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CPPC PLANNING

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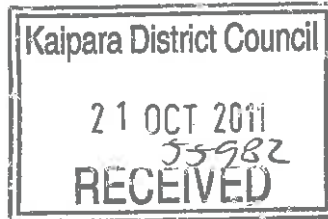
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20 October 2011



Kaipara District Council
Private Bag 1001
Dargaville 0340

**REGARDING APPEAL BETWEEN NOEL AND JOCELYN CULLEN AND THE
KAIPARA DISTRICT COUNCIL PURSUANT TO SECTION 120 OF THE RESOURCE
MANAGEMENT ACT 1991**

Please find a copy of the appeal lodged with the Environment Court 20 September 2011.

Please also note the following notices:

How to become party to proceedings

You may be a party to the appeal if you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court, and serve copies on the other parties, within 15 working days after the period for lodging a notice of appeal ends. Your right to be a party to the proceedings in the Environment 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 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 or the decision. These documents may be obtained, on request from the appellant.

Should you have any queries please do not hesitate to contact me at your convenience.

Yours faithfully

Claire Phillips
Environmental Planner
For and on behalf of Noel and Jocelyn Cullen

BEFORE THE ENVIRONMENT COURT

RMA

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of an appeal under
section 120 of the Act

BETWEEN Noel and Jocelyn Cullen
Appellant

AND Kaipara District Council
Respondent

NOTICE OF APPEAL UNDER SECTION 120 OF THE RESOURCE MANAGEMENT ACT 1991

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

1. We, Noel and Jocelyn Cullen, appeal against part of a decision of Kaipara District Council on the following plan:

Proposed Kaipara District Plan – Rezoning Request.

2. We, Noel and Jocelyn Cullen made a submission on that plan. (Submission 86)
3. We, Noel and Jocelyn Cullen are not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. We, Noel and Jocelyn Cullen received a notice of the Decision on 7th October 2011.
5. The decision was made by the Kaipara District Council.
6. The part of the decision that we, Noel and Jocelyn Cullen are appeal is:

Decision 3.5 Land at Mangawhai Heads Road and Jack Boyd Drive, Mangawhai:

That submissions:

Submitter Point	Submitter Name	Hearing Report	Page	Decision
81/26, 81/27, 81/28	Materials Processing Limited	13	15	Be Accepted
81/29	Materials Processing Limited	Rezoning Requests	9	Be Accepted
86/1	Noel and Jocelyn Cullen	Rezoning Requests	9	Be Rejected

3.5.2 Reasons for Decision

Materials Processing Limited Property (submitter 81)

1. In regard to Lot 1 DP 357002 (identified as Site 1 in Map 5) , the Panel considers that there is the perceived need for commercial activity in the local area. The Panel notes that the site is part of a cluster of small businesses located in the area. Rezoning the area to Business: Industrial is considered to be consistent with the existing activities as well as with the intention of the Plan to encourage further businesses to locate in the Mangawhai Area and allow for employment opportunities and growth in the area. The Panel notes that the site is within the Mangawhai Structure Plan policy area which provides for residential, business and industrial growth.
2. The Mangawhai Structure Plan, as reflected in the proposed zonings, as publicly notified in the Plan, did not envisage any business or industrial zonings in this locality. Primarily because the foreseeable future need for such zonings are met through existing zoned land together with the zonings identified as part of Estuary Estates. The Panel concludes that an exception can be justified in relation to this site because the activities that have existed on the site for some years, together with the size, shape and location of the land which enable industrial activities to occur whilst avoiding or mitigating any likely actual or potential adverse effects on the surrounding environment.
3. The Panel considers the change in zoning will be consistent with the Objectives and Policies of Chapter 3: Land Use and Development Strategy and Chapter 14: Business zone, notably Objectives 3.4.2, 14.5.2 and Policies 3.5.4, 14.6.4 (refer to Appendix 3).
4. The Panel notes that business activity on site is likely to require resource consent if a change of use occurs, regardless of zoning. A Business: Industrial zone will ensure as new uses establish in the surrounding subdivision that the potential effects of reverse sensitivity will be considered as part of the resource consent process and provide more certainty that existing uses can remain long term.

Cullen Property (submitter 86)

5. The Panel notes that submitter 86 wishes to develop part of this land (Lot 1 DP 206248 and Lot 2 DP 357002 (shown as Sites 2 and 3 in Map 5) for industrial

activities and retain part of the site for residential purposes. The Panel notes that tabled evidence from the submitter states that the consent for the residential subdivision (RM0064) is yet to be fully implemented.

6. The Panel considers that changing the zone from Residential to Business: Industrial is incompatible with the layout of the proposed residential subdivision (RM060074). In addition the Panel is advised that a s224c certificate has been issued for stage 1 (of 2 stages) of the subdivision. The Panel note that given the differences between Residential and Business subdivisions it would be inappropriate to rezone this land given the consented lot sizes, design and layout.
7. Furthermore, given the current stage of the subdivision the Panel considers that rezoning part of Lot 1 DP 206248 and Lot 2 DP 357002 to Business: Industrial, and leaving the rest of the site(s) as residential would result in two zones on the one site. The Panel considers that this would not provide for effective land management within the Plan and that zones should be allocated by individual parcels (with property boundaries as zone boundaries).
8. In contrast to the Material Processing Limited site, this land has been specifically subdivided and is in the process of being developed for residential purposes, consistent with its residential zoning. In addition the total area of land being sought for rezoning is significantly larger in size and the Panel received no specific evidence to support the need at Mangawhai for this amount of additional business/industrial land, particularly given the extent of undeveloped but already appropriately zoned land.
9. The Panel also consider that the rezoning proposal would be inconsistent with the Objectives and Policies of the Plan, notably Objective 3.4.2 and 3.4.3 and Policies 3.5.6 and 14.6.6 (as stated in Appendix 3).
10. The Panel therefore rejects submission 86/1.

7. The reasons for the appeal are as follows:

- a. The Respondent erred in concluding that the proposed re-zoning of the Appellants property is incompatible with the layout of the proposed residential subdivision (RM060074).
- b. The Respondent erred in concluding that two zonings within the Appellants properties would not be effective land management.
- c. The Respondent erred in concluding that there is not a need for additional business/industrial land at Mangawhai.
- d. The Respondent erred in concluding that the Appellants land is different from submitter 81's land.
- e. The Respondent erred in concluding that the rezoning proposal would be in consistent with the objectives and policies of the Plan.
- f. The Respondent erred in rejecting submission 86/1.

8. The relief the Appellant seeks is:
 - a. That this appeal is allowed, and the rezoning of the Appellants land be Accepted;
 - b. Mediation is a way to achieve an agreed environmental outcome;
 - c. Costs;

9. We, Noel and Jocelyn Cullen attach the following documents to this notice:
 - a. Copy of the submission, evidence and further information
 - b. Copy of Respondent's decision, Hearing report and correspondence
 - c. List of names and addresses of persons to be served with a copy of the notice:

Dated 18th day of October 2011

Noel and Jocelyn Cullen by their authorized agent,

Claire Phillips
BRS (Env Policy & Planning), Assoc. NZPI

Address for service of the Appellant is:

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