

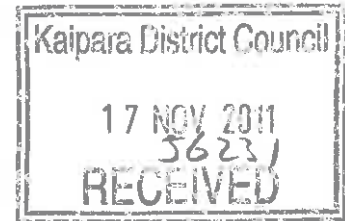
16 November 2011

Kaipara District Council
Private Bag 1001
Dargaville

Our Ref: 1164

Attention: Glennis Christie

Dear Sir,



**Kaipara District Council Proposed Kaipara District Plan
Environment Court Appeal**

Please find enclosed a copy of the notice of appeal to the Environment Court on behalf of Richard & Anne Henry. As the relevant district authority responsible for issuing the Proposed District Plan, the appellant is obliged to serve notice on you. Please consider this letter as service of the relevant information.

If you would like to discuss anything further, please do not hesitate to contact me.

Yours faithfully

PRECISION PLANNING LIMITED

Per:



Kellie Roland
DIRECTOR

3807.06.04

NOTICE OF APPEAL TO THE ENVIRONMENT COURT

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

Richard and Anne Henry appeal 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 received by the Appellant on or about 05 October 2011.
3. While this appeal raises concerns in relation to general planning matters within the PDP, the Appellant is specifically concerned with the identified PDP provisions as they relate to Lot 2 DP 379414, herein referred to as "the subject site".
4. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("the Act").

The general grounds for this appeal are as follows:

- The PDP in its current form adversely imposes financial and administration costs to all landowners in terms of interpreting and administering the Plan provisions.
- The Overlay areas compromise private property rights and unduly restrict the ability to continue existing day-to-day operations, specifically within the Rural Zone.

On this basis, the relief sought by Richard and Anne Henry 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

General submission on Overlays (Chapter 4)

Summary of Reasons for the Appeal

The Appellant does 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 Plan, as they apply to the subject property which is within an identified overlay, adversely impose financial and administration costs to the Appellant in terms of interpreting and administering the Plan provisions and severely restricts the development potential of the subject property.

Relief Sought

- That all overlay provisions and mapping be deleted from the Kaipara District Plan.

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

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

Rural Subdivision Rules (Chapter 12)

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 almost prohibitive, specifically in relation to those properties identified as being within an Overlay Area.

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 subdivision and development planning provisions as a means of managing their district.

It is contended 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.

The Appellant has particular concern with the following Controlled subdivision rules (as outlined in the original submission):

- Rule 12.12.1 General Rural Subdivision
- Rule 12.12.3 Boundary Adjustment

Relief Sought

- Reduce minimum allotment size of Rule 12.12.1 General Rural Subdivision to status quo (4-hectares);
- Remove item (c) from Rule 12.12.3 Boundary Adjustment (reference to 10%)
- 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.

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

Consequential Change to Rule 12.10.1 Excavation and Fill

Summary of Reasons for the Appeal

The Appellant made a general submission in terms of the Rural earthworks provisions of the Plan. The Appellant was generally satisfied with the rule as incorporated into the PDP, subject to minor amendments. However it is noted 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 revised definition essentially encapsulate all forms of earthworks (including digging in ones garden) and 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 Rule;
- 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

Consequential Amendments to Rule 12.10.3 (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 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 12.10 and 12.15.

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.

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

- Allow two dwellings per allotment (Rule 12.10.3) as sought in original submission;
- Make minor amendment to Rule 12.10.3(c) to read 500mm rather than 500m;
- Delete requirement from Rule 12.10.3(c) 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.

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

Kaipara District Council Engineering Standards 2009 / 2011

Summary of Reasons for the Appeal

It is considered that the Kaipara District Council Engineering Standards 2009 (and subsequently, 2011) were not correctly 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?). Council's direction has not been clear in terms of how these standards / rules will be applied in future, noting that they consider the Standards to have been incorporated by way of reference; however it is clear that the Standards actually form the basis of many rules within the Plan.

Relief Sought

- That all references to Kaipara District Council Engineering Standards 2011 are deleted from the Kaipara District Plan.
- A variation to the Plan is undertaken to appropriately incorporate the standards into the Plan.
- Make any consequential amendment as to detail or substance throughout Chapter

16 to give effect to this appeal point.

Dated this 07 day of November 2011


.....

Richard and Anne Henry


.....

Address for Service

Richard and Anne Henry

470 Tara Road,

RD2

Kaiwaka 0852

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) 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).

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.

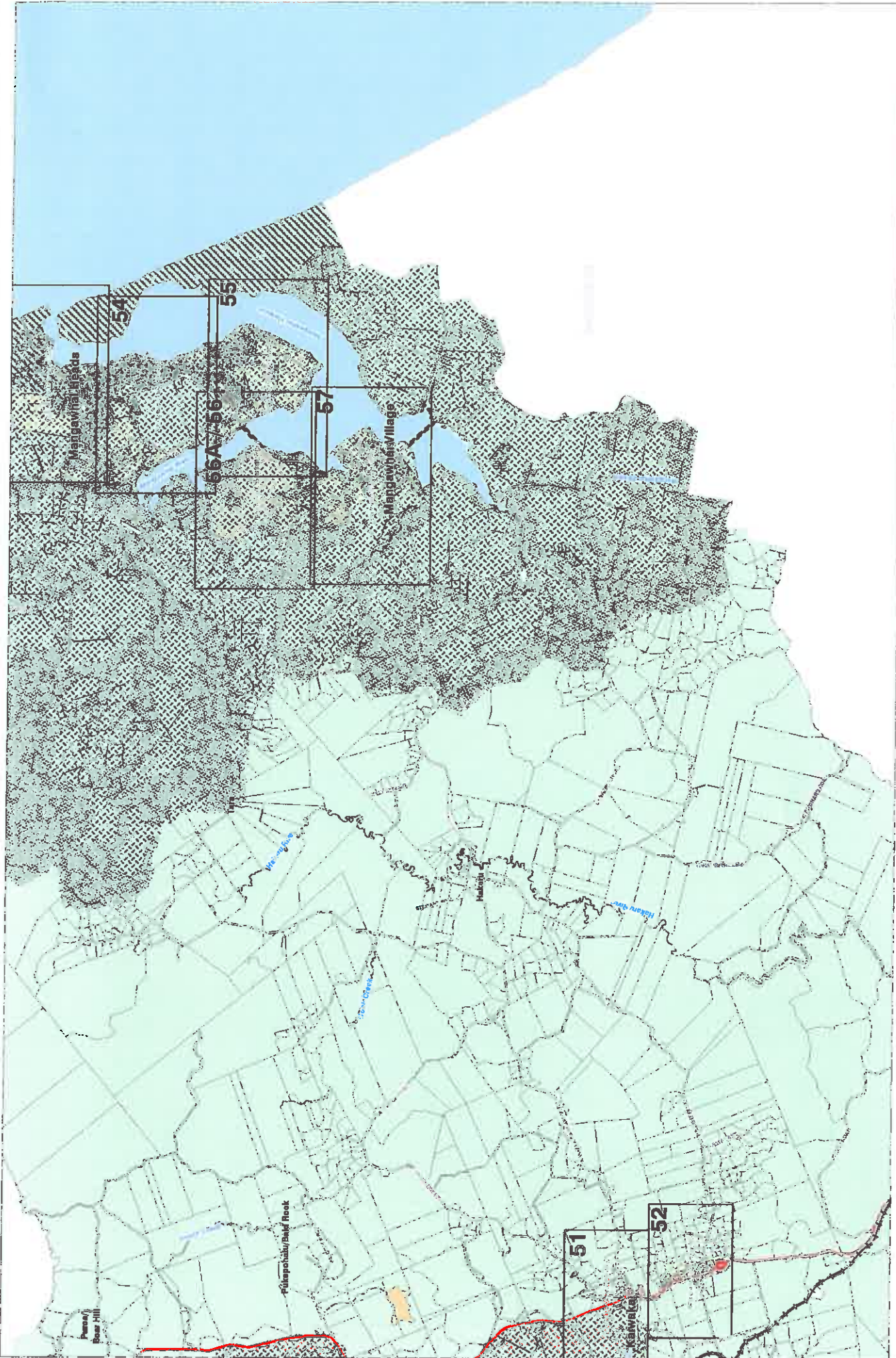
You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

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.



Map 21 of 60

Map Series One

Land Use

UPDATED MAPS AS A RESULT OF DECISIONS ON THE PROPOSED PLAN (AS NOTIFIED)

Scale: 1:50,000 @ A3

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