

Form 7

**Notice of appeal to Environment Court against decision on proposed policy
statement or plan or change or variation**

Clause 14(1) of Schedule 1, Resource Management Act 1991

To: The Registrar
Environment Court
Po Box 7147
Wellesley Street
Auckland 1141

Kaipara District Council appeals against part of a decision of Kaipara District Council on the Proposed Kaipara District Plan.

It made a submission on that plan.

It is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

It received notice of that decision on 5 October 2011.

The decision was made by Kaipara District Council.

The part of the decision that Kaipara District Council is appealing is:

- (a) Rule 17.10.2
- (b) Consequential amendments – there may be a need to alter other rules and definitions as a consequence of any changes to the above.

The reasons for the appeal are as follows:

Rule 17.10.2 controls earthworks within Areas of Significance to Maori. Council's submission sought to reword so that *sites* rather than *areas* of significance to Maori would be subject to earthworks controls. The decision's version drafting of this rule still controls earthworks within *areas* of significance to Maori. Rule 17.10.2 is not easy to read, and therefore could be interpreted to have the unintended outcome of requiring consent to all earthworks around the fringes of both the Kaipara and Mangawhai Harbours.

The relief Kaipara District Council seeks is that Rule 17.10.2 is re-drafted so that *sites* within Areas of Significance to Maori are subject to earthworks controls. Suggested amended wording follows:

Rule	Parameter	Heritage Activity Performance Standard
17.10.2	<p>Earthworks <u>within 20m of a site containing a Category A Resource or Feature identified in Appendix 17.1 or within an Area of Significance to Maori identified in Appendix 17.2</u></p>	<p>Any activity <u>involving earthworks within 20m of any Category A heritage resource or feature listed in Appendix 17.1 or within an Area of Significance to Maori identified in Appendix 17.2</u> is permitted if:</p> <p>a) The activity does not involve earthworks within 20m of any Category A heritage resource or feature listed in Appendix 17.1 or Area of Significance to Maori identified in Appendix 17.2; and</p> <p>a) Earthworks do not exceed 500mm in depth or cumulatively 100m² in area per site unless <u>in the case of a Category A heritage resource or feature listed in Appendix 17.1</u> the Site Management Protocol (Rule 17.9.1) and <u>in the case of both sites in Appendix 17.1 and 17.2, the</u> Accidental Discovery Protocol (Rule 17.9.2) are followed; and</p> <p>b) It complies with the relevant Rules and Performance Standards in Part B.</p> <p><u>Note 1: In addition to the Standards above, any works that would modify, damage or destroy an archaeological site require approval from the New Zealand Historic Places Trust in accordance with the Historic Places Act 1993.</u></p>

Please note the text above in black, including underlined text, is from the Decisions version of the Proposed Kaipara District Plan. The text in red underlined is the suggested amended wording for the purpose of this appeal.

I attach the following documents to this notice:

- (a) A copy of Kaipara District Council's submission
- (b) A copy of the Chapter 17 Heritage Decision Report

- (c) A copy of the Addendum to Chapter 17 Heritage Hearing Report
- (d) A list of names and address of persons to be served with a copy of this notice

Stephen Ruru
Chief Executive Officer

Date: Monday 14 November 2011

Address for service of appellant:

Kaipara District Council

Private Bag 1001

Dargaville 0340

Telephone: 09 439 3123

Fax: 09 439 6756

Email: council@kaipara.govt.nz

Contact person: Mark Vincent, Policy and Planning Manager

d) A list of names and address of persons to be served with a copy of this notice

New Zealand Historic Places Trust
Northland Area Office
PO Box 836
Kerikeri 0245
Attn: Sherry Reynolds

Owen Stevens
439 Pahi Road
RD1
Paparua 0371

Mangawhai Historical Society
PO Box 91
Mangawhai 0540
Attn: Bryan Clark

New Zealand Archaeological Association
Po Box 1972
Whangarei 0140
Attn: Jonathan Carpenter

Stephen Martin
C/- Osbourne Hay (North) Ltd
PO Box 16
Warkworth 0941
Attn: David Hay

Farmers of New Zealand inc, Kaipara Citizens and Ratepayers Association inc, Pouto Topu A Trust
PO Box 484
Whangarei 0148
Attn: Ian Walker

Kaipara District Council
Private Bag 1001
Dargaville 0340
Attn: Stephen Ruru

Ref	Plan Ref.	Explanation	Amendment Sought by Submission
40.	Chapter 17 – Heritage	Rule 17.10.2 – Amend parameter to remove reference to an area of significance to Maori. These are wide areas as these are areas of historical association with Maori but do not necessarily contain physical features that require protection. Rework so it is clear we want to protect physical features.	Rework 17.10.2 Parameter to read: "Earthworks on a site containing a Category A Resource or Feature or an area of significance to Maori." Add note of explanation: Note 1: A site of significance to Maori could include a physical feature such as (but not limited to) middens, kumara pits or a pa site
41.	Chapter 20 Reserve Management Units	While the Rules in Table 20.10.1 and 20.10.2 indicate the precedence of this Chapter over other provisions of the Plan this is not clear in the Rules explanation in 20.8	Amend Section 20.9 to clearly indicate that the intention of the Plan was to make activities identified in an adopted Reserve Management Plan take precedence over other Rules (e.g. the underlying zoning).
42.	Chapter 21 Designations	Add a new designation to Appendix 21.1 Schedules of Designations. Add the new designation to Map Series Two – Map 8	A designation that was approved in 2002 was never included in the Operative Plan. The designation is for Broadcast Communications Ltd for a "Broadcasting, telecommunications (including radio and microwave communications) and ancillary and associated purposes" facility. The legal description of the site is Section 14 Block III Tangihua Survey District.
Map Errors			
43.	Mapping of D9 on Map 15	Designation is being shown over Lot 2 when it should be over Lot 1.	Amend D9 to be shown on Lot 1.
44.	Appendix A: Growth Areas Mangawhai	Mangawhai spelled incorrectly in legend. Colour for the Greater Growth Area should be changed as it needs to be differentiated from the other Growth Area Maps. (In other words, the greater growth area of Mangawhai, which corresponds to the growth area catchment, should be distinguishable from the 'growth area' hub which is shown on other maps).	Rework legend as follows: Mangawhai Mangawhai Structure Plan Policy Areas providing for Residential, Business or Industrial growth. Change the shading for the Greater Growth area catchment to be different from other growth area maps.

Submission Point	Submitter Name	Hearing Report	Page	Decision
FS492/1	Mangawhai Historical Society	17	21	Be Rejected
FS482/1	New Zealand Archaeological Association	17	21	Be Rejected

4.17.2 Reasons for Decision

1. The Panel considers Category B items need to be included in a schedule but notes that there are no rules for these items, as discussed in more detail in Section 4.7.2 of this report.
2. The Panel notes that Other Methods such as incentives and education provide a more positive mechanism to achieve the outcomes being sought from the Plan.

4.17.3 Changes required to Chapter 17 as a result of Decision

No changes required.

4.17.4 Consequential Amendments.

No consequential amendments required.

4.18 [PAN 17.18] – Rule 17.10.2

Several submissions were received on Rule 17.10.2 Earthworks on a Category A Resource or Features or an Area of Significance to Maori. Submissions seek the following:

1. Include archaeological sites in the Parameter of the Rule.
2. Remove permitted activity threshold for earthworks on recorded archaeological sites and require avoidance of earthworks on archaeological sites or that Site Management Protocol is followed.
3. Clarify whether the rule applies to Appendix 17.2: Nohoanga Areas and Areas of Significance to Maori
4. Restrict earthworks within 20m of any heritage resources in Appendix 17.1 and 17.2.
5. Include a note to clarify a site of significance to Maori.

4.18.1 Decision

That submissions:

Submission Point	Submitter Name	Hearing Report	Page	Decision
413/67	New Zealand Historic Places Trust	17	23	Be Accepted in Part
FS496/1	Stevens, Owen	17	23	Be Accepted in Part
FS492/1	Mangawhai Historical Society	17	23	Be Accepted in Part
FS482/1	New Zealand Archaeological Association	17	23	Be Accepted in Part
25/4	Martin, Stephen	17	23	Be Accepted in Part
FS511/2	Farmers of New Zealand Inc., Kaipara Citizens and Ratepayers Association Inc., Pouto Topu A Trust	17	23	Be Accepted in Part
118/40	Kaipara District Council	17	23	Be Accepted in Part
FS496/8	New Zealand Historic Places Trust	17	23	Be Accepted in Part

4.18.2 Reasons for Decision

- The Panel notes that Policy 17.5.8 directs Council to protect the spiritual, cultural and historical values of Areas of Significance to Maori from inappropriate subdivision, use and development. On this basis, Nohoanga Areas and Areas of Significance to Maori identified in Appendix 17.2 are explicitly included in Rule 17.10.2.
- Further to this the Panel notes that areas not identified in the Plan can still be protected through the Historic Places Act 1993 if it is defined under that Act as an archaeological site:

An archaeological site is defined under the Historic Places Act 1993 as either—

archaeological site means any place in New Zealand that—

(a) either

(i) was associated with human activity that occurred before 1900; or

(ii) is the site of the wreck of any vessel where that wreck occurred before 1900;

and

(b) is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand.
- The Panel accepts in part the submissions to the extent that changes are made to Rule 17.10.2 to improve the readability of the rule and consistency with the Policy Framework.
- The Panel notes that the NZAA Site Recording Scheme can be used by Council to inform applicants where there are archaeological site.

4.18.3 Changes required to Chapter 17 as a result of Decision

[Amend Rule 17.10.2 (Parameter) as follows]

Earthworks on a site containing a Category A Resource or Feature identified in Appendix 17.1 or an Area of Significance to Maori identified in Appendix 17.2.

[Amend Performance Standards of Rule 17.10.2 as follows]

<p>Any activity on a site listed in Appendix 17.1 is permitted if:-</p> <p>a) the activity does not involve earthworks within 20m of any <u>Category A heritage resource or feature listed in Appendix 17.1 or Area of Significance to Maori identified in Appendix 17.2</u>; and</p> <p>b) Earthworks do not exceed 500mm in depth or cumulatively 100m² in area per site unless the Site Management Protocol (Rule 17.9.1) and Accidental Discovery Protocol (Rule 17.9.2) are followed; and</p> <p>c) It complies with the relevant rules and performance standards in Part B.</p> <p><u>Note 1: In addition to the standards above, any works that would modify, damage or destroy an 'archaeological site' require approval from the New Zealand Historic Places Trust in accordance with the Historic Places Act 1993.</u></p>

4.18.4 Consequential Amendments

No consequential amendments are required.

4.19 [PAN 17.19] – Chapter 17 Maps

One submission seeks that the Areas of Significance to Maori is removed from the property at 42 Blackswamp Road Mangawhai and the adjacent land.

4.19.1 Decision

That submissions

Submission Point	Submitter Name	Hearing Report	Page	Decision
02/12	Riverside Holiday Park	17	24	Be Rejected

4.19.2 Reasons for Decision

1. The Panel notes that Areas of Significance to Maori have been identified in the relevant Treaty Settlements process. On this basis, the Panel does not feel it is appropriate to remove this area from the subject sites.
2. The Panel considers that mapping of these areas is an appropriate method to respond to Council's Part 2 requirements (particularly Section 6 and 8 of the RMA).

4.19.3 Changes required to Chapter 17 as a result of Decision

No changes are required.

4.19.4 Consequential Amendments

No consequential amendments are required.

Memorandum

To: Proposed Kaipara District Plan Hearing Panel **Date:** 3 June 2010
From: Gemma Henry
Copy: Amelia Linzey
Subject: Addendum to Chapter 17 Heritage Hearing Report

1.1 Clarification of submission 25/4 (Page 23 of Chapter 17 Hearing Report)

As outlined in the Chapter 17 Heritage Hearing Report:

Submission 25/4 opposes Rule 17.10.2 and seeks it be amended so that it does not apply to sites which are identified as 'Area of Significance to Maori'. The submitter states that Rule 17.10.2 is unclear and requires clarification as to whether it applies to only the sites listed in Appendix 17.1 or whether it applies to all sites identified as being 'Area of Significance to Maori'. If it applies to all sites of 'Area of Significance to Maori' this is opposed as it restricts beyond the other rules controlling earthworks in the plan. FS511/2 supports submission 25/4 because the relief sought is appropriate, necessary and consistent with the provisions of the RMA.

1.1.1 Interpretation

In the Chapter 17 Hearing Report, it has been assumed that this submission point is requesting to remove the term 'sites of significance' from Rule 17.10.2. After communication from the submitter, further clarification has been provided on their intent regarding this submission and it is now understood that this submission point is seeking clarification of whether Rule 17.10.2 applies to only those sites listed in Appendix 17.1 or all sites identified as being 'Area of Significance to Maori'. As such, a revised assessment for this submission point is to be included in the Chapter 17 Hearing report as outlined below.

1.2 New Assessment to be included in the Chapter 17 Heritage Report

The 'Parameter' of Rule 17.10.2 states that this rule applies to an 'area of significance to Maori'. However, the 'Heritage Activity Performance Standard' of Rule 17.10.2 states that only Appendix 17.1 applies to this rule. It is noted that Appendix 17.1 may include those sites that are registered as features or sites of significance to Maori and not 'areas of significance to Maori'. As such, it is recommended that the 'Parameter' of this rule be amended as follows to provide clarification of this matter. It is recommended submission 25/4 be accepted and that Rule 17.10.2 be amended as follows:

Parameter

Earthworks on a site containing a Category A Resource or Feature or an Area of a Site of Significance to Maori

Gemma Henry

Planner

Direct Dial: +64-9-300 9240
Email: gemma.henry@beca.com

Reviewed and confirmed by Amelia Linzey.