

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2022] NZEnvC 049

IN THE MATTER OF

an appeal under Clause 14 of Schedule 1
of the Resource Management Act 1991

AND

IN THE MATTER OF

Plan Change 78 to the Kaipara District
Plan

BETWEEN

C BOONHAM

(ENV-2021-AKL-000061)

Appellant

AND

KAIPARA DISTRICT COUNCIL

Respondent

AND

MANGAWHAI CENTRAL LIMITED

Applicant

Court: Judge J A Smith (sitting alone pursuant to s 279 by consent of
the parties)

Hearing: On the papers
Last case event: 25 March 2022

Appearances: C Boonham for Himself
W Bangma for the Kaipara District Council
I Gordon and J L Welsh for Mangawhai Central Limited

Date of Decision: 5 April 2022

Date of Issue: 5 April 2022

DECISION OF THE ENVIRONMENT COURT



Boonham v Kaipara District Council

- A: This Court directs that wording is to be inserted within the Plan in accordance with Annexure “**B**” to this decision in relation to certainty of planned wastewater infrastructure (future wastewater infrastructure in relation to the Plan Change).
- B: This does not appear to be an appropriate issue for the assessment of costs. Any party wishing to make an application for costs is to do so within 20 working days. Any reply is to be filed within a further 10 working days, and final reply five working days after that. Such application is not encouraged.

REASONS

Introduction

[1] Mangawhai Central Limited promoted Plan Change 78 (**PC78**) to the Kaipara District Plan. PC78 relates to rezoning of an area of some 93 hectares in central Mangawhai for the purpose of mixed-use development, including residential and business development. It replaces a similar but less intense zoning in the Operative Plan.

[2] There have been issues in relation to the development itself and potential effects on the environment including the nearby harbour and also in relation to wastewater, stormwater and potable water. Consent was granted by Council appointed commissioners with extensive provisions applying.

[3] Two major appeals were filed, one from Mr Boonham¹ and the other from Mangawhai Matters Limited.² The parties have undertaken a significant process of negotiation and mediation. As a result of that all parties but Mr Boonham have reached provisions that were acceptable to them and the Court issued an order in respect of all matters barring the remaining issue for Mr Boonham.³ That determination contains the general provisions which apply. I will not repeat them

¹ ENV-2021-AKL-000061.

² ENV-2021-AKL-000062.

³ [2022] NZEnvC 035.

here, but they are set out in full in that determination.

The Remaining Issue

[4] This decision relates to certain provisions of Plan Change 78, particularly around Chapter 16. The outstanding provisions were marked in Annexure A of [2022] NZEnvC 035 as being subject to a decision as to the final wording:

- (a) 16.3.9.1 Policies 5) requiring connection to council wastewater reticulation.
- (b) 16.7.4 Discretions for Restricted Discretionary Activities (eee) The capacity of the existing or planned reticulated wastewater network(s) to meet the servicing needs of the proposal.
- (c) 16.7.4.1 Assessment Criteria (eee) Whether the proposed development or activity can be accommodated within the existing or planned capacity of the reticulated wastewater network and whether the servicing needs of the proposed development require upgrades to existing infrastructures.
- (d) 16.10.8.1 Matters Over Which Discretion is Restricted (ff) The capacity of the existing or planned reticulated wastewater network(s) to meet the servicing needs of the proposal; and
- (e) 16.10.8.2 Assessment Criteria for Restricted Discretionary Activities (f) Whether the proposed development or activity can be accommodated within the existing or planned capacity of the reticulated wastewater network and whether the servicing of the proposed development require upgrades.

[5] Mr Gordon for Mangawhai Central Limited conveniently set out the wording agreed by other parties and Mr Boonham's proposal in an annexure to his submissions showing the colour coded differences between the parties. I have adapted this annexure to also show Council's proposal and Mr Boonham's further proposal. I attach this as Annexure "A".

[6] Although the submissions were to be as to the wording only, Mr Boonham filed a 35-page document titled 'Evidence' that consists of submissions. The document included extensive background as to why he is concerned about the provision of future wastewater infrastructure at Kaipara.

[7] It is clear that there were significant difficulties over the initial wastewater treatment system at Mangawhai leading to issues before the High Court and a number of significant ramifications including debt for the Council.

[8] Mr Boonham was party to these concerns and he harbours concerns that "history may repeat itself". In the end, however, Mr Boonham has accepted all of the other provisions that have been agreed between the parties and acknowledges that PC78 should proceed. His concern is to ensure that it does not proceed in circumstances where the future wastewater demand cannot be dealt with. I see this as a reasonable expectation.

Concern

[9] Mr Gordon for Mangawhai Central Limited agrees that:

- (a) a full buildout of PC78 will, over time, require extension of the existing wastewater treatment and disposal options;
- (b) the direct cost of the extensions will be for the developer(s); and
- (c) the likely funding methodology will be a development agreement as provided from the Local Government Act 2002 (LGA).

[10] Mr Gordon makes the point that Chapter 16 of the Operative Plan already makes provision for a significant mixed used development on the PC78 site, including large business areas and up to 500 residential units. It is correct that the plan provides for further intensification, but PC78 is one of degree rather than type.

[11] Mr Gordon supports the existing provisions agreed with the other parties and says that these are a reasonable compromise to ensure that infrastructure capacity is

undertaken at the same rate of growth in terms of this project and the general growth of Mangawhai. The District Council agrees there is no need to further change Policy 16.3.9.1 5) or 16.7.4 (eee) or 16.10.8.1 (ff). However, they do agree that there should be some amendment to 16.7.4.1 (eee) and 16.10.8.2 (f).

[12] The issue is whether the wording agreed between the parties on the other appeal is sufficient and if not, what wording should be adopted.

The wording solution

[13] Annexure “A” sets out the provisions agreed between the parties to the Mangawhai Matters appeal in PC78 against those sought by Mr Boonham. I have also added the amendments that the Council would see as appropriate to 16.7.4.1 (eee) and 16.10.8.2 (f).

[14] In his 25 March 2022 response, Mr Boonham suggested an alternative amendment could be one based on the definition of “infrastructure-ready” in 3.4(3) of the National Policy Statement on Urban Development 2020 (**NPS-UD**) namely:

That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long-term plan.

I have added this alternative wording to Annexure “A” as a final alternative to show the range of options that has been presented to the Court.

The degree of certainty

[15] Firstly, I acknowledge the provisions of the operative Kaipara District Plan shown in Annexure “A” are helpful in understanding the intentions in relation to wastewater. Whilst helpful I consider that both the general provisions and the assessment criteria do not give sufficient emphasis to the necessity of having adequate wastewater systems in place.

[16] It must be the purpose and outcome of such provision to avoid adverse effects on the environment (and in particular on public health and on the aquatic

environment). The wastewater system must at all times be able to cope with the wastewater produced by those connected to it. It appears that all resource consents must have regard to the various assessment criteria.

[17] It is arguable that on the current wording the Council could reach the conclusion that the subdivision or development may be permitted even though sufficient wastewater capacity is not in place. Although it is not within the scope of this hearing, it seems relatively clear that action by a Council to grant a consent where environmental effects could occur may lead to proceedings in the Environment Court or High Court.

[18] Accordingly, the question for this Court is what level of importance should be given to ensuring that the infrastructure is in place at a time when a subdivision or development is in contemplation.

[19] The Commissioners considered this matter and at [163] of their decision, the panel concluded that:

Having considered the arguments made, we are satisfied that those particular aspects of the wastewater treatment plant are sufficiently “infrastructure ready” for the purpose of a plan change, recognising that somewhere along the way upgrades will be required and that further development will not be possible until such is given effect and that further development is to be largely funded by development contributions. ...

[20] The detailed application for subdivision, for example, can only follow once and if wastewater infrastructure (in this instance) is secured.

[21] At [164] they say:

... Also, the funding and construction of infrastructure will need to be synchronised with population growth, in order to continue to meet the needs of the community. Any changes to the Kaipara District Plan to accommodate additional growth in Mangawhai need to be accompanied by infrastructure planning, funding and construction. It is expected that the cost of growth will be met by land developers and recovered through development contributions.

[22] At [168]:

We accept that not all the ‘ducks are yet lined up’, but they are sufficiently

aligned for a plan change purpose.

[23] In short, notwithstanding the discursive submissions of all three parties, it appears to be clear that PC78 and other development in Mangawhai will require significant upgrade to the wastewater treatment system in due course (amongst other infrastructure). Given the sensitivity of the receiving environment, it is clear that this needs to be undertaken prior to utilisation of new development to ensure that the capacity of the existing infrastructure is not overstretched.

Consideration of the wording

[24] The parties have gone to some effort to try and get some realistic provisions in relation to future development. However I acknowledge the basic thesis of Mr Boonham's submission: that there needs to be sufficient certainty in relation to wastewater being available for a development when that subdivision consent and development consent are granted.

[25] This is not the same as having all of the infrastructure, although one would expect existing infrastructure to remain ahead of demand. That requires ongoing commitment and funding to the development of the wastewater treatment plant in the coming years.

[26] I acknowledge that the current long-term plan does not appear to provide directly for Mangawhai wastewater upgrades. On the other hand given the timescale to development, one would have to allow some reasonable gap between forecast development, say four to five years ahead, and existing infrastructure.

[27] I acknowledge Kaipara District Council's attempt to address this matter in somewhat more substance in their submissions. However, in the end, I have concluded that the agreed provisions or Council's proposed changes fail to place sufficient emphasis upon the existence or planned provision of the infrastructure.

[28] In 3.4(3) the NPS-UD provides development capacity is infrastructure-ready if:

- (a) in relation to the short term [three years], there is adequate existing development infrastructure to support the development of the land

- (b) in relation to the medium term [three to ten years], either paragraph (a) applies, or funding for adequate infrastructure to support development of the land is identified in the long-term plan
- (c) in relation to the long term [10 to 30 years], either paragraph (b) applies, or the development infrastructure to support the development capacity is identified in the local authority's infrastructure strategy (as required as part of its long-term plan).

[29] Mr Boonham therefore suggests that combining (a) and (b) (within the period of 10 years), an ideal provision would be:

That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long-term plan.

Evaluation under s32 and s32AA

[30] In selecting the most appropriate wording for these clauses the tests under s32 of the RMA are proportionate to the wording choices before me. Section 32AA(1)(c) states:

[the evaluation] (c) must, despite paragraph [32AA(1)](b) and s32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and ...

[31] For the purposes of the wording in question this means wording which creates as much certainty as possible for the enablement of the change envisaged while ensuring the infrastructure is in place to protect users and the environment.

[32] I have concluded that Mr Boonham's suggested wording:

That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long-term plan.

should be adopted for all of the paragraphs in issue because:

- (a) they follow closely on the NPS-UD which anticipates the type of development proposed in PC78;
- (b) it captures more clearly and more definitely the concept of funding for adequate wastewater;

- (c) the long-term plan is prepared under the Local Government Act and its meaning relates clearly and directly to the NPS-UD; and
- (d) the connection to a long-term plan although capable of amendment does provide a legitimate expectation on the part of developers and others as to what will occur.

[33] Under the NPS-UD, in circumstances where no long-term plan is made for the infrastructure, it would seem inappropriate for councils to provide for subdivision or development. On the other hand, were they do so in reliance upon the long-term plan funding for adequate wastewater infrastructure, they have created a legitimate expectation by developers that the same will be provided within the timescale.

[34] When I look at this provision in light of those that were agreed between all other parties, I do not consider that the change is unreasonable. The issue which is addressed is simply putting in more wording requiring the wastewater infrastructure to be part of the local government long-term plan.

[35] I also note that NPS-UD requires such a long-term plan and that it provides for infrastructure including wastewater. Accordingly, this wording represents a clear connection between that requirement and Plan Change 78.

Some or all provisions

[36] Finally, I acknowledge that Council sought that changed wording only occur in respect of some of the provision rather than all. However, I conclude that the wording now suggested is sufficiently concise and clear that it will not create difficulties with interpretation, particularly with any other provisions which may be slightly differently worded.

[37] To provide for consistency, I have concluded that Mr Boonham's appeal on this issue should be allowed to the extent that the provisions identified in Annexure "A" be amended to read as set out in Annexure "B".

[38] In respect of Annexure "B" the only change is in relation to the five provisions

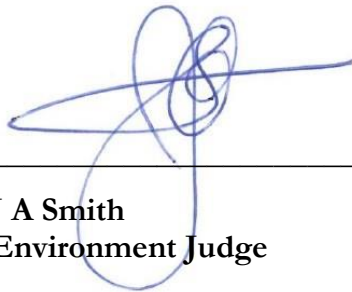
(16.3.9.1 5), 16.7.4 (eee), 16.7.4.1 (eee), 16.10.8.1(ff), 16.10.8.2(f)), which now read:

That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long term plan.

Outcome

[39] The Court directs that wording is to be inserted within the Plan in accordance with Annexure “**B**” to this decision in relation to certainty of planned wastewater infrastructure (future wastewater infrastructure in relation to the Plan Change).

[40] This does not appear to be an appropriate issue for the assessment of costs. Any party wishing to make an application for costs is to do so within 20 working days. Any reply is to be filed within a further 10 working days, and final reply five working days after that. Such application is not encouraged.



J A Smith
Environment Judge



ANNEXURE A

KEY PC78 PROVISIONS RELATING TO WASTEWATER

Explanatory note

Set out below are key PC78 wastewater provisions, as proposed in the joint consent memorandum of the parties to the appeal by Mangawhai Matters Incorporated (ENV-2021-AKL-000062) dated 11 March 2022, and as sought by Mangawhai Central Ltd ("MCL") with respect to the appeal by Mr Boonham (ENV-2021-AKL-000061).

Provisions highlighted in orange are those provisions that Mr Boonham seeks are amended (refer to the document filed by Mr Boonham on 11 March 2022).

The wording sought by Mr Boonham in his document dated 11 March 2022 is set out in blue. The alternate wording proposed by Mr Boonham in his reply submissions dated 25 March 2022 are set out in purple.

The Kaipara District Council's proposed changes to wording are set out in green.

Provisions marked in grey highlight are operative Kaipara District Plan provisions that are cross-referenced in PC78 but which PC78 does not propose to amend.

1. PC78 WASTEWATER OBJECTIVES AND POLICIES (INCLUDING FINANCIAL CONTRIBUTIONS)

16.3.9 Utilities, Services and Infrastructure Objective

To ensure the provision of sustainable infrastructure networks that provides for properly serviced, and orderly development.

16.3.9.1. Policies

...

4) *By requiring that all wastewater systems be connected to Council's public reticulated (EcoCare) system*

5) *By ensuring the infrastructure capacity necessary to serve subdivision and development is available, or that development provides for the necessary extensions or upgrades required to ensure sufficient capacity.*

[Mr Boonham wording:]

5) *By ensuring that there is adequate existing infrastructure to service subdivision and development, or there is adequate planned and funded infrastructure to service subdivision and*

development that is included in a long term plan or an amendment to a long term plan.

[Mr Boonham alternate wording:]

- 5) *By ensuring that there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long term plan.*

16.3.10 Financial Contributions Objective

1. *To ensure that the timing of subdivision and development of the Estuary Estates Structure Plan area is coordinated with the provision of infrastructure needed to serve the area and that development contributes its share of the growth related costs of this infrastructure*

16.3.10.1 Financial Contributions Policies

1. *By requiring development to make contributions at the time of subdivision and/or development (including at the building stage) to provide for infrastructure and reserves within Mangawhai as enabled by Rules 22.10, including 22.10.7 of the District Plan.*
2. *Ensure the proportion of costs associated with the provision of growth-related infrastructure arising from the development, such as provision of new, or upgrades or extensions to community facilities within Mangawhai as provided for under Rules 22.10.1, 22.10.6 and 22.10.7 are met by the development by imposing conditions on resource consents.*

16.3.11.1 Policies

...

- 2) *By ensuring that all subdivisions are able to be properly serviced and can avoid, remedy, or mitigate the effects of natural hazards.*

2. OTHER PC78 WASTEWATER PROVISIONS

16.7.4 Discretions for Restricted Discretionary Activities

Where an activity is a Restricted Discretionary Activity Council will restrict its discretion over the following matters (and as listed as being relevant to each activity in Table 16.7.4) when considering and determining an application for Resource Consent:

...

- e) *Infrastructure...;*

...

- eee) *The capacity of the existing or planned reticulated wastewater network(s) to meet the servicing needs of the proposal.*

[Mr Boonham wording:]

eee) Whether there is adequate existing wastewater infrastructure to service the proposed development, or there is adequate planned and funded infrastructure to service the proposed development that is included in a long term plan or an amendment to a long term plan.

[Mr Boonham alternate wording:]

eee) That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long term plan

16.7.4.1 Assessment Criteria

...

e) Infrastructure

- i. Whether the proposal avoids creating any demand for services and infrastructure at a cost to the wider community.*
- ii) The extent to which the proposal provides for sustainable infrastructure and servicing and in particular the supply of water.*

...

eee) Wastewater Network Capacity

Whether the proposed development or activity can be accommodated within the existing or planned capacity of the reticulated wastewater network and whether the servicing needs of the proposed development require upgrades to existing infrastructure.

[Mr Boonham wording:]

Whether there is adequate existing wastewater infrastructure to service the proposed development or activity, or there is adequate planned and funded infrastructure to service the proposed development or activity that is included in a long term plan or an amendment to a long term plan.

[Council wording:]

Whether the proposed development or activity can be accommodated within the existing or planned capacity of the reticulated wastewater network and whether the servicing needs of the proposed development require upgrades to existing infrastructure. With respect to the consideration of what constitutes planned capacity, this includes the consideration of the extent to which:

- The steps undertaken to progress planned upgrades of the reticulated wastewater network (including any necessary consenting and or designation(s)) are in place, and the likely timing of the planned upgrades in relation to the proposed development or activity; and*
- Funding is committed for the planned upgrades of the reticulated wastewater network in a Long Term Plan or Annual Plan in accordance with the Local Government Act 2002, or through other alternative funding mechanisms such as development agreements, or the Council imposing a condition of consent requiring a financial contribution.*

[Mr Boonham alternate wording:]

That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long term plan

16.8.3 Water Supply and Wastewater Supply

a) *The following Rules shall apply as follows:*

Sub-Zone	...	Wastewater Performance Standard
1		14.13.6
[DELETED]		
3		13.14.6
[DELETED]		
[DELETED]		
7		14.13.6

Chapter 13 – Residential

...

13.14 Performance Standards for All Residential Subdivision

Where activities do not comply with the Performance Standards in Section 13.14 the specific assessment criteria for the Standard infringed, contained within Section 13. 14 will need to be considered, in addition to the relevant Assessment Criteria under Rule 13.10, 13.11 or 13.12.

...

13.14.6 Wastewater Disposal

1. Where a Council reticulated wastewater system is available:

- (a) *The written approval of Council's Asset Manager is obtained and provided with the application to confirm that the Council wastewater system can be extended to serve the subdivision; and*
- (b) *All allotments are provided, within their net site area, with a connection to the Council reticulated wastewater system; and*
- (c) *The reticulated wastewater system is designed and constructed in accordance with the specific requirements of the Council wastewater system; and*
- (d) *All water pipelines vested with Council shall be protected by an Easement in favour of Council.*

...

Activity Status if the Activity does not meet the Performance Standard: *Discretionary activity*

Assessment Criteria:

Council will have regard to the following matters when considering an application for Resource Consent under this Rule:

- i. Whether the capacity, availability and accessibility of the reticulated system is adequate to serve the proposed subdivision;*
- ii. Whether there is sufficient land available for wastewater disposal on site, minimum 2,000m² for unserviced sites;*
- iii. Whether and the extent to which the application includes the installation of all new reticulation, and complies with the provisions of the Kaipara District Council Engineering Standards 2011 or has been confirmed as appropriate by Council's Engineer;*
- iv. Whether the existing wastewater treatment and disposal system, to which the outfall will be connected, has sufficient capacity to service the subdivision;*
- v. Whether a reticulated system with a gravity outfall is provided, and where it is impracticable to do so, whether it is feasible to provide alternative individual pump connections (with private rising mains), or new pumping stations, complete pressure, or vacuum systems. Note: Council consent to install private rising mains within legal roads will be required under the Local Government Act;*
- vi. Where a reticulated system is not available, or a connection is impracticable, whether a suitable wastewater treatment or other disposal systems is provided in accordance with regional Rules or a discharge system in accordance with regional Rule or a discharge permit issued by the Northland Regional Council;*
- vii. Where a reticulated system is not immediately available but is likely to be in the near future whether a temporary system is appropriate. Note: Consent notices may be registered against Certificates of Title pursuant requiring individual allotments to connect with the system when it does become available;*
- viii. Whether provision has been made by the applicant for monitoring mechanisms to ensure contaminants are not discharged to the environment from a suitable wastewater or other disposal system, together with any consent notices to ensure compliance;*
- ix. The need for and extent of any financial contributions in accordance with Chapter 22: Financial Contributions to achieve the above matters;*
- x. Whether there is a need for a local purpose reserve to be set aside and vested in Council as a site for any public wastewater utility for disposal or treatment purposes required to be provided;*
- xi. The provision of practical vehicular access from a public road to and along any area vested with Council for waste water*

purposes; and

- xii. Whether the subdivision represents the best practicable option in respect of the provision that is made for the disposal of wastewater.

Note 1: General assessment of the Kaipara District Council Engineering Standards 2011 is undertaken as part of the assessment of the Subdivision Resource Consent application and conditions relating to compliance with any of these Standards may be applied to the Consent as part of the engineering approval.

Chapter 14 – Business: Commercial and Industrial

...

14.13 Performance Standards for All Business Subdivisions

Where activities... do not comply with the Performance Standards in Section 14.13 the specific assessment criteria for the standard infringed contained within Section 14.13 need to be considered. This will result in the activity being assessed as a Discretionary Activity.

...

14.13.6 Wastewater Disposal

...

1. Where a Council reticulated sewerage system is available:

- (a) The written approval of Council's Asset Manager is obtained and provided with the application to confirm that the Council wastewater system can be extended to serve the subdivision;
- (b) All allotments are provided, within their net site area, with a connection to the Council reticulated wastewater system;
- (c) The reticulated wastewater system is designed and constructed in accordance with the specific requirements of the Council wastewater system; and
- (d) All water pipelines vested with Council shall be protected by an Easement in favour of Council.

Activity Status if the Activity does not meet the Performance Standard: Discretionary activity

Assessment Criteria:

Council will have regard to the following matters when considering an application for Resource Consent under this Rule:

- i) Whether the capacity, availability and accessibility of the reticulated system is adequate to serve the proposed subdivision;
- ii) Whether there is sufficient land available for wastewater disposal on site, minimum 2,000m² for unserviced sites;
- iii) Whether and the extent to which the application includes the installation of all new reticulation, and that it complies with the provisions of the Kaipara District Council Engineering

Standards 2011 or has been confirmed as appropriate by Council's engineer;

- iv) Whether the existing wastewater treatment and disposal system, to which the outfall will be connected, has sufficient capacity to service the subdivision;
- v) Whether a reticulated system with a gravity outfall is provided, and where it is impracticable to do so, whether it is feasible to provide alternative individual pump connections (with private rising mains), or new pumping stations, complete pressure, or vacuum systems. Note: Council consent to install private rising mains within legal roads will be required under the Local Government Act;
- vi) Where a reticulated system is not available, or a connection is impracticable, whether a suitable wastewater treatment or other disposal systems is provided in accordance with regional Rules or a discharge system in accordance with regional Rules or a discharge permit issued by the Northland Regional Council;
- vii) Where a reticulated system is not immediately available but is likely to be in the near future whether a temporary system is appropriate. Note: Consent notices may be registered against Certificates of Title pursuant requiring individual allotments to connect with the system when it does become available;
- viii) Whether provision has been made by the applicant for monitoring mechanisms to ensure contaminants are not discharged to the environment from a suitable wastewater or other disposal system, together with any Consent Notices to ensure compliance;
- ix) The need for and extent of any financial contributions in accordance with Part D: Chapter 22 Financial Contributions to achieve the above matters;
- x) Whether there is a need for a local purpose reserve to be set aside and vested in Council as a site for any public wastewater utility for disposal or treatment purposes required to be provided;
- xi) The provision of practical vehicular access from a public road to and along any area vested with Council for wastewater purposes; and
- xii) Whether the subdivision represents the best practicable option in respect of the provision that is made for the disposal of wastewater.

Note 1: General assessment of the Kaipara District Council Engineering Standards 2011 is undertaken as part of the assessment of the subdivision Resource Consent application and conditions relating to compliance with any of these Standards may be applied to the Consent as part of the Engineering Approval.

16.10 Subdivision Provisions

...

16.10.8.1 Matters Over Which Discretion is Restricted

Council has restricted its discretion over the following matters when considering and determining an application for Resource Consent:

...

f) *Public utilities;*

ff) *The capacity of the existing or planned reticulated wastewater network(s) to meet the servicing needs of the proposal.*

...

[Mr Boonham wording:]

ff) *Whether there is adequate existing wastewater infrastructure to service the proposed proposal (subdivision?) [sic], or there is adequate planned and funded infrastructure to service the proposed subdivision that is included in a long term plan or an amendment to a long term plan.*

[Mr Boonham alternate wording:]

ff) *That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long term plan*

16.10.8.2 Assessment Criteria for Restricted Discretionary Activities

Council will have regard to the following assessment criteria when considering and determining an application for Resource Consent:

...

e) *Where staged subdivision is proposed, whether all necessary infrastructure, roading, utilities, public spaces and connections to service the proposed development will be established.*

...

f) *Whether the proposed development or activity can be accommodated within the existing or planned capacity of the reticulated wastewater network and whether the servicing needs of the proposed development require upgrades.*

...

[Mr Boonham wording:]

f) *Whether there is adequate existing wastewater infrastructure to service the proposed development or activity (subdivision?) [sic], or there is adequate planned and funded infrastructure to service the proposed development or activity (subdivision?) that is included in a long term plan or an amendment to a long term plan.*

[Council wording:]

Whether the proposed development or activity can be accommodated within the existing or planned capacity of the reticulated wastewater network and whether the servicing needs of the proposed development require upgrades to existing infrastructure. With respect to the consideration of what constitutes planned capacity, this includes the consideration of the extent to which:

- The steps undertaken to progress planned upgrades of the reticulated wastewater network (including any necessary consenting and or designation(s)) are in place, and the likely timing of the planned upgrades in relation to the proposed development or activity; and*
- Funding is committed for the planned upgrades of the reticulated wastewater network in a Long Term Plan or Annual Plan in accordance with the Local Government Act 2002, or through other alternative funding mechanisms such as development agreements, or the Council imposing a condition of consent requiring a financial contribution.*

[Mr Boonham alternate wording:]

That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long term plan

16.10.10.4 Subdivision Design

...

16.10.10.4.3 Services

The following Rules shall apply as follows:

Sub-Zone	Wastewater Disposal
1				14.13.6
[DELETED]				
3				13.14.6

See above 14.13.6 and 13.14.6 in grey highlight

ANNEXURE B

16.3.9.1. Policies

...

- 5) *By ensuring that there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long term plan*

16.7.4 Discretions for Restricted Discretionary Activities

Where an activity is a Restricted Discretionary Activity Council will restrict its discretion over the following matters (and as listed as being relevant to each activity in Table 16.7.4) when considering and determining an application for Resource Consent:

...

- e) *Infrastructure...;*

...

- eee) *That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long term plan.*

16.7.4.1 Assessment Criteria

...

- e) *Infrastructure*

- i. *Whether the proposal avoids creating any demand for services and infrastructure at a cost to the wider community.*
- ii) *The extent to which the proposal provides for sustainable infrastructure and servicing and in particular the supply of water.*

...

- eee) *That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long term plan*

16.10 Subdivision Provisions

...

16.10.8.1 Matters Over Which Discretion is Restricted

Council has restricted its discretion over the following matters when considering and determining an application for Resource Consent:

...

- f) *Public utilities;*

- ff) *That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long term plan;*

16.10.8.2 Assessment Criteria for Restricted Discretionary Activities

Council will have regard to the following assessment criteria when considering and determining an application for Resource Consent:

...

- e) *Where staged subdivision is proposed, whether all necessary infrastructure, roading, utilities, public spaces and connections to service the proposed development will be established.*

...

- f) *That there is adequate existing wastewater infrastructure, or funding for adequate wastewater infrastructure to support the development is identified in a long term plan*