

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

BETWEEN

**FONTERRA CO-OPERATIVE GROUP
LIMITED**

(ENV-2011-AKL-000236)

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 and the memorandum of the parties dated 3 December 2012.
- [2] Federated Farmers of New Zealand and Horticulture New Zealand have given notice of an intention to become parties to this appeal under s274 and have signed the memorandum setting out the relief sought.



[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 is directed to amend the Proposed Kaipara District Plan as set out in Annexure A to this order.

[5] The appeal is otherwise dismissed.

[6] There is no order as to costs.

DATED at Auckland this 20th day of December 2012.



L J Newhook
Acting Principal Environment Judge



ANNEXURE A





Performance Standards grey highlight shows amendments proposed as a result of other District Plan Appeal mediation, shown here for the purpose of context

Rule	Parameter	Rural Zone Permitted Activity Performance Standard	Activity Status if the Activity does not meet the Performance Standard	Assessment Criteria
12.10.7	Setbacks	<p>(1) Rural Zone Any building is a Permitted Activity if it is located outside the following setback distances (yards):</p> <p>a) ...</p> <p>(2) In addition to the setbacks above, in the United-Natural-Environment-of-Mangarua Harbour and Kai-Iwi-Lakea Overlay: Any building is a Permitted Activity if it is located outside the following set back distances (yards):</p> <p>a) ...</p> <p>(3) Except that:</p> <p>a) Setback Standards of 12.10.7.1a) and b) do not apply to those approved building platforms on Lots 1-16 and Lots 19-25 DP-328845 (in accordance with Consent notice (dated 24 August 2004) related to Land Transfer Plan No. 328845). Setback for Lots 1- 16 and Lots 19 - 25 DP 328845 are to be governed by the Consent notice (dated 24 August 2004) related to Land Transfer Plan No. 328845; and</p> <p>b) Setbacks from any lake / river or wetland will not apply to maintenance, alterations or upgrades of any structure associated with a consented water take or discharge structure or consented pump station.</p> <p>Note 1: The Regional Water and Soil Plan for Northland also require setbacks from waterways and the coast for excavation activities. Applicants should contact the Northland Regional Council to confirm whether or not Resource Consent is required.</p> <p>Note 2: The 300m radius referred to in relation to State Highways shall be measured from the position where the centreline of the road joins the State Highway.</p> <p>Note 3: Any changes in land use on sites that have access onto Limited Access Roads require approval from the NZ Transport Agency under the Government Roadway Owners Act 1989.</p>	Restricted Discretionary Activity	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 Consent: 1) ...no changes proposed to these assessment matters as a result of Mediation with Fontana
12.10.9	Separation Distance for Noise Sensitive Activities in the Rural Zone	<p>Any Noise Sensitive Activity (as defined in Chapter 24: Definitions) is permitted if:</p> <p>(1) A 300m separation is maintained between the noise sensitive activity and activities listed as follows, on a site under separate ownership:</p> <p>a) Wastewater treatment site or other site of plant or animal effluent storage or disposal (excluding domestic disposal systems);</p>	Restricted Discretionary Activity	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 Consent: 1) The extent to which alternative locations have been considered; 2) Mechanisms in place to avoid future reverse sensitivity conflicts (including covenants on titles) or other physical mitigation works;

¹ [Amended by Consent Order (between KDC & Meridian) signed 7 August 2012]

² [Amended by Consent Order (between KDC & Meridian) signed 7 August 2012]



Parameter	Rural Zone Permitted Activity Performance Standard	Activity Status if the Activity does not meet the Performance Standard	Assessment Criteria
	<p>b) <u>Building</u> used for an industrial activity;</p> <p>c) Intensive feed lot or feed storage area;</p> <p>d) Intensive fattening;</p> <p>e) Dairying shed;</p> <p>f) Mining or quarrying; and</p> <p>g) Any other activity that has existing use rights or Resource Consent to exceed the General Noise, Use of Explosives and Blasting standards, or an Air Discharge Consent (odour) granted by the Northland Regional Council; and</p> <p><u>21</u> The Activity is setback outside the Noise Contour Boundary surrounding the Maunatuato Dairy Factory site as shown on Planning Maps 20 and 60 (Map Series 2).</p> <p>Note 1: This Rule is intended to protect the opportunity for rural activities in the Rural Zone. As such, if there is an existing lawfully established activity as listed in a) to g) above, then a Noise Sensitive Activity wishing to develop would be required to maintain the appropriate separation from this to avoid future land use conflicts.</p> <p>Note 2: For clarity, any Noise Sensitive Activity within the Noise Contour Boundary of the Maunatuato Dairy Factory site will require Resources Consent.</p>		<p>iii) Effects on health and safety of communities;</p> <p>iv) Any consultation with relevant property owners or occupants; and</p> <p>v) How the activity contributes to the Objectives and Outcomes of this Plan, particularly Chapters 2 and 12.</p> <p>and</p> <p>In the case of any Noise Sensitive Activity within the Noise Contour Boundary of the Maunatuato Dairy Factory, the following additional assessment criteria will apply:</p> <p>vi) The potential reverse sensitivity effects on the operation of the Maunatuato Dairy Factory;</p> <p>vii) Whether and the extent to which habitable rooms have been designed such that the internal noise levels of any habitable room does not exceed 35dB(A) zones, while at the same time providing ventilation requirements for example, as required by clause 64 of the New Zealand Building Code 2010.</p> <p>Note 1: The operators of the Maunatuato Dairy Factory will be considered an affected party in relation to any resource consent applications, in respect of Rule 12.10.9(2).</p>

Performance Standards for Subdivision

Parameter	Rural Permitted Activity Performance Standard	Activity Status if the Activity does not meet the Performance Standard	Assessment Criteria
<p>12-15-14</p> <p>Maunderuroto Dairy Factory Noise Contour Boundary</p>	<p>The subdivision is located outside the Noise Contour Boundary surrounding the Maunderuroto Dairy Factory site as shown on Planning Maps 20 and 50 (Map Series 2).</p> <p>Note 1: For clarity, any subdivision within the Noise Contour Boundary of the Maunderuroto Dairy Factory site will require Resource Consent under this performance standard.</p>	<p>Restricted Discretionary</p>	<p>For subdivision that is within the Maunderuroto Dairy Factory Noise Contour Boundary, Council has restricted its discretion over the following matters when considering and determining an application for Resource Consent:</p> <ul style="list-style-type: none"> i) The extent to which the subdivision design mitigates the effects on operation of the Maunderuroto Dairy Factory particularly in respect of potential reverse sensitivity effects; ii) The response to any issues or concerns raised as an outcome of consultation with the operators of the Maunderuroto Dairy Factory (if any has been undertaken). <p>Note 1: The operators of the Maunderuroto Dairy Factory will be considered an affected party in relation to any resource consent applications.</p>
<p>12-15-15</p> <p>Maunderuroto Dairy Factory Pipeline Corridor Assessment Area</p>	<p>Subdivision of new lots is located outside the defined Assessment Area (see Appendix 12-1b: Maunderuroto Dairy Factory Pipeline Corridor Assessment Area) of the Maunderuroto Dairy Factory Pipeline as shown on the Planning Maps 20 and 50 (Map Series 2).</p> <p>Note 1: For clarity, any subdivision for new lots to be created in the defined Assessment Area (see Appendix 12-1b: Maunderuroto Dairy Factory Pipeline Corridor Assessment Area) of the Maunderuroto Dairy Factory Pipeline will require Resource Consent under this performance standard.</p>	<p>Restricted Discretionary</p>	<p>For subdivision that is within the Maunderuroto Dairy Factory Pipeline Assessment Area, Council has restricted its discretion over the following matters when considering and determining an application for Resource Consent:</p> <ul style="list-style-type: none"> i) The extent to which building platforms, paved areas and earthworks avoid effects of the Maunderuroto Dairy Factory Pipeline; ii) The extent to which the subdivision design mitigates the effects on operation of the pipeline and breathe particularly in respect of: <ul style="list-style-type: none"> a. slope stability; and b. operational access; and iii) The response to any issues or concerns raised as an outcome of consultation with the operators of the Maunderuroto Dairy Factory (if any has been undertaken). <p>Note 1: The operators of the Maunderuroto Dairy Factory will be considered an affected party in relation to any resource consent applications.</p>



Residential Performance Standards

Parameter	Residential Permitted Activity Performance Standard	Activity Status if the Activity does not meet the Performance Standard	Assessment Criteria
<p>13.10.8 Separation Distances for Noise Sensitive Activities</p>	<p>Any activity <i>Noise Sensitive Activity</i> (as defined in Chapter 24, Definitions) is permitted if:</p> <p>(1) A 300m separation is maintained between the following activities-the noise sensitive activity and activities listed as follows, on a site under separate ownership:</p> <ul style="list-style-type: none"> a) <i>Bedding</i> or enclosure intended for housing livestock; b) Wastewater treatment site or other site of plant or animal effluent storage or disposal (excluding domestic disposal systems); c) <i>Building</i> used for an industrial or commercial activity; d) Intensive feed lot or feed storage area; e) <i>Intensive farming</i>; f) <i>Dairying shed</i>; g) <i>Mining or quarrying</i>; and h) Any other activity that has existing use rights or Resource Consent to exceed the General Noise, Use of Explosives and Blasting standards, or an Air Discharge Consent (odour) granted by the Northland Regional Council; and <p>(2) The activity is setback outside the Noise Contour Boundary surrounding the Maungaturoto Dairy Factory site as shown on Planning Maps 20 and 50 (Map Series 2), except that this Rule 13.10.8(2) shall not apply to Lots 1, 2 and 3, DP 88949 (Doctors Hill Road).</p> <p>Note 1: This Rule is intended to protect existing, lawfully established activities in adjoining Zones. If a noise sensitive activity develops then it would be required to maintain the appropriate separation distance to avoid future land use conflicts.</p> <p>Note 2: Maungaturoto Dairy Factory has existing use rights for its current operations on its site. Development located within its Zone will therefore be subject to this Rule in relation to the Maungaturoto Dairy Factory's existing operations.</p> <p>Note 3: For the purposes of this Rule, the term 'noise sensitive activities' is used to describe the types of activities that may be affected by amenity issues.</p> <p>Note 4: For clarity, any Noise Sensitive Activity within the Noise Contour Boundary of the Maungaturoto Dairy Factory site will require Resource Consent.</p>	<p>Restricted Discretionary Activity</p>	<p>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 Consent:</p> <ul style="list-style-type: none"> i) The extent to which alternative locations have been considered; ii) Mechanisms in place to avoid future reverse sensitivity conflicts (including covenants on titles) or other physical mitigation works; iii) Effects on health and safety of communities; iv) Any consultation with relevant property owners or occupiers; v) How the activity contributes to the Objectives and Outcomes of the Plan, particularly Chapters 2 and 13; and vi) The extent to which the internal noise level in any habitable room does not exceed 35dB L_{eq} 24 hours while at the same time complying with the ventilation requirements of Clause 64 of the New Zealand Building Code providing ventilation requirements for example, as resulted by clause 94 of the New Zealand Building Code 2010. <p>and</p> <p>In the case of any Noise Sensitive Activity within the Noise Contour Boundary of the Maungaturoto Dairy Factory, the following additional assessment criterion will apply:</p> <ul style="list-style-type: none"> vii) The potential reverse sensitivity effects on the operation of the Maungaturoto Dairy Factory. <p>Note 1: The operators of the Maungaturoto Dairy Factory will be considered an affected party in relation to any resource consent applications in respect of Rule 13.10.8(2).</p>

² Amended by Consent Order (between KDC & Meridian) signed 7 August 2012.





Business: Commercial and Industrial Performance Standards

Parameter	Business: Commercial and Industrial Performance Standard	Activity Status if this Activity does not meet the Performance Standard	Assessment Criteria
14.10.7	<p>Business: Commercial and Industrial Performance Standard</p> <p>Soilbacks</p> <p>(1) Any building is a Permitted Activity if the building is located outside of the following setback distances (yards):</p> <ul style="list-style-type: none"> a) Side and Rear yards - 5m where the site adjoins a reserve or Residential Zoned site; b) Coast / Lake / River yards - 30m from the Coastal Marine Area, or the banks of any lake whose bed has an area of 8ha or more, or the bank of any river or perennial stream whose bed has an average width of 3m or more; and c) Any building is setback 30m from a railway line where there is an intersection of road and rail (level crossing controlled by gateway signage) within 300m; <p>AND</p> <p>(2) Industrial Zone Only</p> <p>Any building is a Permitted Activity if the building is located outside of the following setback distances (yards):</p> <ul style="list-style-type: none"> a) Front yards - 10m; <p>Except that in the Overlay areas the following additional setbacks are required:</p> <p>(3) Natural-Environment of Mangroves Harbour Overlay:</p> <p>Any building is a Permitted Activity if the building is located outside of the following setback distances (yards):</p> <ul style="list-style-type: none"> a) Waterway - 30m from the bank of any mapped perennial waterway or wetland within this Overlay. <p>(4) Except that setbacks from any lake / river or wetland will not apply to maintenance, alterations or upgrades of any structure associated with a consented water lake or discharge structure or associated pump shed/operation.</p> <p>Notes 1: The setbacks applying in the Overlays are additional to the general setbacks of the Business Zones.</p> <p>Note 2: The Regional Water and Soil Plan for Northland also requires setbacks from waterways and the coast for excavation activities. Applicants should contact the Northland Regional Council to confirm whether or not Resource Consent is required.</p> <p>Note 3: Any changes in land use on sites that have access onto Limited Access Road's require approval from the NZ Transport Agency under the Government Roading Powers Act 1988.</p>	<p>Restricted Discretionary Activity</p>	<p>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 Consent:</p> <ul style="list-style-type: none"> i) Extent to which landscaping prevents visual intrusion and dominance of any buildings from beyond the site, particularly from the road and public places including reserves and the Coastal Marine Area, Residential Zoned sites; ii) Effects on public access; iii) Effects on natural hazards; iv) The functional requirements of the building and the activity; v) Protection of the conservation, ecological, recreation, access and hazard mitigation values of esplanade reserves or Strips; vi) Where buildings are located in close proximity to State Highways or Rail (level crossings) whether and the extent to which consultation has been undertaken with NZ Transport Agency and New Zealand Railways Corporation respectively and written approval obtained. <p>In addition, Council has restricted its discretion over the following matters when considering and determining an application for Resource Consent under this Rule in Natural-Environment of Mangroves Harbour Overlay areas:</p> <ul style="list-style-type: none"> i) The management of stormwater run-off and discharges from any storage areas to reduce potential direct discharges to waterways, lakes and the Coastal Marine Area; ii) Whether the proposed landscaping is in accordance with design principles of the Mangroves Harbour Plan (pages 60-61) for Policy Area Five-311 iii) In Overlay, How the proposal contributes to the Objectives and Outcomes for the relevant Overlay, as set out in Chapter 4 (Sections 4.4 and 4.7); and iv) Where buildings are located in close proximity to State Highways or Rail (level crossings) whether and the extent to which consultation has been undertaken with NZ Transport Agency and New Zealand Railways Corporation respectively and written approval obtained.
14.10.14	<p>Business: Commercial and Industrial Performance Standard</p> <p>General Noise</p> <p>(1) Commercial Zone Only</p> <p>Any activity is permitted if noise from the site does not exceed the following limits:</p> <ul style="list-style-type: none"> a) 60dB L_{Aeq} as measured within the boundary of any other site in the same Zone: <ul style="list-style-type: none"> i. 7:00am - 7:00pm: 50dB L_{Aeq}; ii. 7:00pm - 10:00pm: 45dB L_{Aeq}; and iii. 10:00pm - 7:00am: 40dB L_{Aeq} and 710dB L_{Amax}. <p>as measured within any other site Zoned Residential, or within the zonal boundary of a</p>	<p>Discretionary Activity</p>	<p>Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for Resource Consent:</p> <ul style="list-style-type: none"> v) Minimum level of noise likely to be generated; vi) The noise environment of the locality in which the activity is proposed; vii) Effect on sensitive activities in adjoining Residential Zones; viii) Length of time for which the specified noise standard will be exceeded;

⁴ [Amended by Consent Order (between KDC & Meridian) signed 7 August 2012]



















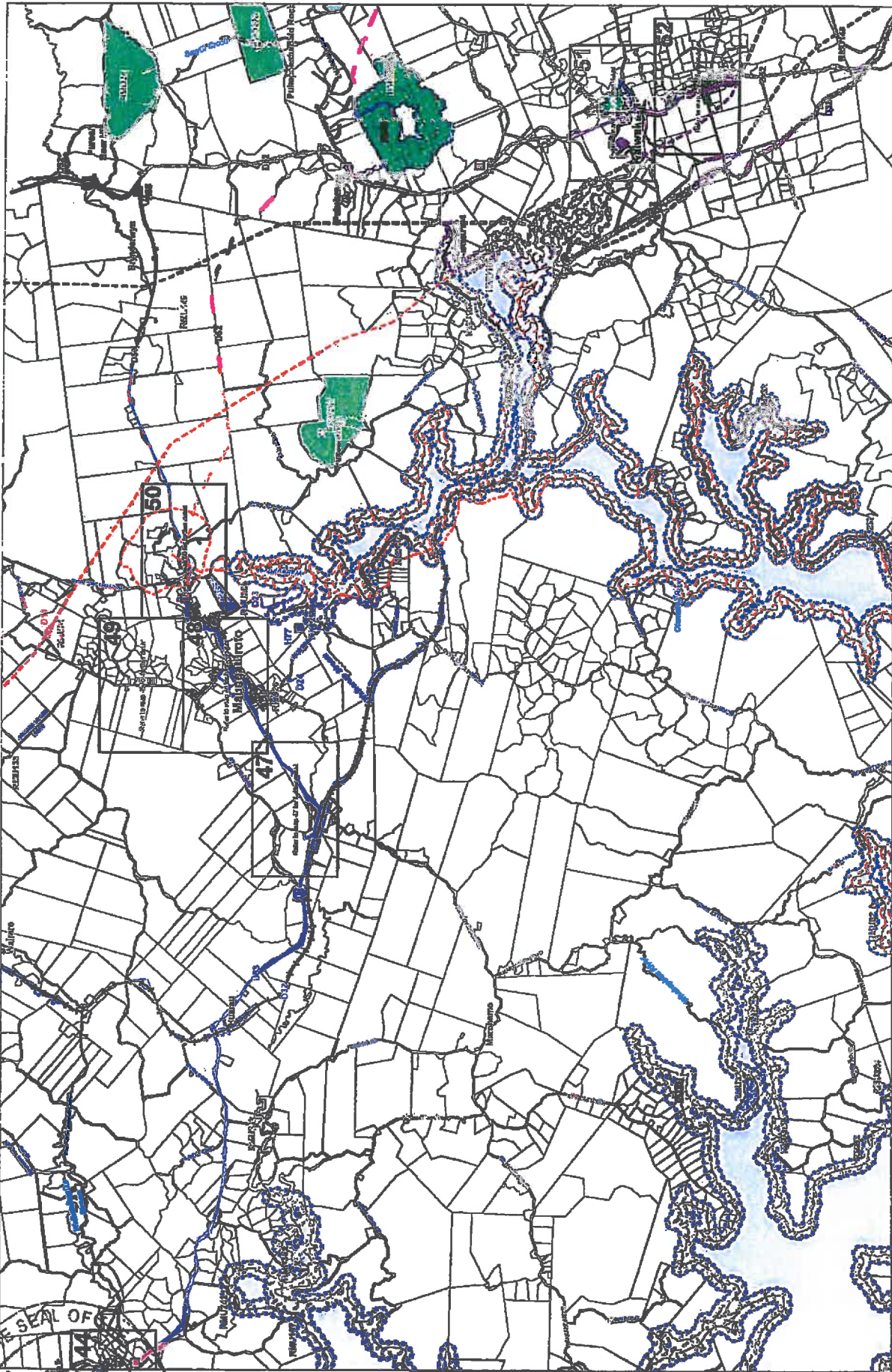
Parameter	Business: Commercial and Industrial Permitted Activity Performance Standard	Activity Status if the Activity does not meet the Performance Standard	Assessment Criteria
	<p><i>dwelling in a Rural or Maori Purpose Zoned site.</i></p> <p>(2) Industrial Zone Only</p> <p>With the exception of (b) below, any activity is permitted if noise from the site does not exceed the following limits:</p> <p>a) 75dB $L_{Aeq,Tmax}$ as measured within the boundary of any other site in the same Zone:</p> <ul style="list-style-type: none"> i. 7:00am – 7:00pm (Mon-Set): 55dB L_{Aeq}; ii. 7:00pm – 10:00pm (Mon-Set), and 7:00am to 10:00pm (Sunday and Public Holidays): 50dB L_{Aeq}; and iii. 10:00pm – 7:00am (any day): 45dB L_{Aeq} and 75dB $L_{Aeq,Tmax}$ <p>as measured within any other site Zoned Residential, or within the notional boundary of a residential activity in a Rural or Maori Purpose Zoned site.</p> <p>b) Any activity associated with the Mairangiurua Dairy Factory, including infrastructure, wastewater treatment, and other ancillary activities, within the Mairangiurua Dairy Factory site, is a permitted activity if noise from the site, as measured at the Noise Contour Boundary shown on Planning Maps 20 and 30 (Map Series 2), does not exceed the following limits:</p> <ul style="list-style-type: none"> i. at all times 45dB L_{Aeq}; and ii. 10:00pm – 7:00am (any day): 70dB $L_{Aeq,Tmax}$ <p>(3) Commercial and Industrial Zone</p> <p>Any dwelling is permitted if the internal noise level in any habitable room does not exceed 35 dB $L_{Aeq,24hr}$ while at the same time complying with the ventilation requirements of Clause G4 of the New Zealand Building Code.</p> <p>Note 1: Sound levels shall be measured in accordance with NZS 6801:2008 Acoustics – Measurement of Environmental Sound, and assessed in accordance with NZS 6802: 2008 Acoustics – Environmental Noise.</p>		<ul style="list-style-type: none"> iv) Likely adverse effects beyond the site; x) Alternative methods to avoid noise generation; and xi) Mitigation measures to reduce noise generation.



KAIPARA DISTRICT PLAN - MEDIATION VERSION - OCTOBER 2012

Map Series Two - Sites, Features and Units Legend

-  State Highway
-  Railway
-  Bridge or Causeway
-  Cadastral Parcel Boundary
-  Sea, Lakes and Rivers
-  Heritage Resources (Chapter 17)
-  Notable Tree (Chapter 19)
-  Areas of Significance to Maori (Chapter 17)
-  Reserve Management Units (Chapter 20)
-  Designation Areas (Chapter 21)
-  Maungaturoto Dairy Factory Noise Contour Boundary (45dBA leq)
-  50 KV Electricity Transmission Line
-  110 KV and 220 KV Electricity Transmission Line (Chapter 10)
-  Natural Gas Pipeline (Chapters 10 & 21)
-  Petroleum Gas Pipeline
-  Maungaturoto Dairy Factory Wastewater Pipeline

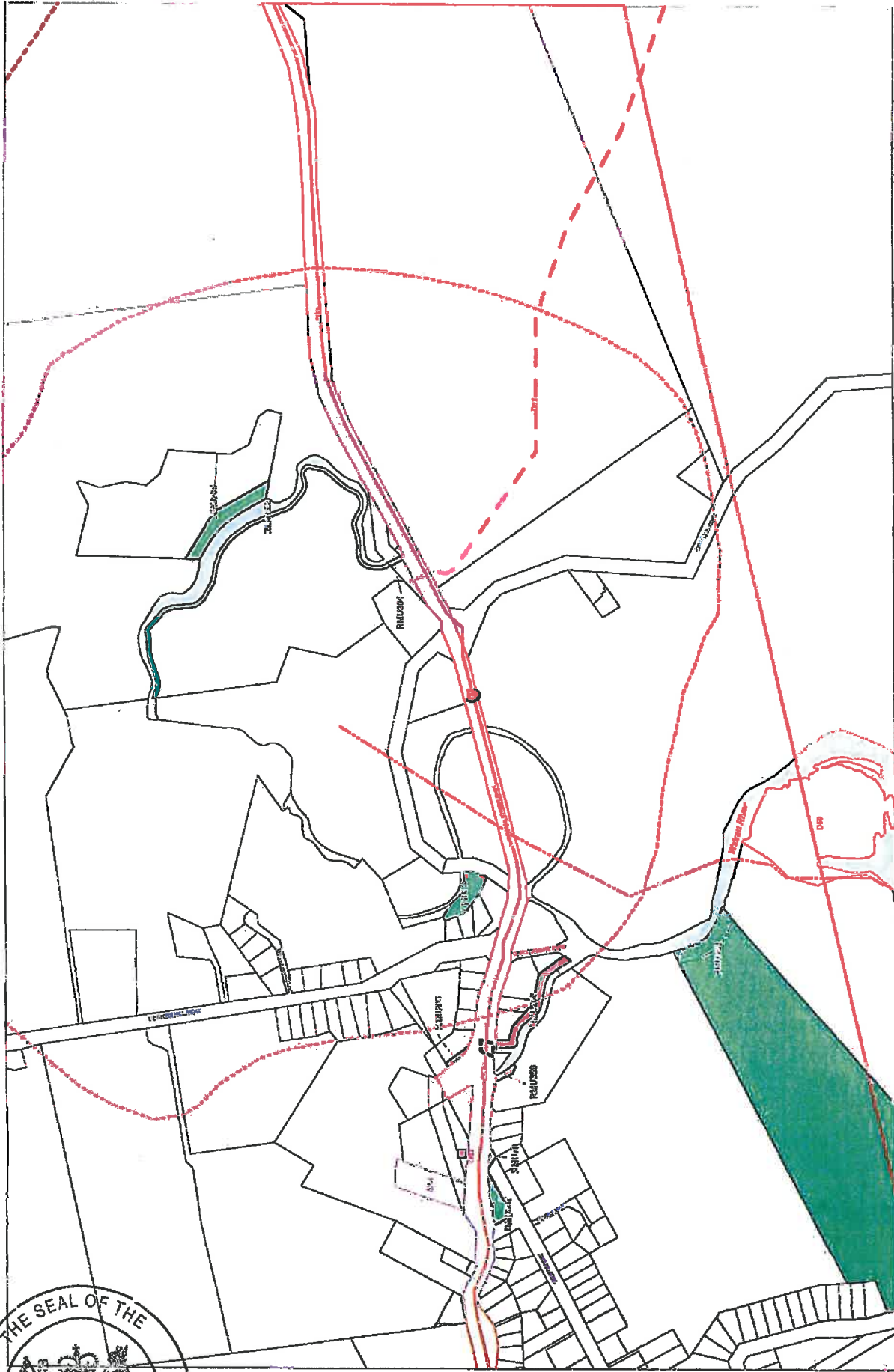


Map 20 of 80

KAIPARA DISTRICT PLAN - MEDIATION VERSION - OCTOBER 2012
Map Series Two
 Sites, Features and Units

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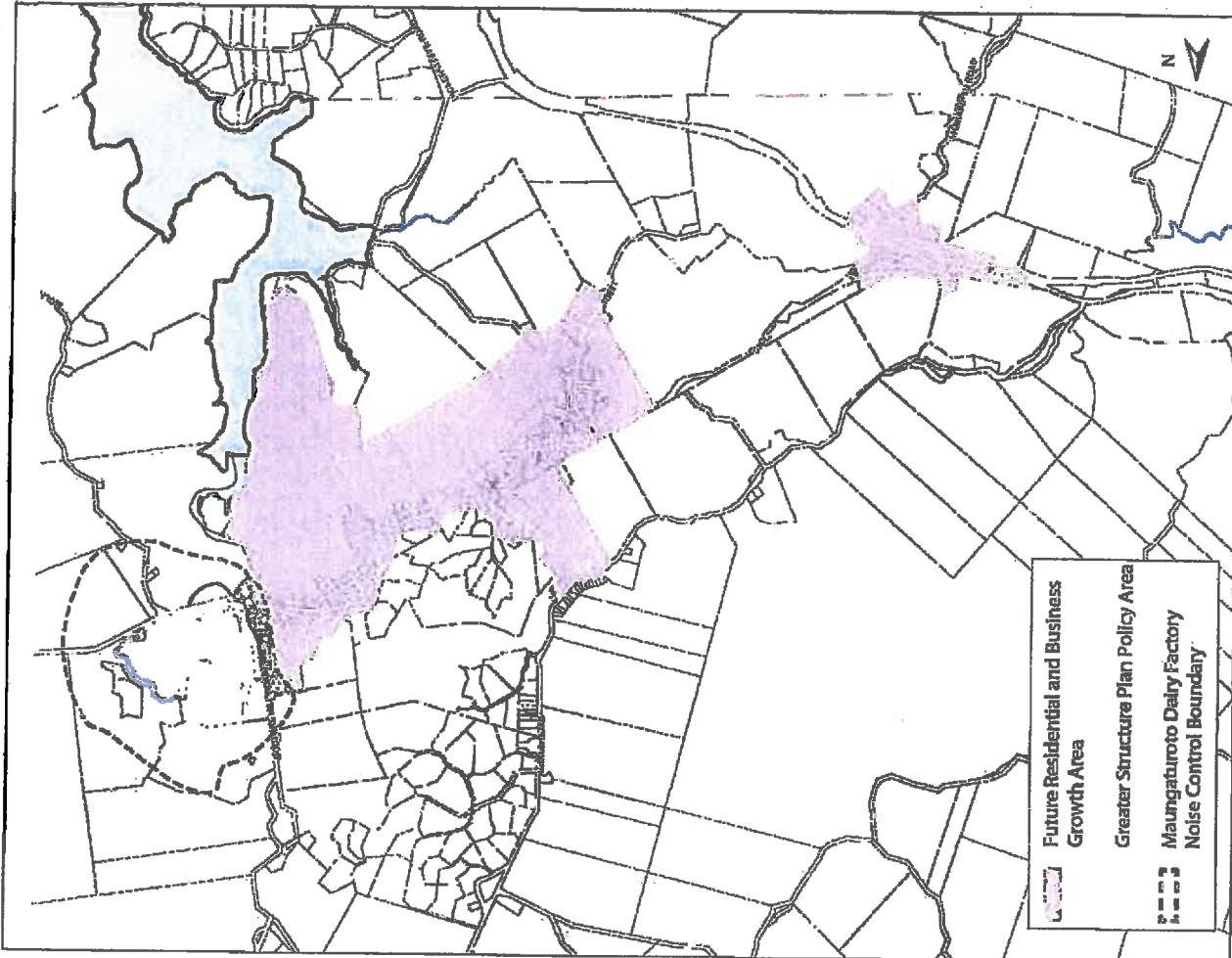


Map 50 of 60

KAIPARA DISTRICT PLAN - MEDIATION VERSION - OCTOBER 2012
Map Series Two
Sites, Features and Units : Maungaturoko

Scale: 1:5,000 @ A3
Copies of this map are available from the Kaipara District Council. All information is provided as a guide only and does not constitute a guarantee of accuracy. The Council is not responsible for any errors or omissions. The Council is not responsible for any loss or damage arising from the use of this map.

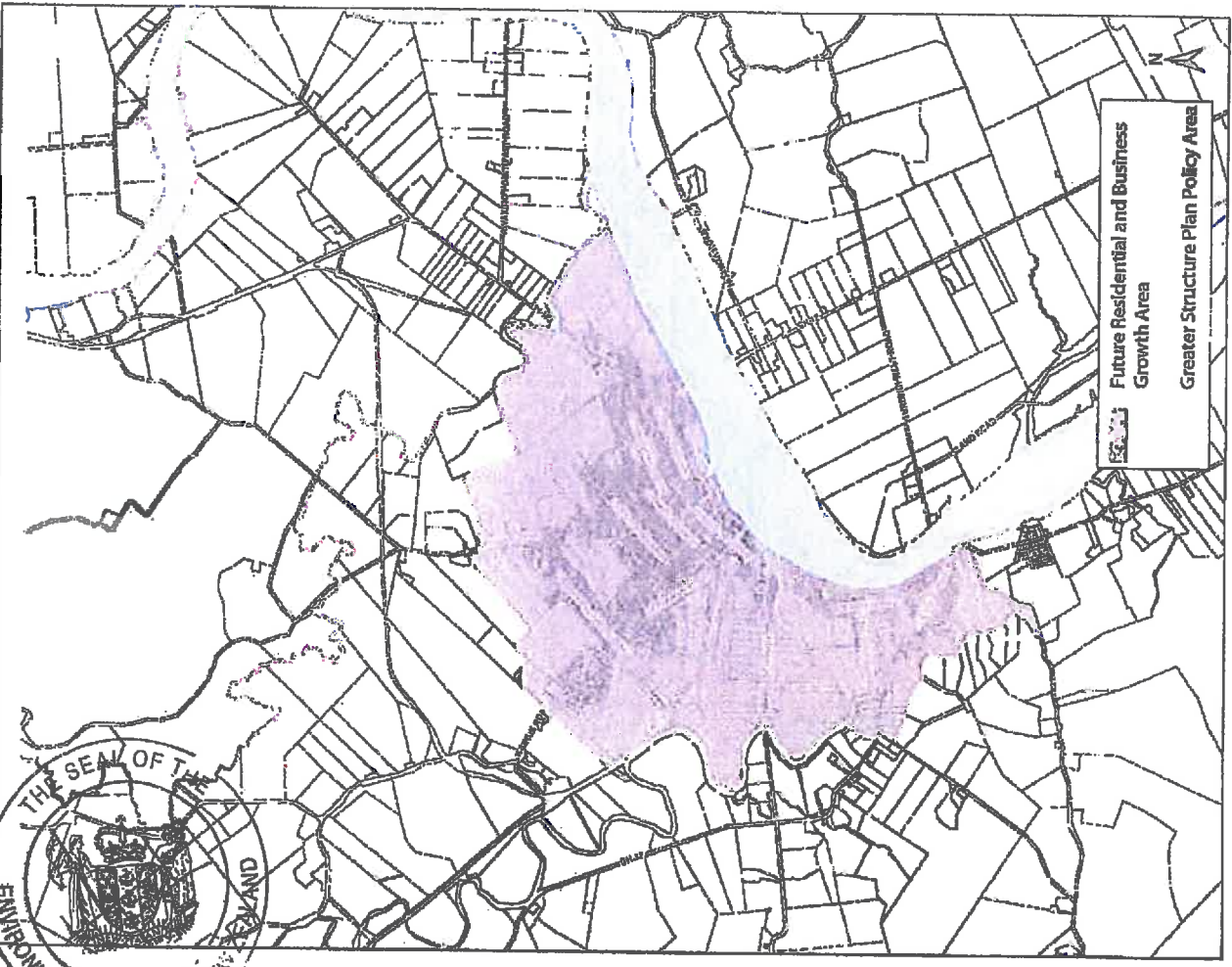




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**Appendix A: Indicative Growth Area
 Maungaturoto**

The maps enclosed are for information and do not constitute a contract or offer of any kind.



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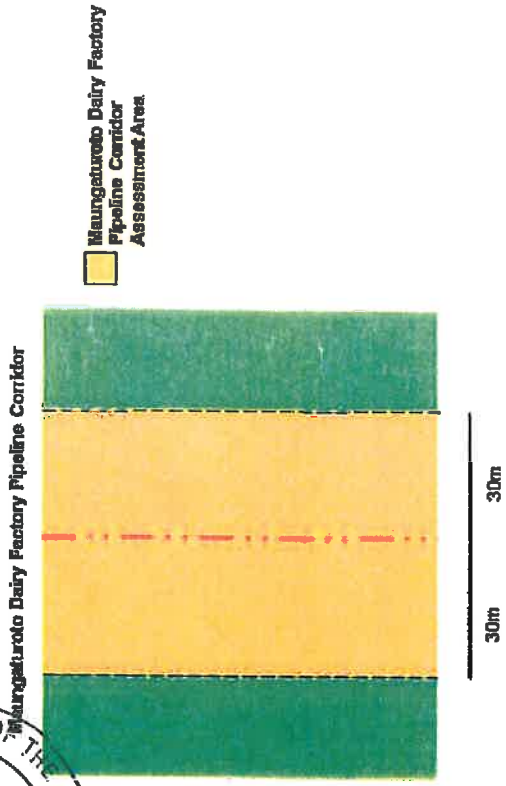
**Appendix A: Indicative Growth Area
 Dargaville**

The maps enclosed are for information and do not constitute a contract or offer of any kind.





Appendix 12.1b: Maungaturoto Dairy Factory Pipeline Corridor Assessment Area



The Maungaturoto Dairy Factory Pipeline is shown on Map Series 2 of the Planning Maps (Maps 20 and 50).