

**BEFORE THE ENVIRONMENT COURT**

**ENV-AKL-2011-**

**UNDER THE RESOURCE MANAGEMENT ACT  
1991**

**IN THE MATTER** of an appeal pursuant to Clause 14  
of Schedule 1 of the Act

**BETWEEN                    THE ESTUARY LAND  
COMPANY LIMITED**

*Appellant*

**A N D                        KAIPARA DISTRICT  
COUNCIL**

*Respondent*

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**NOTICE OF APPEAL**

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**Counsel Acting:**  
R E Bartlett  
Barrister  
PO Box 4338, Auckland  
DX CX 10258  
Tel: (09) 307 9827  
Fax: (09) 366 1599  
[bartlett@shortlandchambers.co.nz](mailto:bartlett@shortlandchambers.co.nz)

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

**The Estuary Land Company Ltd trading as Estuary Estates appeals a decision of Kaipara District Council on the Proposed Kaipara District Plan (“PDP”).**

1. The Appellant made a submission on the PDP (copy **attached**).
2. The decision that is being appealed was made available for public inspection on 7 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. This appeal relates to the Chapter 16 of the PDP as it affects Lot 4 DP 154785 and Lot 6 DP314200, herein referred to as “Estuary Estate”.
5. The grounds for this appeal are as follows:
  - (i) The amendments made to Chapter 16 undermine the plan change process that preceded the PDP;
  - (ii) The decisions version of the plan incorporates amendments that were not founded upon submissions or further submissions lodged;
  - (iii) The amendments made to Chapter 16 include reference to and compliance with Council’s Engineering Standards 2011;
  - (iv) The amendments, including the incorporation of standards from other zones within the Plan, undermine the principle that Chapter 16 stands alone within the plan and adversely imposes financial and administration costs to all future landowners in terms of interpreting and administering the Plan provisions.

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

#### **APPEAL POINT 1 – OVERLAY PROVISION**

6. Estuary Estate opposes the overlay notation applied to the site. Plan Change 22 was a comprehensive plan change which addressed, amongst other things, effects of the proposed development on the landscape and ecology of the surrounding area.
7. In respect to the application of the Overlay (Harbour and Valued Natural Areas of Mangawhai) the decision report notes:

*“The Panel is mindful that the Overlay provisions give recognition to sensitive and valued environments in the District. The Panel is aware that Estuary Estates, at the time of the Plan change, was subject to considerable ecological investigations at a more detailed level than that undertaken in the preparation of the Overlays. The Panel acknowledges this demonstrated (at the 2007 Hearing process for the Plan Change) that the environmental effects of the development on the Mangawhai Harbour and Tara Estuary could be avoided or mitigated and the associated environmental performance standards (such as earthworks) were prepared to reflect these findings. However, the Panel maintains that the application of the Overlays on areas of the District is an appropriate method to identify valued and sensitive environments and considers that their application should not exclude geographic areas, so that they can be seen across the district as a whole. This will ensure consistency between the Mangawhai Structure Plan and Estuary Estates and the Overlay provisions.*

*On this basis, the Panel deems it appropriate that the objectives and policies of Chapter 4: Overlays should only be considered when discretionary or non-complying consents are sought for an activity within Estuary Estates and has amended the Plan to reflect this.”*

8. The findings of the Panel concede that the Estuary Estates private plan change has undertaken more comprehensive investigations in relation to the surrounding environment than what was undertaken as part of the Section 32 analysis associated with the overlay provisions, however considered it necessary to apply them carte blanche anyway.
9. The application of the Overlay notations as proposed does not provide any benefit to Council in the assessment of resource consent applications (specifically those activities deemed to be either Discretionary or Non-Complying Activities), will increase administration costs for future users and undermines the intent of Chapter 16 as a “stand-alone” chapter, as is acknowledged in the decisions version of the PDP (Chapter 1):

*“Notwithstanding this, the District Plan does include one standalone Chapter - Chapter 16 – Estuary Estates which has an activity based approach to managing land use effects, rather than being effects based. These provisions were approved by Council as a private plan change in 2007 and reflect the activity based structure of the District Plan operative at that time. This Chapter was rolled over into this Plan, recognising the Plan Change had only been recently been adopted and that the provisions applied to a discrete area of the District only. Estuary Estates zones some 130hectares of land at Mangawhai for a new town centre and associated residential, business and open space development. Subdivision and development of this area is to be taken in accordance with the specific policy framework and corresponding performance standards as set out in Chapter 16 and the Estuary Estates Structure Plan (refer Appendix E)” [emphasis added]*

### **Relief Sought**

- Deletion of the overlay provisions and mapping are deleted from the Kaipara District Plan, as it relates to the Estuary Estate site.
- Undertaking any consequential amendment as to detail or substance throughout Chapter 16 to give effect to this appeal point.

## **APPEAL POINT 2 – MAP SERIES 1 + 2**

10. The decisions report notes that a consequential amendment (amongst others) has been made to Chapter 16 as follows:

*Amend Map Series 1 (Land Use) and 2 (Sites, Features and Units) to include information on Estuary Estates land.*

11. Map 56 (decisions version) illustrates an area around the periphery of the site which is identified as an “Area of Significance to Maori” (Section 17).
12. As the site contains an Area of Significance to Maori, any activity on the Estuary Estate site is required to have regard to the provisions of Section 17. Of concern to the development of the site in the manner proposed is Rule 17.10.2 Earthworks on a site containing a Category A resource of Feature identified in Appendix 17.1 or an Area of Significance to Maori identified in Appendix 17.2.
13. The consequential amendment imposes resource consent obligations on Estuary Estate which were not identified at the time the Plan was notified. PC22 included information in relation to sites of significance on the property and had regard to the wider significance of the site to Maori in both its preparation and final form. It is considered inappropriate for the required provisions to now be included in the Plan, as they affect Estuary Estate.

### **Relief Sought**

- Deletion of all overlay provisions and mapping from the Kaipara District Plan, as they relate to the Estuary Estate site.
- Undertaking any consequential amendment as to detail or substance throughout Chapter 16 to give effect to this appeal point.

### APPEAL POINT 3 – CONSEQUENTIAL AMENDMENTS

14. Consequential amendments to integrate the Chapter into the Plan including the replacement of number of Estuary Estates performance standards with the equivalent environmental performance standards from either the Rural, Residential or Business zones of the Plan and the retention of the specific objectives, policies, subdivision and development standards applicable only to Estuary Estates.

#### Summary of Reasons for the Appeal

15. A number of amendments have been made to Chapter 16, apparently in response to matters raised in submissions, in an attempt to integrate Chapter 16 with the rest of the Plan, in turn achieving the purpose and principles of the Act. The decisions report notes:

*“In taking this balanced approach, the Panel has confirmed the policy framework for Chapter 16. However, the Panel concludes that a number of amendments to Chapter 16 will better enable the Plan to achieve the purpose and principles of the RMA (providing for the sustainable management of the district’s land resources), and improve its effectiveness and efficiency. In summary, these amendments include:*

1. *Amendments to integrate the Chapter into the Plan including the replacement of number of Estuary Estates performance standards with the equivalent environmental performance standards from either the Rural, Residential or Business zones of the Plan and the retention of the specific objectives, policies, subdivision and development standards applicable only to Estuary Estates.*

*Nevertheless, the Panel finds that where environmental performance standards of Estuary Estates no longer meet best practice, the standards of the Rural, Residential or Business zones of the Plan are to prevail. As an example, the Panel finds the planning approach to many matters*

*(such as engineering standards, hazardous substances, land contamination) has advanced significantly since 2007 and the Panel considers that Estuary Estates should not be exempt from meeting these standards.*

*However, the Panel has retained those standards which are specific to Estuary Estates and are designed to give the area a special character, distinct from the rest of Mangawhai.*

*The Panel considers the implications of leaving the Chapter as notified would adversely impose financial costs to all Plan users in terms of interpreting and administering the Plan provisions.*

*The Panel notes that the landowner of Estuary Estates did not take the opportunity to provide a revised version of Chapter 16 to the Panel, as invited to in the Hearing Report. Despite some limited discussion being initiated, the Panel understands no progress was achieved in preparing a draft chapter by the Estuary Estates landowner for all parties to (consider at a reconvened Hearing date). Whilst that opportunity has now past, the Panel considers the level of change required is reasonably straightforward and does not have district-wide ramifications and therefore it does not support a separate variation process for this chapter, rather seeking to make these changes now.*

*The Panel considers these changes allow for more streamlined consistency between district wide performance standards and reduced administration costs and costs related to resource consent application preparation, without adversely affecting the special character and intent of Chapter 16."*

16. The incorporation of standards from other zones within the Plan again undermines the 'standalone' statement made in Chapter 1 of the PDP and adversely imposes financial and administration costs to all future landowners in terms of interpreting and administering the Plan provisions.

17. Of primary concern to Estuary Estates are the following consequential amendments:

- Objectives and Policies of the Plan (including but not limited to Chapters 2 – 7 for Non-Complying Activities) if resource consent applications fall to be considered as Discretionary or Non-Complying Activities (Sections 16.1.3, 16.7.2.4, 16.7.2.5, 16.7.5(b), 16.10.9.1);
- Objectives and Policies of the Plan if resource consent applications fall to be considered as Restricted Discretionary Activity (Sections 16.7.2.3);
- Inclusion of District Plan Methods, Staging and Implementation 16.5.1(k);
- Removal of reference to non-notification with respect to Controlled and Restricted Discretionary Activities (Sections 16.7.2.2, 16.7.2.3)
- Requirement for ‘non-permitted’ activities to have regard to matters of discretion (i.e. requires Controlled Activities to have regard to matters of discretion as well as matters for control) (Section 16.7.4, 16.10.8.1);
- Amendments to Assessment Criteria 16.7.4.1(g) **Natural Environment** (not necessary nor intention of development to purely source native revegetation);
- Inclusion of Assessment Criteria 16.7.4.1(n) **Natural Hazards** (natural hazard assessment has been undertaken as part of PC22, no further assessment is considered necessary);
- Inclusion of Note to Section 16.7.6 **Activity Standards and Development Control Modifications (Discretionary Activities)** (all relevant rules should be contained within Chapter 16);



- Rules 16.8.1.2 **Landscaping** and 18.8.1.3 **Green Network** is not a definitive permitted activity standard;
- Amendments to Section 16.8.2 **Development Control Rules** (do not understand meaning of this inclusion);
- Amendments to Rule 16.8.2.11 **Earthworks** (deemed not applicable);
- Inclusion of Rules which reference other Chapters of the Plan (16.8.2.12, 16.2.13, 16.8.3 – 16.8.10, 16.9.4.2 - 16.9.4.5, 16.10.10.4(1), 16.10.10.4(3), 16.12.3.3(c)iii) (All rules should be incorporated into Chapter 16 to achieve one standalone Chapter);
- Inclusion of Rule 16.8.11 **Traffic Intensity** (undermines prescriptive nature of Chapter 16 and will require otherwise permitted (commercial / business) activities to seek consent);
- Amendments to Rule 16.9.4.1(2) **Road Performance Standards – Table**;
- Inclusion of Assessment Criteria 16.10.8.2(i) (natural hazard assessment has been undertaken as part of PC22, no further assessment is considered necessary).

### **Relief Sought**

- Limiting Objectives and Policies for Discretionary or Non-Complying Activities Chapter 12;
- Deletion of District Plan Methods, Staging and Implementation 16.5.1(k);
- Restoration of reference to non-notification with respect to Controlled and Restricted Discretionary Activities (Sections 16.7.2.2, 16.7.2.3)

- Amendment of rules 16.8.1.2 **Landscaping** and 18.8.1.3 **Green Network** to read as permitted activity standard;
- Amendment of Sections 16.7.4 and 16.10.8.1 to state ‘restricted discretionary’ activities to have regard to matters of discretion;
- Deletion of amendments to Assessment Criteria 16.7.4.1(g) **Natural Environment**;
- Deletion of Assessment Criteria 16.7.4.1(n) **Natural Hazards**;
- Deletion of Note in Section 16.7.6 **Activity Standards and Development Control Modifications (Discretionary Activities)**;
- Clarification of meaning of amendment to Section 16.8.2 **Development Control Rules** and amend accordingly if necessary;
- Deletion of amendments to Rule 16.8.2.11 **Earthworks**;
- Deletion of all references to rules from other Chapters of the Plan. Incorporate these rules within Chapter 16;
- Deletion of Rule 16.8.11 **Traffic Intensity**;
- Amendments to Rule 16.9.4.1(2) **Road Performance Standards – Table**;
- Deletion of Assessment Criteria 16.10.8.2(i).
- Undertaking any consequential amendment as to detail or substance throughout Chapter 16 to give effect to this appeal point.

#### **APPEAL POINT 4**

18. The legend to Map 56 makes reference to the site as simply 'Estuary Estates' (Chapter 16). It is considered for clarity that Map 56A should be overlaid on Map 56 and the legend amended accordingly.

#### **Relief Sought**

- Amendment of Map 56 Map Series 1 (Landuse) to illustrate Estuary Estates zoning (as shown on Map 56A).
- Undertaking consequential amendment as to detail or substance throughout Chapter 16 to give effect to this appeal point.

#### **APPEAL POINT 5 – ENGINEERING STANDARDS**

19. 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?). In respect to Estuary Estate, the Engineering Standards 2000 were used to plan the site in the manner proposed. Specific design elements, such as road widths, were based on the 2000 provisions and essentially form the basis for the zones proposed. The new standards, specifically the need to vest any road or accessway with eight users or more, is likely to compromise the maximum yield of the development as proposed.

#### **Relief Sought**

- Deletion of all references to Kaipara District Council Engineering Standards 2011 from the Kaipara District Plan, as it relates to the Estuary Estate site.
- Retention of reference to Kaipara District Council Engineering Standards 2000 within Chapter 16 of the PDP.

- Undertaking any consequential amendment as to detail or substance throughout Chapter 16 to give effect to this appeal point.

#### APPEAL POINT 6 – RULE 12.10.3 and 13.10.3

20. 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.”*

21. 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.”*

- 22. Rule 12.10.3(c) erroneously 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.
- 23. 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.
- 24. 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**

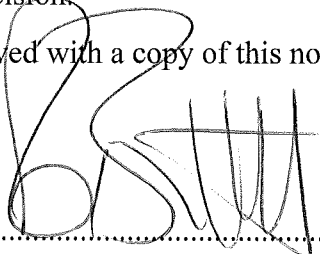
- Make minor amendment to Rule 12.10.3(c) to read 500mm rather than 500m;

- 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.

25. The appellant is prepared to attend mediation subject to first receiving confirmation that the respondent will be represented by fully delegated officials.

26. The appellant attaches the following documents to its notice:

- (a) A copy of its submission.
- (b) A copy of the relevant decision.
- (c) A list of persons to be served with a copy of this notice.

A handwritten signature in black ink, appearing to read 'R E Bartlett', is written over a horizontal dotted line.

**R E Bartlett**

**18 November 2011**

**Address for service of the appellant:**

C/- R E Bartlett  
Shortland Chambers  
PO Box 4338  
Auckland

**Telephone: 09 307 9827**

**Facsimile: 09 366 1599**

**Advice to recipients of copy of notice of appeal*****How to become party to proceedings***

You may become a party to the appeal if you lodge a notice of your wish to be a party to proceedings (in form 33) with the Environment Court within 15 working days after this notice was lodged with the Environment Court.

You may apply to the Environment Court under s281 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 relevant application (or submission) and/or 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 Unit of the Department for Courts in Auckland, Wellington, or Christchurch.

**Contact details of Environment Court for lodging documents**

Documents may be lodged with the Environment Court by lodging them with the Registrar.

**The Auckland address of the Environment Court is:**

Level 2, 41 Federal Street  
(Corner of Wyndham & Federal Streets)  
Auckland

**Its postal address is:**

PO Box 7147  
Wellesley Street  
Auckland  
DX CX10086

**And its telephone and fax numbers are:**

Telephone: 09 9169091  
Fax: 09 916 9090

Name	Postal/AddressLine1	Postal/AddressLine2	Postal/AddressLine3	Postal/AddressLine4
Amanda Jane Barracough	Trounson Park Road	R D 9	Dargaville 0379	
Catherine and John Hawley	18 Lincoln Street	Ponsonby	Auckland 1021	
Craig Shearer	4 Park Road	Titirangi	Auckland 0604	
Department of Conservation (Northland Conservancy)	PO Box 842		Whangarei 0140	
Estuary Estate	PO Box 93		Mangawhai 0540	
Farmers of New Zealand Inc., Kaipara Citizens and Ratepayers Association Inc, Pouto Topu A Trust	PO Box 484		Whangarei 0140	
Fonterra Co-operative Group Limited	c/- Environmental Management Services Limited	PO Box 73024	Auckland International Airport	Auckland 2150
Gabrielle Alispahic-Wintle	P O Box 61		Mangawhai 0540	
Gary Treadgold	62B Colville Road		Dargaville 0310	
Genesis Energy	PO Box 17188	Greenlane	Auckland 1546	
Gordon Phillip Hosking	PO Box 169		Mangawhai 0540	
Helen Curreen	64 Cheviot Street		Mangawhai Heads 0505	
Horticulture New Zealand	PO Box 10 232	The Terrace	Wellington 6143	
Ian Milestone & Gael McConachy	27 Moir Point Road		Mangawhai 0505	
John Bull	4a Black Swamp Road	RD 5	Wellsford 0975	
Jonathan Larsen	PO Box 41 376	St Lukes	Auckland 1346	
Jonathan Hogan	P O Box 14068	Panmure	Auckland 1741	
Kaipara District Council	Private Bag 1001		Dargaville 0340	
Lance Newby	PO Box 744		Whangarei 0140	
Leane Makey	42 Matua Road	Huapai	Kumeu 0810	
Mangawhai Historical Society Inc.	PO Box 91		Mangawhai 0540	
Meridian Energy Limited		PO Box 2454	Christchurch 8140	Attn: Chris Thompson
Natalie Alispahic	PO Box 61		Mangawhai 0540	
New Zealand Archaeological Association	PO Box 1972		Whangarei 0140	
New Zealand Historic Places Trust	Northland Area Office	PO Box 836	Kerikeri 0245	
Northpower Limited	Private Bag 9018		Whangarei 0140	
Owen McShane	1104 Oneriri Road	R D 2	Kiwaka 0573	
Owen Stevens	439 Pahi Road	RD 1	Paparoa 0371	
Peter and Raewyn Harris	PO Box 37		Kiwaka 0542	
Peter and Rose Coles	792 Omamari Road	R D 3	Dargaville 0373	
Ratepayers and Residents of Mangawhai	17 Kapawiti Road	RD 2	Kiwaka 0573	
Riverside Holiday Park	C/- Lamb and Associates Limited	PO Box 302 104	North Harbour 0751	
Rodney District Council	Private Bag 500		Orewa 0916	
Royal Forest and Bird Protection Society of New Zealand Inc	PO Box 108055	Symonds Street	Auckland 1150	
Stella June Woolnough	1083 Kiwaka-Mangawhai Road	RD 5	Wellsford 0975	
Te Uri o Hau and Te Roroa	c/- Wayne Blissett	110 Bank Street	Whangarei 0140	
Telecom NZ Limited	c/- Incite	PO Box 3082	Auckland 1140	
The Guardians of the Kaipara - Nga Kaihiaki of Kaipara	PO Box 88		Wellsford 0940	
Transition Town Kiwaka	c/ S. Dalziel	Kohatu Toa Eco Village	RD 2	Maungaturoto 0587
Transpower New Zealand Limited	Burton Planning Consultants	PO Box 33-817	Takapuna	Auckland 0740
Vector Gas Limited	Private Bag 2020		New Plymouth 4342	