

BEFORE THE ENVIRONMENT COURT

AT AUCKLAND

ENV-2011-AKL-000

IN THE MATTER

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

BETWEEN

CRAIG JEPSON, KEN DUGDALE, WILLIE  
HEWITT, CRAIG MATHESON, OWEN  
MC SHANE (CENTRE FOR RESOURCE  
MANAGEMENT STUDIES), TOM PETERS,  
ADAM BOOTH, SHANE CULLEN AND SUSAN  
ROWBOTHAM

Appellants

AND

KAIPARA DISTRICT COUNCIL

Respondent

NOTICE OF APPEAL



To: The Registrar  
Environment Court  
PO Box 7147  
Wellesley Street  
AUCKLAND

Craig Jepson, Ken Dugdale, Willie Hewitt, Craig Matheson, Owen McShane (Centre for Resource Management Studies), Tom Peters, Adam Booth, Shane Cullen and Susan Rowbotham (Appellants) appeal a decision of Kaipara District Council (Respondent) on the Proposed Kaipara District Plan 2009 (PDP).

1. The Appellants made submissions on the PDP (copy attached).
2. The decision that is being appealed was received by the Appellants on or about 05 October 2011.

3. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("the Act").
4. The decisions the Appellants are appealing are the decisions to reject, or accept in part only, the relief sought in the submissions made by the Appellants on the Plan as identified in Annexure 1.

**The general grounds for this appeal are as follows:**

1. Due process was not followed with respect to the PDP process;
2. The District Plan in its current form is not user-friendly and is generally too complex to understand and comprehend in its entirety;
3. The PDP in its current form adversely imposes financial and administration costs to all future landowners in terms of interpreting and administering the Plan provisions, and will ultimately stymie growth in the district;
4. The Appellants accordingly reiterate and rely on the specific reasons/comments set out in the submission they made on the Plan as identified in Attachment 1 in support of this appeal.
5. By reference to the statutory requirements, the Appellants contend that the decisions do not ensure that:
  - The Plan is designed to accord with and assist the Respondent to carry out its functions of integrated management and control of the actual and potential effects activities so as to achieve the purpose of the Act;
  - The Plan gives effect to the New Zealand Coastal Policy Statement or the Northland Regional Policy Statement;
  - The Plan is consistent with the Northland Regional Plan;
  - The proposed objectives in the Plan are the most appropriate way to achieve the purpose of the Act;
  - The proposed policies in the Plan implement the objectives, and the that the rules implement the policies;
  - Having regard to their respective efficiency and effectiveness, the proposed policies and methods are the most appropriate methods for achieving the objectives of the Plan taking into account the benefits and costs of the proposed policies and methods;
  - The proposed rules will avoid, remedy or mitigate the actual or potential effects of activities on the environment.

On this basis, the relief sought by the Appellants' is that those submission points that were either rejected or accepted in part be accepted and amendments made accordingly to the Plan as notified.

In particular, but without limiting the generality of the above:

(1) **Summary of the decision, specific provision or matter**

Process under which the PDP was formulated and notified

**Summary of Reasons for the Appeal**

The Appellants' have significant concerns in relation to the process under which the PDP was formulated and notified. This particular Appeal point should be read in conjunction with Annexure D.

**Relief Sought**

- As outlined in Annexure D

(2) **Summary of the decision, specific provision or matter**

Usability of the District Plan in its current form

**Summary of Reasons for the Appeal**

The PDP has adopted an effects-based approach for future planning and development of the district, which is a different approach than that of the Operative District Plan, which is more activity-based. The subdivision provisions of the PDP have been completely re-written, with the thresholds for Controlled Activity subdivisions increased. There are now no longer any 'permitted activities' within the District, but rather a series of 'thresholds' for landowners to comply with.

While in some instances the effects-based regime will assist in facilitating business growth within the District, the ambiguity in the rules as written, coupled with the level of discretion introduced to the assessment criteria, the appellants believe that the task of obtaining resource consent will be onerous, costly and certainly subject to a high uncertainty of outcome.

The general usability of the PDP is difficult, specific examples include:

- Subdivision rule tables are not cascading. Unlike the landuse rules which include a specific column (**Activity Status if the Activity does not meet the Performance Standard**) indicating the default activity status, the subdivision rules do not continue with this approach;
- The majority of assessment criteria / matters of discretion adversely impose financial and administration costs to all future landowners in terms of interpreting and administering them. In some instances, matters of discretion extend to some 40+ matters any one of which can ultimately default the application to a discretionary status;
- In some instances, assessment criteria / matters of discretion require the assessment of Objectives and Policies of the PDP which is considered to be

a function outside the restricted discretionary status. The Act requires this as a second hurdle in applications for non-complying activities only.

- In some instances, assessment criteria / matters of discretion require the consultation with parties, interest groups, landowners or occupiers not necessarily identified as affected under the provisions of Section 95 of the Act;
- The subdivision flow diagrams are not user-friendly and contain errors which confuse the specific rules contained within.

**Relief Sought**

- Amendments made accordingly to the abovementioned examples as detailed above or alternatively as per those submission points that were either rejected or accepted in part be accepted;
- Make any consequential amendment as to detail or substance throughout the PDP to give effect to this appeal point.

**(3) Summary of the decision, specific provision or matter**

General submission on Overlays (Chapter 4)

**Summary of Reasons for the Appeal**

The Appellants do not support the reasons provided in the decisions report for the application of the overlays as included in the PDP. It is considered that the overlays as proposed are not necessary to maintain amenity values as purported in the decisions report, nor are necessary to achieve Section 7 of the Act.

The rules included within the specific chapters of the PDP, as they apply to properties within the identified overlays, adversely impose financial and administration costs to all future landowners in terms of interpreting and administering the PDP provisions and severely restricts the development potential of these properties.

The effect of the overlays is to dramatically reduce the value of existing properties and this loss of asset value has not been taken into account in the sections 32 analysis. Landowners were not consulted on this matter so how did the Council assess the costs to the landowners?

**Relief Sought**

- That all overlay provisions and mapping be deleted from the PDP.
- Make any consequential amendment as to detail or substance throughout the PDP to give effect to this appeal point.

**(4) Summary of the decision, specific provision or matter**

General Rural Subdivision Rules (Chapter 12)

Rule 12.10.3: Dwellings

### **Summary of Reasons for the Appeal**

The fundamental difference between the Operative District Plan and the PDP is that the rural subdivision provisions have gone from being relatively flexible and focussed on the needs of the Kaipara community to being almost prohibitive.

In formulating its rules, the Council has failed to recognise that the Kaipara District does not share the same growth pressures as its neighbouring counterparts and as such, it is not appropriate to mirror their subdivision and development planning provisions as a means of managing the Kaipara District.

The appellants submit that the general rural subdivision provisions promoted by the PDP will have a significant and detrimental effect on the District's growth if they are retained.

The overlay notations across much of the district will limit development that can occur within these areas. A number of 'flexible subdivision approaches' cannot be carried out within an overlay area. There are no Discretionary Activity subdivision provisions contained within Chapter 12 (Rural) of the PDP. It is contended that this is a fundamental flaw of the PDP, given the general acknowledgement of the need for growth within the District. On the basis that no additional land has been rezoned as a consequence of this process, any future form of small rural or rural-residential development (specifically in an Overlay) will be assessed as a Non-Complying Activity.

### **Relief Sought**

- Reduce minimum allotment size of Rule 12.12.1 **General Rural Subdivision** to status quo (4-hectares);
- Retain status quo for dwelling intensity within the Rural Zone (amend Rule 12.10.3 to provide for 2 dwellings per 4-hectares as a permitted activity)
- Incorporate Discretionary Activity provision into Rule 12.12.1 **General Rural Subdivision** which provides for an nominal average allotment size between Controlled and Non-Complying Status;
- Remove Overlays from the PDP in their entirety;
- Make any consequential amendment as to detail or substance throughout the PDP to give effect to this appeal point.

### **(5) Summary of the decision, specific provision or matter**

Residential Subdivision Rules (Chapter 13)

#### **Summary of Reasons for the Appeal**

The residential subdivision provisions, specifically in Overlay areas, provides for a minimum allotment size of 1,000m<sup>2</sup> as a Controlled Activity. There is no flexibility within this rule to provide for smaller allotments or a minimum allotment size through an averaging provision. Non-compliance with the Controlled Activity provisions will render the application Non-Complying. On the basis that a number of allotments

within areas such as Mangawhai are already much smaller than 1,000m<sup>2</sup> and are suitable for their intended purpose, it is suggested that a minimum allotment provision of 600m<sup>2</sup> (as provided for in non-overlay areas) be adopted. To address amenity issues specifically in Mangawhai, the specific provisions currently applicable to the Mangawhai Beachfront Area under the ODP could be retained which limit subdivision to 1,000m<sup>2</sup>. The provision of smaller allotments, specifically in Mangawhai, will increase the potential number of future Ecocare connections, which are desperately required to assist with the re-payment of the scheme's loan.

#### **Relief Sought**

- Remove Overlays from Chapter 13 of the PDP in their entirety, such that the minimum allotment size is 600m<sup>2</sup> across the entire District;
- Incorporate Discretionary Activity provision into Rule 13.11.1 **General Rural Subdivision** which provides for an nominal average allotment size between Controlled and Non-Complying Status;
- Make any consequential amendment as to detail or substance throughout the PDP to give effect to this appeal point.

#### **(6) Summary of the decision, specific provision or matter**

Consequential amendments to Rule 12.10.1 Excavation and Fill and Rule 13.10.1 Excavation and Fill

#### **Summary of Reasons for the Appeal**

The PDP decisions definition of Excavation and Fill has been substantially altered since notification. **Excavation and Fill** is now defined by the PDP as:

*Modification of land surfaces by blading, contouring, ripping, moving, and removing soil, spoil or earth.*

The Decisions Version of the PDP also extends these limits on Excavation and Fill to include land under the Areas of Significance to Maori overlay.

The revised definition seriously compromises the ability of landowners to adequately undertake farming activities and/or otherwise general duties on their property, specifically those within an overlay area.

#### **Relief Sought**

- Revise definition of Excavation and Fill;
- Remove Overlays from the PDP in their entirety;
- Increase volume thresholds to be consistent with Northland Regional Council provisions;
- Remove reference to area thresholds from Rules;
- Make any consequential amendment as to detail or substance throughout the PDP to give effect to this appeal point.

(7) **Summary of the decision, specific provision or matter**

Kaipara District Council Engineering Standards 2009 / 2011

**Summary of Reasons for the Appeal**

We submit that the Kaipara District Council Engineering Standards 2009 (and subsequently, 2011) were not notified correctly. There are a number of elements within the 2009 / 2011 standards that either impact on private property rights or propose overly onerous engineering requirements (standards or rules?). The standards have been incorporated into the PDP both by reference but then are also included as rule provisions.

**Relief Sought**

- That all references to Kaipara District Council Engineering Standards 2011 are deleted from the PDP.
- A variation to the PDP is undertaken to correctly integrate the standards into the Plan.
- Make any consequential amendment as to detail or substance throughout the PDP to give effect to this appeal point.

(8) **Summary of the decision, specific provision or matter**

Consequential Amendments – Map Series 2 (Sites, Features and Units)

**Summary of Reasons for the Appeal**

The decisions report notes that a consequential amendments (amongst others) to **Map Series 2 (Sites, Features and Units)**, which illustrate that the Kaipara Harbour Coastal Area and Mangawhai Harbour Coastal Area are identified as Areas of significance to Maori.

The implication of the amendment means that any “earthworks” (the term Earthworks is not defined in the PDP) within an Area deemed to be of significance to Maori will require resource consent. The consequential amendment imposes resource consent obligations on landowners which were not identified at the time the Plan was notified.

**Relief Sought**

- That all consequential amendments made to Map Series 2 (Sites, Features and Units) are deleted from the Kaipara District Plan.
- A variation to the PDP is undertaken to correctly integrate the changes into the Plan.
- Make any consequential amendment as to detail or substance throughout the PDP to give effect to this appeal point.

(9) **Summary of the decision, specific provision or matter**

Consequential Amendments to Rule 12.10.3 (Dwellings) Rule 13.10.3 (Dwellings)

**Summary of Reasons for the Appeal**

Consequential amendments were made to Rule 12.10.3, which now reads:

*Construction of a dwelling is a Permitted Activity if:*

- a) *After completion, it will be the only dwelling on the site; or*
- b) *It will be an additional dwelling on the site, and there is a minimum of 12ha of net site area associated with each dwelling in the Rural Zone, and 20ha in any Overlay Area;*
- c) *Minimum floor levels are designed in accordance with the following standards: clause*
  - *Floor levels for habitable building floors are designed with a minimum freeboard height to floor level of 500m above the 100 year ARI flood level; and*
  - *The minimum floor level of any new dwelling shall be 5.0m above mean sea level.*

*Note 1: The demolition and/or removal of a dwelling is a Permitted Activity except where the provisions of Chapter 17: Historic Heritage apply.*

*Note 2: Minimum floor levels have been determined using One Tree Point 1964 datum.*

*Note 3: Each dwelling is also required to be assessed against the relevant performance standards contained in the Plan, including within sections 12.10 and 12.15.*

Consequential amendments were made to Rule 13.10.3, which now reads:

*Construction of a dwelling is a Permitted Activity if:*

- a) *After completion, it will be the only dwelling on the site: or*
- b) *It will be an additional dwelling on the site, and the minimum net site area associated with each additional dwelling is:*
  - *600m<sup>2</sup> for a serviced site not in an Overlay Area; or*
  - *1,000m<sup>2</sup> for a serviced site in an Overlay Area; or*
  - *3,000m<sup>2</sup> for an un-serviced site.*
- c) *There is a separation distance of at least 3m from any other detached dwelling;*
- d) *There is a separation distance of at least 6m where there is a private open space area located between two residential dwellings; and*
- e) *Minimum floor levels are designed in accordance with the following Standards*



- *Floor levels for habitable building floors are designed with a minimum freeboard height to floor level of 500mm above the 100 year ARI flood level; and*
- *The minimum floor level of any new dwelling shall be 5.0m above mean sea level.*

*Note 1: The demolition and/or removal of a dwelling is a Permitted Activity except where the provisions of Chapter 17: Historic Heritage apply.*

*Note 2: Minimum floor levels have been determined using One Tree Point 1964 datum.*

*Note 3: Each dwelling is also required to be assessed against the relevant performance Standards contained in the Plan, including within Sections 13.10 and 13.13.*

There is an obvious mistake with Rule 12.10.3(c) which states that *habitable building floors shall be designed with a minimum freeboard height to floor level of 500m above the 100 year ARI flood level*. This error needs to be corrected to read 500mm.

With respect to both Rules 12.10.3(c) and Rule 13.10.3(e), the requirement for two minimum floor levels is contradictory. Whilst Note 2 suggests that the minimum floor levels have been determined using One Tree Point 1964 datum levels, this is quite different to the requirement to have a minimum floor level of 5.0m above mean sea level.

It is not clear why the rule includes both the requirement for 'floor levels for habitable building floors' and a 'minimum floor level for any new building'.

### **Relief Sought**

- Make minor amendment to Rule 12.10.3(c) to read 500mm rather than 500m;
- Delete requirement from Rule 12.10.3(c) and Rule 12.10.3(e) which reads: The minimum floor level of any new dwelling shall be 5.0m above mean sea level.
- Make any consequential amendment as to detail or substance throughout the PDP to give effect to this appeal point.

Signature:

CRAIG JEPSON, KEN DUGDALE, WILLIE HEWITT,  
CRAIG MATHESON, OWEN MCSHANE (CENTRE FOR  
RESOURCE MANAGEMENT STUDIES), TOM PETERS,  
ADAM BOOTH, SHANE CULLEN AND SUSAN  
ROWBOTHAM by their authorised agent:



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K Roland

**Date:** 17 November 2011

**Address for service:** Precision Planning Limited  
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**The Appellant attaches the following documents to this Notice of Appeal:**

- a. A copy of the Appellant's submission (Annexure A).
- b. Chapters 4 (Overlays), 13 (Residential) and 12 (Rural) as notified (Annexure B)
- c. A list of names and addresses of persons to be served with a copy of the Notice (Annexure C).
- d. Supplementary information prepared by Owen McShane (Centre For Resource Management Studies) in support of this appeal.

**Advice to recipients of copy of notice of appeal**

**How to become party to proceedings**

You may be party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

**How to obtain copies of documents relating to appeal**

The copy of this notice served on you does not attach a copy of the appellant's submission and (or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

**Advice**

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

