

# Private Plan Change 78 Mangawhai Estuary Estate – Decisions on provisions and matters raised in submissions

**Meeting:** Kaipara District Council  
**Date of meeting:** 28 April 2021  
**Reporting officer:** Paul Waanders, District Planner

## Purpose | Ngā whāinga

For Council to make a decision on the recommendations of the Hearings Panel on Private Plan Change 78 (Mangawhai Estuary Estates).

## Executive summary | Whakarāpopototanga

The Hearings Panel has conducted a hearing and considered the Plan Change application for the amendment of Chapter 16 and the Maps of Estuary Estates in the Operative Kaipara District Plan, known as Mangawhai Central. The Hearings Panel have made recommendations for Council to consider.

This report recommends that Council accept the Hearings Panel recommendations and adopt them as the Council's Decisions, pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991.

Note - this paper was previously presented to the 31 March 2021 Council meeting, but Council decided to 'lay it on the table' until the April Council meeting as further time was requested by Elected Members to enable them to fully understand the recommendations of the Hearings Panel.

This paper is therefore the same as the 31 March 2021 paper, except that Appendix 3 of Attachment A has been re-attached due to formatting difficulties with the 31 March 2021 agenda item and recommendation c) below has been changed to 24 May 2021 (as the 31 March paper had a notification date of on or before 26 April 2021).

## Recommendation | Ngā tūtohunga

That Kaipara District Council

- a) Accepts the recommendations of the Hearings Panel in **Attachment A** and adopts the recommendations as the Council's decisions on provisions and matters raised in submissions, pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991.
- b) Approves the amended Chapter 16 and Maps for Mangawhai Estuary Estates as recommended by the Hearings Panel in **Attachment A, Appendix 3**.
- c) Approves the public notification of Council's decisions (pursuant to clause 10(4)(b), Schedule 1, RMA) and that public notification be on or before 24 May 2021.
- d) Delegates to the Mayor and Chief Executive, the authority to make any necessary minor formatting, typographical and administrative changes to Chapter 16 (Estuary Estates) and the Maps of Estuary Estates with the Operative Kaipara District Plan, as set out in **Attachment A, Appendix 3** of this report.

## Context | Horopaki

An application to amend Chapter 16 and the accompanying Maps of the Operative Kaipara District Plan for Estuary Estates was received on 3 December 2019 in terms of Part 2 of Schedule 1 of the Resource Management Act 1991 (RMA).

Council appointed independent commissioners Greg Hill (chair) and David Hill as well as Councillor Anna Curnow to hear the submissions, assess the application and make recommendations to Council on the Private Plan Change.

The Hearings Panel's assessment and recommendation has been submitted and Council now needs to consider these and make a decision on those recommendations.

## Discussion | Ngā kōrerorero

District Plan Chapter 16 'Estuary Estates' was inserted into the Kaipara District Plan by means of Private Plan Change 22 in 2007 and was 'rolled over' into the existing (2013) District Plan. The developer (Mangawhai Central Ltd) applied for an overhaul of the chapter and the maps through Private Plan Change 78.

The proposal seeks to retain the Estuary Estates zone, with the following key changes:

- Amending the Business 1 Sub-Zone to match its extent to the amended Estuary Estates Structure Plan and reduce its size from 7.5 ha to 5.32ha.
- Deleting Sub-Zones 2, 4, 5 and 6 and creating new Residential Sub-Zones 3A, 3B, 3C and 3D.
- Creating a new integrated residential development overlay for the new Residential 3A Sub-Zone.
- Rezoning Lots 1 and 4 DP 314200 from Residential to the new Residential 3B and 3C Sub-Zones, and a new Natural Environment 8 Sub-Zone.
- Amending the Service 7 Sub-Zone to align with the ring road route outlined in the amended Estuary Estates Structure Plan, which increases its size from 7.5ha to 8.03ha.
- Reflecting the new network for roads, walking, cycling, flood areas, natural area corridors, a new town centre and open space area.

Under Clause 25(2)(b) of Schedule 1 of the RMA, Council accepted the Private Plan Change on 3 April 2020 and decided to notify the Private Plan Change.

Statutory notification was published in three local papers and the submission period ran from 30 April 2020 to 28 May 2020<sup>1</sup>. The further submission period ran from 21 July 2020 to 4 August 2020<sup>2</sup>.

In July 2020, the Council appointed the Hearings Panel described above. Council also delegated to the Hearings Panel the authority to make a recommendation on the Private Plan Change, after considering;

- the request (including the section 32 evaluation),
- all the submissions received,
- the section 42A reports prepared by the officers for the hearing,
- legal submissions and,
- the evidence presented during the hearing and the Applicant's closing legal submissions.

Full information including the section 42A report and all evidence was made available on Council's website <https://www.kaipara.govt.nz/mangawhaicentral>

The hearings were conducted between 23-25 November 2020 and 3 February 2021 and the Hearing Panel's report and recommendation have been received (**Attachment A**), recommending

<sup>1</sup> Pursuant to Clause 5, Schedule 1, RMA

<sup>2</sup> Pursuant to Clause 7, Schedule 1, RMA

the approval of the Private Plan Change, subject to modifications to the provisions contained in Appendix 3 of Attachment A.

Council now must make its decision in accordance with clause 10, Schedule 1 of the RMA.

## Options

It would be problematic for Council to not accept the recommendations of the Hearings Panel, as the panel was delegated the responsibility (by Council) to hear all submissions/evidence. The extent of Council's decision making is therefore limited because any departure (from the Hearings Panel recommendation) would require submissions to be re-heard in order to follow due process, including providing reasons for the decision. Additionally, any possibility that the Council may wish to depart from the Hearing Panel's recommendation and/or debate its merits carries with it a degree of risk of legal challenge, either in subsequent Environment Court proceedings or a judicial review of the Council's decision on the plan change.

The options analysis below relates to whether to adopt the hearing panel's recommendations as the Council's decisions.

### Option 1

To adopt the Hearing Panel's recommendation as a Council decision. This is the recommended option.

#### Advantages

- Council has followed proper process, in line with statute and the Hearing Commissioner Policy, to ensure recommendations to Council are independent and made by experienced and professional Commissioners
- Council has delegated the Hearings Panel the authority to hear all matters and make a recommendation to Council. Not agreeing with the recommendations, after not hearing the submissions would not be due or proper process.
- Significant engagement and transparency on the plan change has occurred through robust Council processes.
- Council has invested time and resources into processing the Private Plan Change and organising the hearings. Some staff have been reallocated from their business as usual work to complete all processes. There is a soft cost to this reallocation of resource.
- The applicant, local individuals, and the community have also invested significant time and their own resources into the process.
- Avoids any actual and possible perceived Council predetermination or bias and will help protect Council and ratepayers from potential judicial review on public law matters.

#### Disadvantages

- None apparent.

### Option 2

Reject the Hearings Panel's recommendation and re-hear the application. This is not the recommended option.

#### Advantages

- None apparent.

#### Disadvantages

- It is well established in local government that where a Council delegates a Hearings Panel to hear and provide recommendations for RMA processes, Council's consideration of the recommendations becomes more of a procedural decision. If Council were to revisit the reasoning or conclusions of the Hearings Panel, issues of natural justice and fairness will arise. This would require Council providing reasons for any decision not in line with the recommendations. It would also mean that Council would need to re-hear all of the submissions and evidence.
- If Council was to re-hear the matter, the current Hearing Commissioner Policy applies. There are only four elected members qualified with the Making Good Decision Certification

with only one of those, certified as a Chair. Councillor Curnow would be omitted from this process, leaving three Councillors. Careful consideration of Councillor conflicts and experience would need to be considered to ensure that the hearing process was robust.

- There is also a high likelihood of reputational risk as Council would not be adopting the recommendations provided by very experienced, professional RMA hearings practitioners. Rejecting the recommendations from a Hearings Panel such as this would be extremely unusual.
- This option would result in significant additional costs (for the applicant, Council and submitters), delay the process, and may result in Council not meeting its statutory obligation to make decisions on submissions within two years of notifying the Private Plan Change - April 2022.

### **Policy and planning implications**

The Proposed Plan change is a revisit of the present zoning and provisions of Chapter 16 in the Operative District Plan. It should be noted that Chapter 16 of the Operative District Plan already provides for the majority of the land (subject to the plan change) to be urbanised, with the private plan change seeking that the urban form be configured in a different way, enabling more intensity of residential development.

### **Financial implications**

The development will contribute to the financial strength of Mangawhai through the collection of development contributions, creating additional rateable properties and the development of other physical works to be included, such as a large water storage reservoir. As this was a 'Private Plan Change', the developer was obliged to fund the plan change application (as opposed to be funded by general ratepayers).

### **Risks and mitigations**

If Council does not agree with the recommendations of the Hearings Panel, they would need to rehear all evidence and submissions considered by the Hearing Panel. This would result in additional costs to ratepayers, potentially lead to reputational risks for Council, delay the process, and may result in council not meeting its statutory obligation to make decisions on submissions within two years of notifying the Private Plan Change (by April 2022). This risk is mitigated by accepting the recommendations of the Hearings Panel.

### **Impacts on Māori**

The applicant has submitted a Cultural Values Assessment from Te Uri o Hau as well as Archaeological reports with its application, which have been given regard to. Ngati Manuhiri has, after correspondence, accepted the content of the Te Uri o Hau assessment.

### **Significance and engagement | Hirahira me ngā whakapāpā**

Council notified the community through statutory notification between 30 April 2020 and 28 May 2020 by notices in three local papers, letters to directly affected parties and radio advertisements during Covid-19 lockdown with the further notification period between 21 July 2020 and 4 August 2020, in accordance with clause 5 and 7 of Schedule 1 to the Resource Management Act 1991.

Hearings were conducted 23-25 November 2020 and 3 February 2021 in Mangawhai with all the documentation available on Council's website.

The recommendations and associated decisions are made in accordance with the legislative requirements and after appropriate consultation and engagement with the community.

### **Next steps | E whaiake nei**

Assuming Council adopts the Hearing Panel's recommendations as the Council decisions, the next step will be to publicly notify the decisions. Once notified, submitters will then have 30 working days to lodge appeals (if they consider it necessary) with the Environment Court.

## Attachments | Ngā tapiritanga

	Title
A	Recommendations from the Hearings Panel on Private Plan Change PPC78
B	Strike Through version of the Private Plan Change