

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2022] NZEnvC 120**

IN THE MATTER OF

appeal under clause 14 of the First  
Schedule of the Resource Management  
Act 1991 in relation to the package of  
urban services and plan changes to the  
Operative Whangārei District Plan -  
Kauri Dieback Hygiene provisions

BETWEEN

DIRECTOR-GENERAL OF  
CONSERVATION

(ENV-2020-AKL-127)

Appellant

AND

WHANGĀREI DISTRICT COUNCIL

Respondent

Court: Judge J A Smith  
Environment Commissioner SC Myers  
Environment Commissioner SK Prime

Hearing: On the papers  
Last case event: 29 June 2022

Date of Decision: 30 June 2022  
Date of Issue: 30 June 2022

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**DECISION OF THE ENVIRONMENT COURT**

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- A: The Court confirms the provisions as set out in Annexure 1.
- B: Applications for costs were not encouraged and the Court understands no costs applications have been filed. Accordingly, there is no issue as to costs and the Court makes no orders.



## REASONS

### Introduction

[1] On 16 June 2022 the Court issued its second interim decision in relation to the District Wide – Kauri dieback topic of appeals on the Urban and Services plan changes to the Operative Whangārei District Plan.<sup>1</sup> The parties were directed to prepare a final of the plan provisions for approval by the Court.

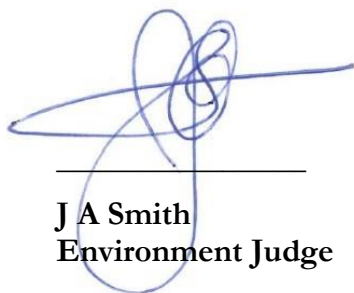
[2] The Council has prepared and filed the final provisions in accordance with the directions in the second interim decision.

### Outcome

[3] The Court confirms the provisions as set out in Annexure 1.

[4] Applications for costs were not encouraged and the Court understands no costs applications have been filed. Accordingly, there is no issue as to costs and the Court makes no orders.

For the Court:



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**J A Smith**  
**Environment Judge**



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<sup>1</sup> *Director-General of Conservation v Whangārei District Council* [2022] NZEnvC 103.

**Annexure 1**  
ENV-2020-AKL-000127 - Kauri Dieback Final Provisions

EARTH-R2	Earthworks, Land Preparation, Cultivation, or Land Disturbance within a Kauri Hygiene Area	
<b>All Zones and Development Areas</b>	<p>Activity Status: Permitted</p> <p>Where:</p> <ol style="list-style-type: none"> <li>1. The works are undertaken for the purpose of gardening on a site less than 2,000m<sup>2</sup> and:               <ol style="list-style-type: none"> <li>a. The maximum area disturbed within a single kauri hygiene area is 250m<sup>2</sup> within a site; and</li> <li>b. All soil, organic material (excluding crops grown for consumption) and surface water from the works within the kauri hygiene area are retained within the kauri hygiene area; and</li> <li>c. All tools, equipment, clothing and footwear are cleaned to the greatest extent reasonably practicable of all soil and organic material prior to entry into and exit from the Kauri Hygiene Area; and</li> <li>d. Any planting uses either:                   <ol style="list-style-type: none"> <li>i. sterilised seeds or</li> <li>ii. seeds that have been harvested without coming into contact with soil; or</li> <li>iii. cuttings free of soil; or</li> <li>iv. accredited <i>Phytophthora agathidicida</i> free plants; or</li> <li>v. plants with their root system within the same Kauri Hygiene Area;</li> </ol> </li> <li>e. The Whangārei District Council is notified within 3 months of the Kauri Hygiene Area being established.</li> </ol> </li> </ol> <p>OR</p> <ol style="list-style-type: none"> <li>2. The works are undertaken in accordance with an approved subdivision consent under EARTH-R1.1(c).</li> </ol> <p>OR</p> <ol style="list-style-type: none"> <li>3. The works are undertaken by a local authority or a Network Utility Operator in relation to infrastructure and are for the purpose of:               <ol style="list-style-type: none"> <li>a. Emergency works as defined by section 330 of the Resource Management Act 1991; or</li> <li>b. Works that are necessary to avoid or remedy unplanned network outages;</li> </ol> </li> </ol>	<p>Activity Status when compliance not achieved: Controlled</p> <p>Where:</p> <ol style="list-style-type: none"> <li>1. The works are undertaken by a local authority or a Network Utility Operator for the purpose of the operation, repair, maintenance or minor upgrading of infrastructure.</li> </ol> <p>Matters of Control:</p> <ol style="list-style-type: none"> <li>1. The extent to which the kauri dieback management plan is likely to be effective in avoiding the spread of kauri dieback disease.</li> <li>2. Any recommendations and proposed mitigation measures of the kauri dieback management plan and any further information provided through the consent process.</li> <li>3. The extent of earthworks, land preparation, cultivation or land disturbance within the kauri hygiene area.</li> <li>4. Procedures for implementing, monitoring, reviewing and amending the kauri dieback management plan.</li> <li>5. Operational needs of the local authority or Network Utility Operator.</li> </ol> <p>Activity Status when compliance not achieved, and the activity is not a Controlled activity: Restricted Discretionary</p> <p>Matters of discretion:</p> <ol style="list-style-type: none"> <li>1. The matters of control listed in EARTH-R2.1 – 5.</li> </ol> <p><i>Compliance Standard:</i></p> <ol style="list-style-type: none"> <li>1. Controlled activity Rule EARTH-R2.1 takes effect on [insert date twelve months after final decision / consent order]</li> <li>2. Note: An application may be made for a district wide resource consent rather than a site-specific consent pursuant to controlled activity Rule EARTH-R2.1.</li> <li>3. Any application for a controlled or restricted discretionary activity that is not a district wide resource consent shall comply with information requirement EARTH-REQ1.</li> <li>4. Any application for a district wide</li> </ol>

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OR

4. The works are undertaken for the purpose of:
  - a. An emergency regulation made under section 150 of the Biosecurity Act 1993; or
  - b. Scientific work in relation to testing and monitoring for kauri dieback disease that is carried out with authority of the Minister under section 52 of the Biosecurity Act 1993.

resource consent shall comply with information requirement EARTH-REQ2.

*Compliance Standard:*

1. From [insert date twelve months after final decision / consent order] permitted activity Rule EARTH-R2.3 is conditional on the management plan in EARTH-REQ2:
  - a. Containing a section on Emergency works and works that are necessary to avoid or remedy unplanned network outages; and
  - b. Having been certified by the Council.
2. Non-compliance with compliance standard (1)(a) or (b) above falls under controlled activity rule EARTH-R2.1.

**EARTH-REQ1 Information Requirement– Kauri Dieback Management Plan**

**All Zones and Development Areas**

1. Any application for a controlled or restricted discretionary activity under rule EARTH-R2.1 that is not for a district wide resource consent shall prepare and implement a kauri dieback management plan.
2. The purpose of the kauri dieback management plan is to set out the procedures that will be followed to avoid the risk of the spread of kauri dieback disease. These hygiene procedures are based on the knowledge that all kauri hygiene areas have the potential to contain *Phytophthora agathidicida*.
3. The kauri dieback management plan shall detail, where relevant:
  - a. An assessment of the overall risk of spreading kauri dieback, including:
    - i. The activities proposed and their potential vectoring of *Phytophthora agathidicida*.
    - ii. The frequency, duration and scale of the proposed activities.
    - iii. The risk associated with each activity before any procedures to mitigate risks are implemented.
    - iv. The procedures that will be implemented for each activity to mitigate the risks.
    - v. The risk of each activity after those procedures are implemented and followed.
  - b. The kauri dieback management plan objectives to prevent or minimise the spread of kauri dieback.
  - c. The procedures that will be followed to prevent or minimise the spread of kauri

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- dieback disease.
- d. A site description relating to the area of proposed works (site name, site location and other identification details).
  - e. A map or maps showing:
    - i. The area that the management plan applies to.
    - ii. The location of each kauri tree within that area and its associated kauri hygiene area.
    - iii. Locations where access to the kauri hygiene area will be prevented (e.g. by fencing off, covering the soil with protective surface).
    - iv. The boundary of any kauri dieback disease containment areas.
    - v. Equipment and vehicle cleaning points (which are to be located within the kauri hygiene area or kauri dieback disease containment area).
    - vi. Any water bodies, fences, roads, tracks or structures within the kauri hygiene area and kauri dieback disease containment area.
    - vii. Proximity to other kauri trees.
    - viii. Areas where livestock have access to the kauri hygiene area or kauri dieback disease containment area.
  - f. The method by which the boundaries of any kauri hygiene area and kauri dieback disease containment area will be clearly marked out.
  - g. The procedures to be followed to ensure that any vehicles, equipment, clothing and footwear are cleaned to the greatest extent reasonably practicable prior to entry into and exit from the kauri hygiene area and kauri dieback disease containment area.
  - h. The procedures to be followed to ensure that any soil, organic material or surface water not retained within the kauri hygiene area are either:
    - i. Stored within a kauri dieback disease containment area; or
    - ii. Transported in a sealed vehicle/container to a landfill and the facilities at the landfill are suitable to dispose of infected or suspected infected material.
  - i. The water management procedures to be used for the washdown of vehicles, equipment and footwear used in a kauri hygiene area, including:
    - i. Methods to ensure that run-off does not enter any water bodies, the coastal marine area or separate kauri hygiene areas of any neighboring kauri trees.
    - ii. If on-site washdown is impracticable, procedures to undertake washdown at a facility where water is treated and managed.
  - j. For works within the kauri hygiene area that are likely to take longer than 12 months, the procedures to be followed to monitor, review and amend the kauri dieback management plan, including an annual report to Council until the completion of the works within the kauri hygiene area which details:
    - i. All works undertaken in a kauri hygiene area in the preceding 12 months including the date, type of equipment and vehicle used, the cleaning procedures followed and the disposal location of all disturbed soil and organic material.
    - ii. A review of the kauri dieback management plan to ensure the continued effectiveness of the management plan, this may include auditing of kauri dieback management procedures and soil sampling within and surrounding hygiene areas.
    - iii. Any proposed amendments to the kauri dieback management plan.
  - k. Any consultation undertaken with mana whenua and a summary of the results of

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that consultation.

#### EARTH- REQ2

#### Information Requirement– District-Wide Kauri Dieback Management Plan

1. Any application for a controlled or restricted discretionary activity under rule EARTH-R2.1 for a district wide resource consent shall prepare and implement a kauri dieback management plan.
2. The purpose of the kauri dieback management plan is to set out the procedures that will be followed to avoid the risk of the spread of kauri dieback disease. These hygiene procedures are based on the knowledge that all kauri hygiene areas have the potential to contain *Phytophthora agathidicida*.
3. For local authorities and Network Utility Operators, the District-Wide management plan shall include a section on emergency works and works that are necessary to avoid or remedy unplanned network outages. The purpose of this section of the management plan is to set out the procedures that will be followed to avoid the risk of the spread of kauri dieback disease in the context of emergency works and unplanned network outages which are, by their nature, dynamic, urgent and complex.

#### **Emergency works and unplanned network outages**

4. For emergency works and unplanned network outages, the management plan shall include:
  - a. an assessment of the activities including the:
    - i. type, frequency, duration and scale of activities, so far as can be reasonably anticipated;
    - ii. the context in which the activities are performed, including the purpose of the activities and the community benefit that the infrastructure provides;
  - b. an assessment of the risk of spreading kauri dieback by reference to the activities identified in accordance with 4(a)(i);
  - c. the controls to be implemented to minimise and mitigate the risk identified in the assessment in 4(b) and to address the interests identified in the assessment in 4(a)(ii);
  - d. The residual risk.
5. The controls in 4(c) may include general or flexible controls which are capable of tailoring to a particular activity and must include reasonably practicable methods to:
  - a. identify and record kauri and kauri hygiene areas;
  - b. identify and record vehicles that enter those areas;
  - c. minimise soil disturbance within kauri hygiene areas;
  - d. clean vehicles, equipment and items that contact soil and organic matter in kauri hygiene areas. This can include cleaning vehicles when back at a depot or facility; and
  - e. minimise the movement of potentially infected water, soil and organic matter between kauri hygiene areas or into waterways;
6. The management plan must establish:
  - a. a record keeping and audit process; and
  - b. a process for annual notification to the Whangārei District Council, including identification of activities undertaken with kauri hygiene areas.

#### **All other works**

7. For all other works, the kauri dieback management plan shall detail, where relevant:
  - a. An assessment of the risk of spreading kauri dieback, including:
    - i. The activities proposed and their potential vectoring of *Phytophthora agathidicida*.
    - ii. The potential frequency, duration and scale of the proposed activities.
    - iii. The risk associated with each activity before any procedures to mitigate

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- risks are implemented.
- iv. The procedures that will be implemented for each activity to mitigate the risks.
- v. The risk of each activity after those procedures are implemented and followed.
- b. The kauri dieback management plan objectives to prevent or minimise the spread of kauri dieback.
- c. The procedures that will be followed to prevent or minimise the spread of kauri dieback disease.
- d. Details of a suitable process for undertaking risk assessments, including pre-start site inspections to identify any necessary kauri dieback protection measures to be employed.
- e. The method by which the boundaries of any kauri hygiene area and kauri dieback disease containment area will be clearly marked out.
- f. The procedures to be followed to ensure that any vehicles, equipment, clothing and footwear are cleaned, to the greatest extent reasonably practicable, prior to entry into and exit from the kauri hygiene area and kauri dieback disease containment area. This can also include cleaning of vehicles when back at a depot or facility.
- g. The procedures to be followed to ensure that any soil, organic material or surface water not retained within the kauri hygiene area are either:
  - i. stored within a kauri dieback disease containment area; or
  - ii. transported in a sealed vehicle/container to a landfill and the facilities at the landfill are suitable to dispose of infected or suspected infected material.
- i. The water management procedures to be used in relation to the washdown of vehicles, equipment and footwear used in a kauri hygiene area, including:
  - i. Methods to ensure that run-off does not enter any water bodies, the coastal marine area or non-contiguous kauri hygiene areas of any neighbouring kauri trees.
  - ii. If on-site washdown is impracticable, procedures to undertake washdown at a facility where water is treated and managed.
- j. The procedures to be followed to monitor, review and amend the kauri dieback management plan, including an annual report to Council identifying the locations of earthworks undertaken within kauri hygiene areas,
- k. Any consultation undertaken with mana whenua and a summary of the results of that consultation.

#### New Definitions:

##### Gardening

means the planting, growing and tending of vegetation and the mowing of grass, but excludes the layout of paths, walls, fences and garden structures that are embedded in the soil. Gardening can include the use of driven stakes or poles to support landscaping above the soil.

##### Kauri dieback disease containment area

means an area identified in a kauri dieback management plan within which soil organic material and surface water from works within a kauri hygiene area are contained and confined.

##### Kauri hygiene area

Means the area within three times the maximum radius of the canopy dripline of a kauri tree.