

Private Plan Change PPC 78 Estuary Estates (Mangawhai Central) Final Decision

Meeting: Kaipara District Council
Date of meeting: 29 June 2022
Reporting officer: Paul Waanders, District Planner

Purpose | Ngā whāinga

To complete the final procedural steps subsequent to the Environment Court decision on the appeals from Private Plan Change 78 (PPC78).

Executive summary | Whakarāpopototanga

PPC78 was lodged with Council on 3 December 2019 by Mangawhai Central Limited, to amend Chapter 16 in the Operative District Plan to suit their development aspirations.

The prescribed RMA process has been followed, including notification, and receiving 208 submissions and 9 further submissions. A Hearings Panel appointed by the Council conducted a hearing and heard legal submissions and evidence from Mangawhai Central Limited, submitters and the Council's section 42A team and made recommendations to Council. Council considered these recommendations on 28 April 2021 and adopted the recommendations as the Council's Decision on PPC 78.

The Decision was notified and 2 appeals (one from Mangawhai Matters Inc and one from Mr Boonham) were lodged with the Environment Court. The Mangawhai Matters appeal was resolved via mediation.

Mediation with Mr Boonham resulted in a narrowing of his appeal (it originally sought the entire Plan Change be declined) and this was decided by the Environment Court Judge "on the papers" (without a hearing).

Pursuant to Clause 17 of Schedule 1 of the RMA, Council must now procedurally approve the amendments to the Operative District Plan because the Environment Court's decisions mean the appeals against PPC 78 have now been resolved.

Recommendations | Ngā tūtohunga

That the Kaipara District Council:

- a) Agrees to amend the Operative Kaipara District Plan in accordance with the Environment Court's determination and decision at Attachments A and B
- b) Approves Private Plan Change 78 to the Kaipara District Plan (pursuant to Clause 17 of Schedule 1 of the Resource Management Act 1991), circulated as Attachment C;
- c) Delegates the Chief Executive to publicly notify in accordance with Clause 20 of Schedule 1 of the Resource Management Act (1991) that the 'operative date' will be 22 July 2022.

Context | Horopaki

The purpose of this report is to seek Council's approval under Clause 17 of Schedule 1 of the RMA and Clause 20 of Schedule 1 of the RMA needed to make the amendments to Chapter 16 of the Operative Kaipara District Plan. This is required to be done in order to give effect to the determination and decision of the Environment Court [2022] NZEnv 035 and [2022] NZEnv 049 on Private Plan Change 78.

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 sought to retain the Estuary Estates zone, with the following key changes:

1. Retain the Estuary Estate zone at 83 Molesworth Drive, Mangawhai.
2. Amend Business 1 sub-zone and reduce its size.
3. Delete the previous sub-zones 2, 4, 5 and 6.
4. Create a new Residential sub-zones 3A, 3B, 3C and 3D.
5. Amend Service 7 sub-zone to align with the ring road route increases its size.
6. Create a new integrated residential development overlay over the new Residential 3A sub-zone.
7. Rezone Lots 1 and 4 DP 314200 from Residential to the new Residential 3B and 3C sub-zones, Create a new Natural Environment 8 sub-zone.
8. Add an exception to Rule 10.10 in the Operative Plan Network Utilities
9. Delete Appendix E and replace it with a New Structure Plan
10. Replace Map 56A in Series One of the District Plan.

Statutory notification was published in three local papers plus radio advertisements. The submission period ran from 30 April 2020 to 28 May 2020. The further submission period ran from 21 July 2020 to 4 August 2020. 208 submissions and 9 further submissions were received.

Council appointed the Hearings Panel and hearings were held on 23-25 November 2020 and 3 February 2021.

The Hearing Panel's report and recommendation was considered by Council on 28 April 2021 and adopted as the Council's decision on PPC 78, all submitters were subsequently notified of the decision.

Full information and all evidence was made available on Council's website when the appeal period started. <https://www.kaipara.govt.nz/mangawhaicentral>

Two parties appealed the Council Decision: Mangawhai Matters Incorporated and Mr Clive Boonham.

The appeal by Mangawhai Matters related to the parts of the Council Decision that deal with the following matters:

- (a) residential capacity;
- (b) potable water supply;
- (c) traffic;
- (d) stormwater management and harbour quality;
- (e) community amenities; and
- (f) staging and funding of development.

The appeal by Mr Boonham was against the Council Decision in its entirety and had a particular focus on wastewater infrastructure capacity and funding.

The following parties joined the appeal as interested parties under s274 of the RMA:

- (a) The New Zealand Fairy Tern Charitable Trust;
- (b) Peter Rothwell; and
- (c) Northland Regional Council (s274 notice withdrawn in February 2022).

Extensive negotiations and mediation took place resulting in the signing of a Draft Consent Memorandum and Draft Consent Order in relation to the Mangawhai Matters Inc appeal, with Mr Boonham making a further submission to the Court on his appeal seeking wording changes to certain provisions of PPC78, that was decided by His Honour Judge Smith on the papers (i.e. without a hearing).

The Court's determination and decision in relation to the two appeals against PPC 78, both dated 5 April 2022 are attached as **Attachments A and B**.

Some of the changes that were included as part of the dispute resolution and approved by the Environment Court were:

- **Stormwater.** The tested Auckland Guidelines are made applicable to ensure the health of streams and the estuary which is also benefitting the Fairy Tern population.
- **Water reticulation.** The majority of properties will still be reliant on roof water with smaller lots having to be reticulated. For that purpose, a reservoir will be created for storage. Minimum storage requirements are introduced as well as water harvesting.
- **Wastewater** was the most discussed subject with the capacity of the Mangawhai wastewater works and the financial implications of upgrades required to service the plan change area resulting in several amendments to the plan change provisions to ensure that wastewater connections are available or financially committed before development is consented.
- **Road connection** and cycle trails have been provided for including the need to connect with the Old Waipu/Cove Road.
- **Natural Habitat.** Large areas will remain undeveloped and will contribute to the natural habitat as well as recreational usage.
- **Amenity values** were addressed through the design guidelines and recognising the character of the area and requiring high level on-site amenity. A minimum lot size of 500m² and suitable location of water tanks are some of the requirements included.
- **Fairy Tern.** Provisions to manage the effects on the habitat of Tara Iti / Fairy Tern and their food sources (including wetlands, watercourses, and the coastal marine area), including disturbance by people and dogs have been included in the amended provisions, to the satisfaction of the NZ Fairy Tern Trust.
- **A fencing condition** along wetlands has been introduced to protect the Tara Iti / Fairy Tern habitat especially against potential dog predation.
- **Development Contributions and Financial contributions** have been highlighted throughout the agreement. The following general provision has been included as an assessment criteria: "That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long-term plan".

Attachment C has been prepared to implement the direction and decision of the Court and is the 'finalised' package of Plan Change documentation.

Incorporating the Plan Change into the Operative District Plan

Pursuant to Clause 17(1) of Schedule 1 RMA, Council shall now approve the Plan Change as changed through the mediation settlement process and decisions of the Court to be taken up into the Operative Kaipara District Plan 2013. This includes affixing the seal of the local authority to the Plan in terms of the requirement of Clause 17(3) of Schedule 1, RMA.

A Public Notice will be placed in newspapers pursuant to Clause 20 of Schedule 1, RMA covering the Kaipara District announcing that the Operative District Plan is amended in accordance with the Court's decision on Plan Change 78 Mangawhai Central, with the operative date being set no sooner than five working days after the public notices have appeared. The date set for when amendments become operative is 22 July 2022.

Options

Whilst it is best practice to provide at least two options for decision makers, in this instance, there is only one realistic option (to approve the Private Plan Change).

Option 1

Approve the Plan Change in terms of the provisions of the Resource Management Act 1991 and incorporate the Plan Change as a replacement for Chapter 16 and Appendix E Estuary Estates.

Advantages:

- a. This gives effect to the direction and decision of the Environment Court.

- b. The issues were canvassed through negotiations and mediation with all parties and agreement was reached, bar one aspect being the funding for the wastewater scheme (which the Court has now determined).
- c. The Court has included provisions to address the last matter through funding mechanisms to be reported in the Council's Long-Term Plan, which will trigger and unlock Resource Consent applications which will enable development.
- d. The reviewed provisions will result in a more practical implementation of development at Mangawhai Central
- e. This is the logical conclusion of a thorough and robust public participatory process – there is an expectation that Council will now formally approve the plan change.

Disadvantages:

- a. None noted, especially with all the parties, including the local interest having been part of the mediation process to reach an agreement.

The Council's solicitor advises that from a legal perspective, now that the two appeals against PC78 have been determined, the next step in the process is for the Council to pass a resolution "approving" PC78 under Clause 17 of Schedule 1, RMA.

This step is:

- purely procedural in nature, and
- now that the appeals have been resolved, it is mandatory for the Council to pass a resolution approving PC78. There is no ability for the Council to not approve PC78 or make amendments at this stage.
- Once the Council has approved PC78, it is then required to give public notice of this, and PC78 will, at that point, become Operative.

Financial implications

Going forward, it will be important to clearly identify the source of funding for wastewater in the Long Term Plan (as it pertains to Mangawhai) as this is linked to the Environment Court's decision on wastewater management.

Risks and mitigations

The development according to the provisions of the Plan Change is directly related to the availability to provide the necessary service and each Resource Consent application need to demonstrate that services are available

The funding mechanisms needs to be identified to phase the development. The Court's decision requires these to be stated upfront.

Significance and engagement | Hirahira me ngā whakapāpā

The decision to accept the Court's direction and decision or matters of this report are considered to have a low degree of significance in accordance with Council's Significance and Engagement Policy. No feedback is required, and the public will be informed of Council's decision via the agenda and minutes publication of this meeting, on the website and through other channels if appropriate. It is noted that this is the conclusion of a long and robust public participatory process under the RMA, which included multiple opportunities for the public to be involved.

Next steps | E whaiake nei

Council's website will be updated by 22 July 2022 with the amended District Plan Chapter 16 (Attachment 3) and the deletion of Appendix E.

A public notice will be placed in newspapers covering the Kaipara district notifying that the Operative District Plan has been amended and the Plan Change has been declared operative, with the date being set no sooner than five working days after the Public Notice appears. The date set as when the amendments will become operative is 22 July 2022.

Attachments | Ngā tapiritanga

	Title
A	2022 Signed Consent Order NZEnvC 035 Mangawhai Matters Inc vs Kaipara District Council
B	2022 Decision NZEnvC 049 Boonham vs Kaipara District Council
C	Consolidated Plan Change 78 (including maps) - replacing Chapter 16 Operative Kaipara District Plan.