9.2.1	
4.9.2.1(d)	
4.9.3.1	

DATED this day of 2010

C J Thompson
Environment Judge

IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN FEDERATED FARMERS OF NEW ZEALAND INC.

(ENV-2006-WLG-000260)

Appellant

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Respondent

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FISH AND GAME COUNCIL)

Pursuant to section 271A of the Act

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

Order

- [4] The Court orders, by consent, that Gisborne District Council is directed to modify the Gisborne District Council Part-operative Combined Regional Land and District Plan as follows:

Words to be inserted are shown as <u>underlined</u> . Words to be deleted are shown as struck through.	
PROVISION	AMENDMENT
Chapter 4.9 Protection Management Area Overlay 4.9 4.9.3.1 4.9.3.2 4.9.3.3	No change.

DATED this day of 2010

C J Thompson
Environment Judge

IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN ROYAL FOREST AND BIRD PROTECTION SOCIETY OF
NEW ZEALAND INC.

(ENV-2006-WLG-000262)

Appellant

AND GISBORNE DISTRICT COUNCIL

Respondent

AND FEDERATED FARMERS OF NEW ZEALAND INC.

Pursuant to section 271 A/274 of the Act

AND FISH AND GAME NEW ZEALAND (EASTERN REGION
FISH AND GAME COUNCIL)

Pursuant to section 271 A of the Act

BEFORE THE ENVIRONMENT COURT

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

IN CHAMBERS at Wellington

CONSENT ORDER

Introduction

- [1] The Court has read and considered the appeal and the memorandum of the parties dated 15 July 2010.
- [2] The following parties gave notice of an intention to become parties under s271 A/s274 and have signed the memorandum setting out the relief sought:
 - Federated Farmers of New Zealand Inc.; and
 - Fish and Game New Zealand (Eastern Region Fish and Game Council).
- [3] The Court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:
 - (a) All parties to the proceedings have executed the memorandum requesting this order; and
 - (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

- [4] The matters listed below, forming part of the Tairāwhiti Earth Centre appeal, are resolved without change to the Combined Regional Land and District Plan (decision version).

Words to be inserted are shown as <u>underlined</u> . Words to be deleted are shown as struck through .	
PROVISION	AMENDMENT
Chapter 4.9 – Protection Management Area Overlay 4.9.3.1	<u>4.9.3.1.1 Notification</u> <u>Subject to Sections 95 and 95A-F of the Resource Management Act 1991, an application for a restricted discretionary activity under Rule 4.9.3.1 shall be notified. However such an application need not be publicly notified if, in the opinion of the consent authority, notification may be limited to service of notice of the application on all persons who may be adversely affected by the activity.</u>
Chapter 4.9 – Protection Management Area Overlay 4.9.3.2 (1) 4.9.3.2 (2)	Replace 4.9.3.2 (1) and (2) with the following. <u>4.9.3.2 Indigenous vegetation clearance by selective tree felling:</u> <u>Provided that:</u> <u>1. Vegetation clearance in a single rating unit per ten years exceeds the lesser of:</u>

	<p>a. <u>50m³ of roundwood, or</u> b. <u>10% of any single species exceeding 30cm d.b.h., and</u></p> <p>2. <u>The vegetation is not vegetation that has become dangerous to human life or property as a result of natural causes.</u></p> <p>[Please note: Matters of discretion remain unchanged.]</p>
<p>Chapter 4.9 – Protection Management Area Overlay</p> <p>4.9.3.2</p>	<p><u>4.9.3.2.1 Notification</u></p> <p><u>Subject to Sections 95 and 95A-F of the Resource Management Act 1991, an application for a restricted discretionary activity under Rule 4.9.3.2 shall be notified. However such an application need not be publicly notified if, in the opinion of the consent authority, notification may be limited to service of notice of the application on all persons who may be adversely affected by the activity.</u></p>

DATED this day of 2010

C J Thompson
Environment Judge

IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN MINISTER OF CONSERVATION

(ENV-2006-WLG-000438)

Appellant

AND GISBORNE DISTRICT COUNCIL

Respondent

AND FEDERATED FARMERS OF NEW ZEALAND INC.

Pursuant to section 271A/274 of the Act

AND NEW ZEALAND TRANSPORT AGENCY
(Successor to Transit New Zealand)

Pursuant to section 271A/274 of the Act

BEFORE THE ENVIRONMENT COURT

Environment Judge Thompson sitting alone under section 279 of the Act

IN CHAMBERS at Wellington

CONSENT ORDER

Introduction

- [1] The Court has read and considered the appeal and the memorandum of the parties dated 15 July 2010.
- [2] The following party gave notice of an intention to become a party under s271 A/s274 and has signed the memorandum setting out the relief sought:
- Federated Farmers of New Zealand Inc.; and
 - New Zealand Transport Agency (Successor to Transit New Zealand).
- [3] The Court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:
- (a) All parties to the proceedings have executed the memorandum requesting this order; and
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

- [4] The Court orders, by consent, that Gisborne District Council is directed to modify the Gisborne District Council Part-operative Combined Regional Land and District Plan as follows:

Words to be inserted are shown as <u>underlined</u> . Words to be deleted are shown as struck through .	
PROVISION	AMENDMENT
Chapter 4.9 – Protection Management Area Overlay	No change.
4.9.1.4(c)	
4.9.1.4(h)	
4.9.2.1	

DATED this day of 2010

C J Thompson
Environment Judge

IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN TAIRAWHITI EARTH CENTRE
(Successor to Gisborne Environmental Centre Inc.)
(ENV-2006-WLG-000271)

Appellant

AND GISBORNE DISTRICT COUNCIL

Respondent

AND ERNSLAW ONE LTD.

Pursuant to section 271A of the Act

AND FEDERATED FARMERS OF NEW ZEALAND INC.

Pursuant to section 271A/274 of the Act

AND MINISTER OF CONSERVATION

Pursuant to section 271A of the Act

AND NZ TRANSPORT AGENCY
(Successor to Transit New Zealand)

Pursuant to section 271A of the Act

BEFORE THE ENVIRONMENT COURT

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

IN CHAMBERS at Wellington

CONSENT ORDER

Introduction

- [1] The Court has read and considered the appeal and the memorandum of the parties dated 15 July 2010.
- [2] The following parties gave notice of an intention to become parties under s271A/s274 and have signed the memorandum setting out the relief sought:
 - Ernslaw One Ltd;
 - Federated Farmers of New Zealand Inc.;
 - Minister of Conservation; and
 - New Zealand Transport Agency (successor to Transit New Zealand).
- [3] The Court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:
 - (a) All parties to the proceedings have executed the memorandum requesting this order; and
 - (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

- [4] The matters listed below forming part of the Tairāwhiti Earth Centre appeal, are resolved without change to the Combined Regional Land and District Plan (decision version).

Words to be inserted are shown as <u>underlined</u> . Words to be deleted are shown as struck through .	
PROVISION	AMENDMENT
Chapter 4.9 – Protection Management Area Overlay 4.9.3.1	<u>4.9.3.1.1 Notification</u> <u>Subject to Sections 95 and 95A-F of the Resource Management Act 1991, an application for a restricted discretionary activity under Rule 4.9.3.1 shall be notified. However such an application need not be publicly notified if, in the opinion of the consent authority, notification may be limited to service of notice of the application on all persons who may be adversely affected by the activity.</u>

<p>Chapter 4.9 – Protection Management Area Overlay</p> <p>4.9.3.2</p>	<p><u>4.9.3.2.1 Notification</u></p> <p><u>Subject to Sections 95 and 95A-F of the Resource Management Act 1991, an application for a restricted discretionary activity under Rule 4.9.3.2 shall be notified. However such an application need not be publicly notified if, in the opinion of the consent authority, notification may be limited to service of notice of the application on all persons who may be adversely affected by the activity.</u></p>
<p>Chapter 4.9 – Protection Management Area Overlay</p> <p>4.9.3.3 4.9.3.4</p>	<p>No change.</p>

DATED This day of 2010

C J Thompson
Environment Judge

4.9 PROTECTION MANAGEMENT AREA OVERLAY

4.9.1 Permitted Activities

The following permitted activities are for the avoidance of doubt. The list is not exhaustive (General Rule 4.6.1 refers).

4.9.1.1 Minor upgrading and maintenance of lawfully established structures for network utility purposes (excluding roads, tracks or earth dams)

4.9.1.2 Maintenance of lawfully established roads, tracks or earth dams

4.9.1.3 Maintenance and repair of lawfully established structures excluding network utility structures

4.9.1.4 Vegetation clearance

Provided that:

- a) The vegetation comprises exotic trees or shrubs or other exotic plants scattered amongst pasture; or³
- b) The clearance is by grazing; or
- c) The clearance is plantation forest thinning resulting in at least 250 evenly distributed trees remaining per hectare; or
- d) The clearance is harvesting of agricultural and horticultural crops; or
- e) The clearance is required under a Regional Pest Management Strategy under the Biosecurity Act 1993; or
- f) The clearance is land preparation by discing, ploughing or ripping; or⁴
- g) The clearance is for fencing, confined to the extent necessary to create and maintain a stable fenceline, and not more than 4m total width; or⁵
- h) The clearance is of the indigenous understorey to plantation forest, and is incidental to permitted or otherwise authorised plantation forest clearance.

4.9.1.5 Establishment and operation of telecommunication and radio communication structures located above or below ground within legal road and road reserve, including associated vegetation clearance and land disturbance.⁶

4.9.1.6 Overhead connections to individual properties from existing overhead lines and cables, limited to one extra support structure.⁷

4.9.1.7 Subject to Rule 4.8.4.1, and outside of legal road and road reserve, establishment and operation of telecommunication and radio communication lines and cables located below ground, including associated vegetation clearance and land disturbance, where the construction corridor does not exceed 2 metres in width.⁸

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68/02
Hikurangi Forest
Farms
Item 6
4.9

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68/02
Minister of
Conservation
Item 6, 7, 8,
4.9.1.4(a)(c)(f)(h)

³ Consent Order Minister of Conservation RMA 68/02 - 15 June 2006

⁴ Consent Order Minister of Conservation RMA 68/02 - 15 June 2006

⁵ Consent Order Minister of Conservation RMA 68/02 - 15 June 2006

⁶ Consent Order Telecom ENV-2007-WLG-000051 formerly RMA 128/02 - 28 October 2008

⁷ Consent Order Telecom ENV-2007-WLG-000051 formerly RMA 128/02 - 28 October 2008

⁸ Consent Order Telecom ENV-2007-WLG-000051 formerly RMA 128/02 - 28 October 2008

4.9.2 Controlled Activities

The following activities shall be controlled activities.

4.9.2.1 The clearance of plantation forest vegetation, planted prior to the notification of this plan

Provided that:

1. Vegetation clearance exceeds 2ha in any contiguous area and/or exceeds 2ha over any 12 month period.

Council shall limit its control to the matters a) - g) specified below:

- a) The timing and duration of the activity
- b) The area and location of the activity
- c) Any vegetation that is to be retained
- d) Potential effect on the values associated with natural character, biodiversity, significant habitat of indigenous fauna, amenity value and landscape, including revegetation type and density
- e) Effect on the water quality of waterbodies
- f) Heritage values in the heritage alert layer

Refer to Chapter
3.15 - 3.18,
6.6, 6.7.3, 6.7.4,
6.8.1 - 6.8.4,
6.9.1 - 6.9.4

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Hikurangi Forest
Farms
Item No. 5, 4.9

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Gisborne
Environmental
Centre
Item 9
4.9.3

4.9.3 Restricted Discretionary Activities

The following activities shall be restricted discretionary activities:

4.9.3.1 Vegetation clearance, other than that specifically permitted or authorised by another rule

Provided that:

1. Vegetation clearance exceeds 500m² in any contiguous area and/or exceeds 500m² over any 12 month period.

Council shall restrict its discretion to the matters a) - g) specified below:

- a) The timing and duration of the activity
- b) The area and location of the activity
- c) Any vegetation that is to be retained
- d) Potential effect on the values associated with natural character, biodiversity, significant habitat of indigenous fauna, amenity and landscape, including revegetation type and density
- e) Effects on water quality of waterbodies
- f) Heritage values in the heritage alert layer

4.9.3.1.1 Notification

Subject to Sections 95 and 95A-F of the Resource Management Act 1991, an application for a restricted discretionary activity under Rule 4.9.3.1, shall be notified. However such an application need not be publicly notified if, in the opinion of the consent authority, notification may be limited to service of notice of the application on all persons who may be adversely affected by the activity.

4.9.3.2 Indigenous vegetation clearance by selective tree felling:

Provided that:

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Forest and Bird
4.9.3.1 and
Reference No. 95/02
Federated Farmers
Item 4
4.9.3.1

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95/02
Forest and Bird
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Item 4
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Conservation
Item 10
4.9.3.2

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4.9.3.2

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1. Vegetation clearance in a single rating unit per ten years exceeds the lesser of:

a. 50m³ of rondwood, or

b. 10% of any single species exceeding 30cm d.b.h., and

2. The vegetation is not vegetation that has become dangerous to human life or property as a result of natural causes.

Council shall restrict its discretion to the matters a) - g) specified below:

- a) The timing and duration of the activity
- b) The area and location of the activity
- c) Any vegetation that is to be retained
- d) Potential effect on the values associated with natural character, biodiversity, significant habitat of indigenous fauna, amenity value, access and landscape, including revegetation type and density
- e) Effects on water quality of waterbodies
- f) Heritage values in the heritage alert layer

4.9.3.2.1 Notification

Subject to Sections 95 and 95A-F of the Resource Management Act 1991, an application for a restricted discretionary activity under Rule 4.9.3.2 shall be notified. However such an application need not be publicly notified if, in the opinion of the consent authority, notification may be limited to service of notice of the application on all persons who may be adversely affected by the activity.

4.9.3.3 Land disturbance

Provided that:

1. The activity exposes more than 100m² of earth measured in a vertical plane view in any 3 month period, or disturbs more than 100m³ of earth in any 3 month period.

Council shall restrict its discretion to the matters a) - g) specified below:

- a) The timing and duration of the activity
- b) Area, location and length of the activity with particular regard to conformity with existing landforms
- c) Placement and management of cuts and fills likely to be visually dominant in the landscape
- d) Potential affect on the values associated with natural character, biodiversity, significant habitat of indigenous fauna, amenity value and landscape, including revegetation type, timing and density, especially of any cut and fill areas
- e) Effects on water quality of waterbodies
- f) Heritage values in the heritage alert layer

4.9.3.4 Erection of new structures or alteration or additions to existing structures

Provided that:

1. The structure exceeds 2.5m in height, or
2. Projects an area of more than 10m², measured in a plan view, or
3. Cannot be contained within a volume of 25m³.

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6.7.4, 6.8.1, 6.8.2,
6.8.4, 6.9.1, 6.9.3,
6.9.4

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~~Federated Farmers~~
~~Item 4~~
~~4.9.3.3~~
~~Land Disturbance~~

Council shall restrict its discretion to the matters a) - j) specified below:

- a) The timing and duration of the activity
- b) The cumulative effect of the activity
- c) Proximity to existing structures
- d) Conformity with the nature and extent of existing structures
- e) The area, location and size of the structure with particular regard to conformity with existing landforms
- f) The structure's visual dominance in the landscape
- g) Any vegetation screening and backdrop
- h) Potential effect on the values associated with natural character, biodiversity, significant habitat of indigenous fauna, amenity value and landscape
- i) Heritage values in the heritage alert layer

MEMORANDUM OF UNDERSTANDING

between

GISBORNE DISTRICT COUNCIL

and

HIKURANGI FOREST FARMS LIMITED

Correction of PMA mapping inaccuracies in the Gisborne District Plan
that affect Hikurangi Forest Farms plantation forestry blocks

MEMORANDUM OF UNDERSTANDING

DATED this day of 2010

BETWEEN HIKURANGI FOREST FARMS LIMITED

AND GISBORNE DISTRICT COUNCIL

BACKGROUND

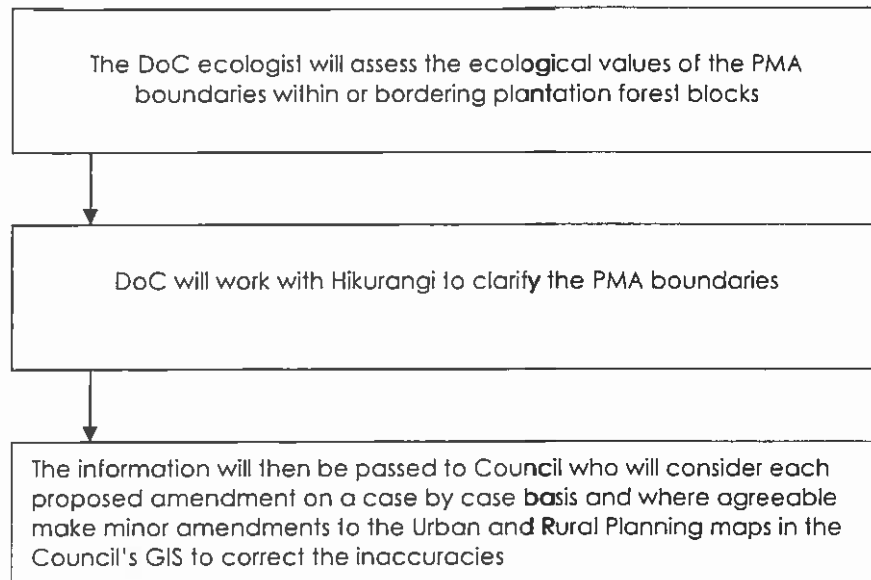
- A. The Gisborne District Council ("Council") publicly notified its decisions on the Proposed Combined Regional Land and District Plan for the Gisborne District (the Plan) on 16 January 2002.
- B. Hikurangi Forest Farms Limited ("Hikurangi") appealed Council's decisions on Chapter 4 – Natural Heritage on the grounds that the decisions imposed unnecessary restrictions on plantation forest activities.
- C. Mediation since 2002 has resolved most of the grounds for appeals on Chapter 4 to the satisfaction of Hikurangi and other involved interests with the exception of matters relating to Chapter 4.9 – Protection Management Area Overlay issues, objectives, policies and rules.
- D. Appendix 8 of the Plan (lists of Protection Management Areas) and the Gisborne District Urban and Rural Planning Maps (showing locations of individual Protection Management Areas) are already operative.
- E. The sole remaining issue surrounds the accuracy of the Protection Management Area ("PMA") maps at a fine scale. The broad scale planning maps at a scale of up to 1:50,000 are general district-wide maps that indicate the location and shape of PMAs relative to other features such as roads, rivers and property boundaries. They are based on the Department of Conservation's Protected Natural Areas ("PNA") mapping on topographical maps at a similarly broad scale.
- F. Council has upgraded its spatial mapping and uses ortho-rectified aerial photography in its Geographic Information System ("GIS"), which enables a more precise picture of actual conditions on the ground than previous topographical maps.
- G. The translation of the original broad scale PNA maps onto broad scale Council planning maps and then onto the fine scale Council GIS aerial photos has highlighted inaccuracies in PMA boundaries.
- H. The impact is felt particularly by forestry companies where plantation forest blocks adjoin a PMA. The purpose of the PMA Overlay is to protect significant areas of native biodiversity. There should be no plantation forestry within a PMA, however the scale inaccuracies in mapping the PMAs mean that there are pockets of plantation forest that fall within some PMA boundaries.
- I. Vegetation clearance of plantation forestry outside a PMA is generally a controlled activity and Council must grant the consent but retains the ability to impose conditions to minimise adverse environmental effects. However, vegetation clearance within a PMA is a (restricted) discretionary activity, where Council has the ability to decline the consent. The result of the inaccuracies is unnecessary uncertainty for Council, for landowners and for potential parties during resource

consent processes, something that the mapping of the PMAs was intended to reduce.

- J. The Department of Conservation ("DoC") has agreed to employ an ecologist to assess the ecological values of the PMA boundaries within or bordering plantation forest blocks and to work with forest companies to clarify the PMA boundaries. Hikurangi is one of the forest companies working through this process with DoC. That information would then be passed to Council to consider minor amendments to the Urban and Rural Planning maps in the Council's GIS to correct the inaccuracies.
- K. The process for resolution of the inaccuracy issue will resolve the outstanding Hikurangi appeal on Chapter 4.9 of the Plan and enable Chapter 4 to be made operative. Hikurangi is content for the corrections to be made over the next five years as Council resources are available, however they would like Council's commitment to the process to be recorded in a Memorandum of Understanding.
- L. Hikurangi Forest Farms has agreed that a Memorandum of Understanding will be sufficient to resolve the Hikurangi Forest Farms appeal on chapter 4.9 Protection Management Areas Overlay of the District Plan.

THE PARTIES AGREE

- 1. The parties agree that the mapping inaccuracies can be dealt with in the following process:



- 2. The parties commit to the following:

Hikurangi Forest Farms will:

- o Provide Council's District Conservator with the PMA boundaries as agreed with DoC in a timely manner and in a format for immediate use by the Council as agreed with Council's Land Data Services Team Leader
- o Resolve all other matters related to chapter 4.9 as per the memorandum to the Environment Court and Consent Order attached as Appendix 1

- o Hikurangi (through DoC) will bear the costs of the ecological assessment and the GIS mapping of the boundary amendments.

Gisborne District Council will:

- o Consider each of the corrections to PMAs affecting Hikurangi plantation forest blocks as agreed between Hikurangi and DoC. Any corrections the Council agrees with will be incorporated into the Plan as resources become available but at least within five years of receiving the whole set of GIS files and maps from Hikurangi
 - o Consider other affected parties in decisions particularly PMA or forest block landowners
 - o Retain absolute discretion on all decisions relating to these matters to ensure that it is able to meet its statutory responsibilities and obligations
 - o Bear the costs of any amendments or changes to RMA Plans.
3. The parties have entered this memorandum in order to clarify their understanding of the process for resolving the outstanding issues and do not intend this memorandum to be binding upon them.

SIGNED BY

For Gisborne District Council

Witness

SIGNED BY

For Hikurangi Forest Farms

Witness