

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14 of the First Schedule
to the Act on the Proposed Kaipara District Plan

BETWEEN **ESTUARY ESTATES LAND COMPANY LIMITED**
ENV-2011-AKL-000243

Appellant

AND **KAIPARA DISTRICT COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Acting Principal Environment Judge L J Newhook sitting alone under section 279 of the Act
IN CHAMBERS at Auckland

CONSENT ORDER

Introduction

1. The Court has read and considered the appeal, the respondent's reply, and the memorandum of the parties dated 10 October 2012.
2. No person has given notice of an intention to become a party under s274.
3. The Court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:



- (a) All parties to the proceedings have executed the memorandum requesting this order.
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

- 4. Therefore the Court orders, by consent, that the Kaipara District Council be directed to amend Chapter 16 of the Proposed Kaipara District Council Plan ("**Proposed Plan**") as follows (insertion shown as underline and deletion as ~~strikethrough~~):

- (a) Section 16.1 General Description:

16.1.3 How to Use this Chapter of the District Plan

...

How much information Council will need in considering your Consent application depends on the Activity Status of your Consent. Firstly, you will need to check the activity tables in Section 16.7 and then the Performance Standards in Section 16.8 and 16.10 of this Chapter. In considering a Resource Consent application Council will exercise its discretion (Discretionary Activities) or will limit its discretion to those matters identified (Restricted Discretionary Activities) in order to consider how the activity contributes to or is not contrary to the Objective and Policies of the Plan. If the proposal is a Discretionary ~~or Non-Complying~~ Activity you will need to consider whether the proposal meets the Objective and Policies of this Chapter. For Non-Complying Activities you will need to consider the Objectives and Policies of both this Chapter and the Plan, particularly of Part A of the Plan, as well as the relevant Part 2 matters of the Resource Management Act 1991. See Section 1.3.5 of the District Plan for a summary of the "Status of Consents".

If you need to prepare a Resource Consent application for your proposed development or subdivision: Council has prepared a guide that sets out the process and information they want to assist them in processing your application. This guide can be obtained from Council's offices or their website: www.kaipara.govt.nz.



~~Reference should also be made to other relevant Chapters of the Plan, particularly their Objective and Policies, including:~~

~~Chapter 2: District Wide Resource Management Issues;~~

~~Chapter 3: Land Use and Development Strategy;~~

~~Chapter 4: Overlays;~~

~~Chapter 5: Tangata Whenua Strategy;~~

~~Chapter 6: Ecological Areas; and~~

~~Chapter 7: Natural Hazards.~~

~~Issues, Objectives and Policies within each Chapter of the Plan are presented in no particular order of importance.~~

(b) Application of District Wide Plan Provisions:

16.1.6 District Plan Wide Provisions

...

Where Standards are specified in this chapter, they are to take precedence over the Kaipara District Council Engineering Standards 2011. For all other matters, Kaipara District Council Engineering Standards 2011 shall apply. The following documents should also be referred to as they may contain Standards which apply to a particular site or proposal.

- Austroads Guide to Traffic Engineering Practice;
- Austroads Urban Road Design;
- NZS 4402:2010 Land Development and Subdivision Engineering;

~~Kaipara District council Engineering Standards 2011;~~



- ~~Kaipara District Council Quality Assurance Requirements 2007; and~~
- ~~Kaipara District Council Long Term Plan 2009-19~~

(c) **Methods of Implementation, section 16.5:**

16.5 Methods of Implementation

16.5.1 District Plan Methods, Staging and Implementation

A number of methods are used to implement the Estuary Estates Structure Plan provisions, including;

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- (k) ~~Providing access to geological databases;~~

~~Inventory and Maps of Important Geological sites and Landforms in the Northland Region shown on the NZ Land Inventory NZMS 290 (1996);~~

~~Use of Climate, Soil and Crop Information for Identifying Potential Land Use Change in the Hokianga and Western Kaipara Region (2003).~~

(d) **Objectives and Policies:**

16.6.5.2 Objectives and Policies

Policies

...

- (c) By creating stormwater retention pond/lakes within the Sub-Zone as shown on the Maps 1-26 so that stormwater is managed ~~in accordance with Kaipara District council Engineering Standards 2011~~ and to ~~enhance~~ residential amenity is enhanced.



(e) Notification Requirements:

16.7.2 Notification requirements

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16.7.2.2 Controlled Activities

Applications for Resource Consent as a Controlled Activity will be considered without notification.

The following activities shall be Controlled in the Estuary Estates Sub-Zones:

- a) Any activity listed as Controlled Activity in Section 16.7 of this Chapter; and
- b) Any subdivision complying with the Terms for Subdivision listed in Section 16.10 of this Chapter.

Note 1: Any identified site feature or management unit mapped shall comply with the relevant Subdivision Standards of that Chapter of the District Plan.

16.7.2.3 Restricted Discretionary Activities

Applications for Resource Consent as a Restricted Discretionary Activity will be considered without notification.

The following shall be Restricted Discretionary Activities in the Estuary Estates Sub-Zones:

- Any activity listed as a Restricted Discretionary Activity in Section 16.7 of this Chapter,



- Any activity which does not meet any Performance Standard Listed in Section 16.8, 16.8 and 16.10 of this Chapter; and

16.7.2.4 Discretionary Activities

The following shall be Discretionary Activities in the Estuary Estates Sub-Zones;

- a) Any activity listed as a Discretionary Activity in Section 16.7 of this Chapter; and
- b) Any subdivision complying with the Terms for Subdivision listed in Section 16.10 of this Chapter.

Note 1: Applications for Discretionary Activities will be assessed against, but not restricted to, the Assessment Criteria listed in Sections 16.7 and 16.10 of this Chapter, and the Objectives and Policies of this Chapter ~~and Part A Chapters of the District Plan.~~

16.7.2.5 Non-Complying Activities

The following shall be Non-Complying Activities in the Residential Zone:

- (a) Any activity listed as a Non-Complying Activity in 16.7 of this Chapter;
- (b) Any subdivision listed as a Non-Complying activity in Section 16.10 of this Chapter.

Note 1: Applications for Non-Complying Activities will be assessed against, but not restricted to, the Assessment Criteria listed in Sections 16.7 and 16.10 of this Chapter, the Objectives and Policies of Part A of the District Plan and the effects of the activity on the environment.



(f) **Assessment criteria for restricted discretionary activities:**

16.7.4 Assessment Criteria for Restricted Discretionary Activities

Where an activity is not permitted by this Rule, Council has restricted its discretion over the following matters when considering and determining an application for Resource Consent¹;

...

n) ~~Natural Hazards~~

...

16.7.4.1 Assessment Criteria

...

n) ~~Natural Hazards~~

~~Safety of the dwelling and people using the facility/building during flood events or tidal inundation including possible egress during flood events or tidal inundation.~~

(g) **Assessment criteria for discretionary and non-complying activities:**

16.7.5 Assessment Criteria For Discretionary And Non-Complying Activities

...

b) For Non-Complying Activities the Council will have regard to the Objective and Policies of ~~the following District Wide Chapters~~ Part A of the District Plan.

i. ~~Chapter 2~~ District Wide Resource Management Issues



¹ This change arises from the partial draft Consent Order already before the Court in respect of ENV-2012-AKL-000250: Meridian Energy Limited v Kaipara District Council.

ii. ~~Chapter 4 Overlays~~

iii. ~~Chapter 5 Tangata Whenua Strategy, and~~

iv. ~~Chapter 6 Ecological Areas~~

...

**16.7.6 Activity Standards and Development control Modifications
(Discretionary Activities)**

...

~~Note: When Resource Consent is sought from a Rule included within another Chapter of the District Plan, the activity status and assessment criteria of that Rule shall take precedence over this Chapter;~~

(h) Permitted Activity Standards and Development Controls:

16.8.1 General Rules

All Permitted, Controlled and Restricted Discretionary Activities shall comply with the relevant controls in Rule 18.8.1.

...

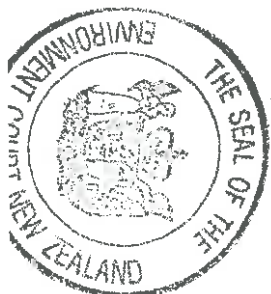
16.8.1.2 Landscaping

a) The Structure Planting shown on Map 18 is to be established before in conjunction with any building development of the Estuary Estates Structure Plan area begins.

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(i) Development Control Rules:

16.8.2 Development Control Rules



All Permitted, Controlled and Restricted Discretionary Activities shall comply with the relevant controls in Rule 16.8.2 ~~unless stated otherwise.~~

- (i) Building Size and location:

16.8.2.1 Building Location and Size

All buildings shall be located in accordance with the indicative building locations shown on Maps 4-17.

...

- b) Dwellings shall have a minimum floor level of 3m above mean sea level.

...

- (ii) Water and Wastewater:

16.8.3 Water Supply and Wastewater supply

The following Rules shall apply as follows:

Sub-Zone	Water Supply Performance Standards	Wastewater Performance Standard
1	14.13.4	14.13.6
2	14.13.4	14.13.6
3	14.13.4.	14.13.6
4	13.13.4	13.13.6
5	13.13.4	13.13.6
7	14.13.4	14.13.6

- (iii) Traffic intensity:

16.8.12 Traffic Intensity

The following Rules shall apply as follows:



Sub-Zone	Performance Standards
1	14.10.18
2	14.10.18
3	13.10.18
4	13.10.18
5	13.10.18
6	12.10.18
7	14.10.18

(j) Permitted Activity Standards:

16.9.4 Rules: Permitted Activity Standards

All Permitted, Controlled and Restricted Discretionary Activities shall comply with the relevant controls in Rule 16.9.4.

16.9.4.1 Roads

1 Road Hierarchy

Roads shall be formed in accordance with the roading hierarchy identified on the Estuary Estates Structure Plan ~~23~~.

2 Road Performance Standards

All roads shall be constructed~~formed~~ in accordance with the Standards in the following table or the Kaipara District Council Engineering Standards 2011:

...

Note: The specifications in the Table above take precedence over the Zone Performance Standards.



(k) Subdivision:

16.10.5 Subdivision Activity Table

The following table specifies the status of various activities within the different Sub-Zones. Any Non-Complying Activity identified in the Activity Table will be assessed according to the relevant provisions of the Resource Management Act 1991 and the Objectives and Policies of Part A of the Plan.

...

16.10.8.1 Matters Over Which Discretion is Restricted

When an activity is not permitted by this Rule Council has restricted its discretion over the following matters when considering and determining an application for Resource Consent²;

...

i) ~~Natural Hazards;~~

...

16.10.8.2 Assessment Criteria for Restricted Discretionary Activities

When an activity is not permitted by this Rule Council has restricted its discretion over the following matters when considering and determining an application for Resource Consent³.

...

i) ~~Safety of the dwelling and people using it during flood events or tidal inundation including possible egress during flood events or tidal inundation.~~

² This change arises from the partial draft Consent Order already before the Court in respect of ENV-2012-AKL-000250: Meridian Energy Limited v Kaipara District Council.

³ This change arises from the partial draft Consent Order already before the Court in respect of ENV-2012-AKL-000250: Meridian Energy Limited v Kaipara District Council.



...

16.10.9.1 Criteria for assessing Discretionary and Non-Complying Activities

- a) The Council will have regard to the Objective and Policies for the relevant Sub-Zone, Parts 16.8, 16.9 and 16.10, as well as the gGeneral Objectives and Policies in Part 16.3, and for Non-Complying Activities, Council will have regard to the Objectives and Policies of Part A Chapters of this Plan; and
- b) The Council will have regard to any adverse effects of the activity on the environment and proposed measures to avoid mitigate or remedy such effects.

Note: The assessment criteria for Restricted Discretionary Activities may be used as a guide when assessing Discretionary and Non-Complying Activities.

5. The appeal is resolved in its entirety.

6. There is no order as to costs.

DATED the 14th day of November 2012



L J Newhook
Acting Principal Environment Judge

