

IN THE MATTER of the Resource Management Act 1991

AND proposed private plan change 3 from **NORTH CITY DEVELOPMENTS** to the Kaipara District Council to rezone Lot 1 DP 341981 situated along Molesworth Drive, Mangawhai from Residential to Commercial.

DECISION BY INDEPENDENT HEARING COMMISSIONERS

1.0 THIS DECISIONS REPORT

This decisions report contains the decisions of the independent hearing commissioners regarding the proposed private plan change and the submissions to it. The report includes a commentary on the issues raised regarding the proposed private plan change as part of the basis for the decisions that are made on it and the submissions to it. Those issues were largely addressed in the planning report (**section 42A report**) on the application, prepared in accordance with section 42A of the Resource Management Act 1991 (**RMA**) by Council planner Paula Hansen. That report includes a recommendation on the submissions. It also includes a recommendation that the proposed private plan change be approved, with some amendments.

2.0 APPOINTMENT

The Kaipara District Council (**Council**) appointed two independent hearing commissioners (**Commissioners**), pursuant to section 34 of the RMA, to hear the proposed private plan change and the submissions to it and to make the associated decisions.

3.0 COMMISSIONERS

Alan Watson

Burnette Macnicol.

4.0 APPLICANT

Russell Maloney, applicant

Alan Webb, legal counsel

Kylie McLaughlin-Brown, planner and landscape architect

Dean Scanlen, traffic engineer.

5.0 SUBMITTERS

Malcolm Peter Davey

Marion Elizabeth Naish

William Grant Naish

Glennis Stormont

Helen Curreen

Mangawhai Museum and Historical Society

Of the above submitters, only Ms Curreen presented at the hearing. Ms Stormont attended but did not wish to present.

6.0 COUNCIL OFFICERS

Pauline Hansen, Policy Planner

Howard Alchin, Policy Manager

Matthew Smith, Civil Engineer.

7.0 OTHERS

We record that there were other persons attending but not participating in the hearing.

8.0 THE HEARING

The hearing of the application and the submitters was held at the Mangawhai Club in Mangawhai on 13 April 2017. For the applicant, we heard legal submissions from Mr Webb followed by evidence from Ms McLaughlin-Brown and Mr Scanlen. Ms Curreen

then addressed us as one of the submitters. The Council was represented by Mr Alchin, Ms Hansen and Mr Matthew Smith who each addressed details of the proposal and the evidence that had been presented by the applicant and the submitter.

Following the presentations at the hearing it was adjourned so that the applicant could provide further information requested by the Commissioners, that being particularly an amended plan change document that addressed some of the comments made by the Commissioners during the hearing. That was received on 21 April 2017 and is discussed below. The hearing was closed on 26 April 2017.

9.0 THE PROPOSED PRIVATE PLAN CHANGE

The proposed private plan change (**the plan change or the proposal**) is to rezone an area of approximately 7,863m² of land legally described as Lot 1 DP 341981 (**the site**) from Residential (Harbour Overlay) to Commercial (Harbour Overlay), as those zones are currently provided for in the operative Kaipara District Plan 2013 (**the District Plan**).

The site is located at the corner of Molesworth, Estuary and Norfolk Drives, Mangawhai Heads. The plan change proposes to limit the height of buildings on the site to 8m and to provide a building setback of 20m in an area identified on the site where parts of the boundaries of the site adjoin the Residential zone. It is also proposed to include a new rule requiring restricted discretionary activity assessment for any development on site with the assessment criteria including consideration of the landscaping of the site, the design of buildings and the Crime Prevention Through Environmental Design (**CPTED**) principles. Other than the height of buildings, all other rules for the Commercial zone are to apply as currently written in Chapter 14 of the District Plan.

The plan change does not seek to change any of the objectives and policies that apply to the Commercial zone for land use and subdivision. Neither does it seek to change the Harbour Overlay provisions. In other words the existing objectives and policies which set performance standards for land use activities and those that apply to subdivision would be applied to the area that is subject to the rezoning proposal.

The proposal is to provide all services for stormwater and wastewater off site. This includes connection to the reticulated wastewater system.

The application for the plan change is supported by the following technical reports:

- Economic Impact Assessment Report - ME Consultants;

- Geotechnical Report - Cook Costello;
- Service Plan and Molesworth Drive Roading Upgrade Plans/Wastewater;
- Stormwater Report - Morphem Consultants;
- Traffic Impact Assessment – Engineering Outcomes Limited;
- Landscape and Visual Assessment - Threshold Associates;
- Acoustic Report - Marshall Day;
- NES Assessment (Contaminants in Soils to Protect Human Health) - ENGEO Consultants.

10.0 CHANGES SOUGHT TO THE DISTRICT PLAN

The proposal would result in the following changes to the District Plan to give effect to the plan change request:

- Alterations to Map 55 showing the area that is to be zoned Commercial, the 20m building setback from the Residential zone for the 8m building height restriction and the 2.5m planted buffer area.
- Changes to Rule 14.10.5 to provide for the 8m building height restriction within the 20m building setback.
- Introduction of a new Rule 14.10.30 requiring a resource consent for a restricted discretionary activity including assessment criteria that includes the integration of Appendix 25A of the District Plan – Mangawhai Design Guidelines, for the site including the use of CPTED principles into the Commercial zone rules.
- Other consequential changes as required to integrate the plan change into the District Plan.

11.0 SUBMISSIONS

The plan change was publicly notified for submissions on 19 August 2016 with submissions closing on 23 September 2016. Six submissions were received. The summary of submissions was notified 18 November 2016 with the period for further submissions closing 2 December 2016. No further submissions were lodged. There were no late submissions.

The concerns raised in the submissions cover a range of matters but have been

conveniently grouped and discussed in the section 42A report under the following broad categories:

- Providing for Commercial Activities in Mangawhai;
- Residential Amenity and Effects of Commercial Activities;
- Traffic and Pedestrian Matters;
- Geotechnical and Stormwater Matters.

We adopt those groupings for the purposes of this decisions report, including for both our discussion of these issues below and for our resultant decisions.

In addition, we note the matter raised in legal submissions¹ for the applicant regarding the no complaints covenant registered on the Naish and Stormont properties. The intention of that covenant is to prevent those parties submitting against the application.

We have not taken the approach sought in the legal submissions that the submissions should be set aside or that the submissions should not have been allowed to be lodged. We see this as a private property issue and separate to the matters that we are to consider under the RMA. Accordingly we have considered all of the evidence put before us and weighed it on its merits. We note the legal submissions did seek, in the alternative, that the submissions be given no, or very little weight and it was pointed out that neither submitter appeared at the hearing.

12.0 STATUTORY CONTEXT

In order to provide a context to our considerations and decisions we provide an outline of the statutory context of a private plan change request below. We note that this statutory context is provided in detail by the Council planner in the section 42A report.

12.1 Procedural issues

On 28 June 2016 the Council formally resolved to accept the plan change request and not adopt it as a Council-initiated plan change. The plan change then proceeded to notification as a private plan change.

12.2 A Decision on Private Plan Change

¹ Legal submissions from Alan Webb dated 13 April 2017, paragraphs 30 to 37

We are to make a decision under delegated authority on the plan change provisions and the matters raised in the submissions to the plan change. Our decisions must include reasons for acceptance or rejection of submissions and may also address submissions in groups and include consequential alterations to the plan change and any other relevant matter arising from submissions. In that respect, we may either decline, approve or approve the plan change with modifications and are to give reasons for our decisions

12.3 Statutory Consideration of Plan Changes in terms of sections 74, 31, 75 and 32 RMA.

Section 74(1) requires that a territorial authority prepare and change its plan in accordance with:

- its functions under s31 of the RMA;
- the provisions of Part 2 of the RMA;
- its duty under s32 of the RMA; and
- any regulations.

Section 74(2) requires that in addition to the requirements of sub-sections 75(3) and (4), a territorial authority shall have regard to the following matters of relevance to this plan change:

- any proposed regional policy statement or proposed regional plan;
- any management plans and strategies prepared under other Acts; and
- relevant entries in the Historic Places Register.

Councils must not have regard to *trade competition or the effects of trade competition* in terms of section 74(3) and Schedule 1 clause 29(1B).

Section 31 specifies the functions of territorial authorities including;

- the establishment, implementation and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district, (including for the purposes of avoidance or mitigation of natural hazards and the maintenance of indigenous biological diversity); and
- the control of effects of use, development or protection of land, including noise and control of subdivision.

Section 75 states what District Plans must state (s75(1)) and what they may state (s75(2)). It also outlines that a District Plan must give effect to (s75 (3)):

- (a) any national policy statement; and
- (b) any New Zealand coastal policy statement; and
- (c) any regional policy statement.

and what a district plan must not be inconsistent with (s75(4)):

- (a) a water conservation order; or
- (b) a regional plan for any matter specified in s30(1).

Submission evaluation processes are required to examine the appropriateness of each objective in achieving the statutory purpose of the Act, and the efficiency and effectiveness of policies, rules or other methods in achieving these objectives. Section 32 requires an evaluation of alternatives, benefits and costs undertaken by an applicant (in the case of private plan changes) prior to public notification, and a further evaluation by the local authority before making a decision on the plan change. A section 32 RMA evaluation is also required for any Council-initiated plan changes to set out the issues and options early in the plan change process.

13.0 THE ISSUES

The following discussion of the issues raised in submissions includes an account of the information presented at the hearing as well as our related analysis of the issues raised.

13.1 Providing for Commercial Activities in Mangawhai

The concerns raised in submissions related to the current proposal having been put forward at a time when there are no definite plans of where and how commercial development should proceed at Mangawhai; whether there was a need for further commercial development given the two existing shopping areas; and, the unsightly nature of future commercial development on the site.

These points, and others are addressed in the section 42A report from the Council with which we find we are largely in agreement. Reference is made in the submissions to the Mangawhai Town Plan or the Mangawhai Development Plan. We take those references to both be to the Mangawhai Town Plan, as the Council's planner did in the section 42A report, which is a Council project that is currently being undertaken. We were informed by the Council's planner that this document has not been completed and as such had not been considered by the Council for adoption. Even then it would only have the status of being a non-statutory document until it had been through the

First Schedule process under the RMA.

It is however evident, from the submissions and site visit, that the increasing population at Mangawhai will need further commercial developments and there is an associated need to plan where such development should be provided for. The evidence and site visit showed there was an element of “randomness” to where developments and/or activities occur. This is better managed through a planning process. However, the Council has in recent times reviewed its District Plan, which was made operative in November 2013, and appears to provide for future rezonings and similar to be dealt with by way of plan changes. Part of the reasons for that approach would be that the existing District Plan includes controls to manage the effects of future commercial development on neighbouring properties. There is then the opportunity for an application for a plan change to be made, in accordance with the RMA, and in the manner now made by the applicant.

Ms McLaughlin-Brown referred in evidence to the existing land use consent for the site. Although part of that consent has now expired, it provided for a future business area and boat and car wash down facility on the site. That component of the consent does not expire until May 2018. She also pointed out that the Council had essentially “rolled over” the former District Plan to make it operative in November 2013 and without providing for any additional Commercial zoned land. Ms McLaughlin-Brown quoted from the District Plan² that indicated some reliance was placed on the plan change approach to providing for future growth. The quoted extract in her evidence included:

The Land Use and Development Strategy seeks to provide clear direction on future Growth Areas without placing undue costs and resources on existing and current communities to fully investigate these areas (as would be required for full re-zoning). ... These identify areas for future development and the specific matters that need to be considered to enable the rezoning of these areas.

Her view was that this provides for the initiation of private plan changes to realise economic opportunities. We agree and in the absence of appropriately zoned land such plan change requests can reasonably be expected.

Ms McLaughlin-Brown’s evidence was that the plan change addressed a number of issues that included Mangawhai facing an increasing population and there being a lack of Commercial zoned land to accommodate such growth.

² Evidence of Kylie McLaughlin-Brown, paragraph 22.

We can find no reason to decide against the plan change on the basis of there being sufficient zoned land available for commercial activities and, to the contrary, that the plan change is needed given the clear indications of continuing growth at Mangawhai. In these respects too, we accept the evidence of Ms McLaughlin-Brown regarding the current Commercial zoned areas at Mangawhai Village to the south and at Mangawhai Heads to the north being limited in their ability to expand or grow as they are surrounded by residential activities. This was evidenced further by our site visit. We note further the view expressed by some submitters that the future plans for development on the Estuary Estates land at Mangawhai can provide for future growth. That land lies to the south of the site and whilst future development was approved on the basis of a plan change some 8 years ago, it has not proceeded. It is apparent to us, from the evidence, that some further Commercial zoned land is needed at Mangawhai at this time.

It did however become apparent from our consideration of the submissions and the plan change provisions that there is a need to clarify whether there are different approaches to commercial development/buildings and commercial activity. The plan change seeks, from all the information available to us, to have any proposed development or proposed activity deemed a restricted discretionary activity to enable the range of assessment criteria in the plan change to be applied. The amendments we have made to address this matter ensure this is the case and that any proposed development or proposed activity falls for consideration as a restricted discretionary activity. However, that approach, in the usual manner applying to all activities in any zone in a district plan, would not apply to all subsequent commercial activities that are carried out in an established commercial building on the site. Such changes may well be covered by the successors in title provisions of the RMA or by existing use rights, as provided for in s10 of the Act, and therefore not require resource consent.

13.2 Residential Amenity and Effects of Commercial Activities

The concerns raised in submissions included consistency of commercial activities with the neighbouring residential area and issues of noise, lighting and glare and shading, wind tunnels, shading, security, loss of views and loss of privacy. The matter of reverse sensitivity was also raised.

It is apparent from the submissions that there is a clear preference by the submitters for residential development on the site. However, the plan change is for commercial development and there is therefore the need to assess the impacts commercial

development and activities could have on the neighbouring residential area. In these respects there are controls on commercial activities in the District Plan that are intended to manage the effects of commercial activities and in addition, further controls are proposed as part of the plan change, to apply to the site, that are intended to take account of the residential neighbourhood in which the site is located.

The existing District Plan controls include building height in relation to boundary, building setback from boundaries, screening of storage areas, separation distances, noise limits and lighting and glare provisions. The plan change provides for buildings as a permitted activity up to a height of 12m in accordance with the Commercial zone provisions but limits the height to 8m over that part of the site which is within 20m of the Residential zone to recognise the potential impact of buildings within that area on neighbouring residents. Further, any commercial activity on the site is deemed to be a restricted discretionary activity. That requires a proposal to be assessed against a range of provisions that include particular consideration of the impacts of the proposed activity upon the adjacent Residential zone. The provisions recognise, and provide for avoidance or mitigation of, the potential reverse sensitivity effects between the respective zones.

In addition, the plan change provides additional site specific provisions that seek to ensure that potential reverse sensitivity effects are addressed. These are by:

- Limiting the height of buildings on that part of the site within 20m of the Residential zone to 8m in order to address issues that may arise from development such as effects on daylight and sunlight, visual effects and impacts associated with bulk and dominance of buildings.
- Applying design criteria that seek to ensure development meets urban design principles and provides for suitable design outcomes.

We note that the requirements for landscaping for streetscape enhancement and car parking areas and for landscape buffers between commercial uses and adjacent residential development were removed from the plan change by the applicant during the hearing. This was on the basis that these matters were better addressed by including them as a matter for the exercise of Council's discretion when considering a restricted discretionary activity application. We agree that is a more effective approach in considering impacts on neighbours, particularly given that future development will be discretionary.

The need for details of a proposed development to be more precise and for controls that recognise the neighbouring Residential zone were highlighted in submissions. We

acknowledge the specifics of a proposed development would arguably make it easier to assess the effects of it but then any proposal is assessed in the context of existing zone provisions rather than each and every proposal warranting closer consideration. The plan change provisions take account of the situation of the site being adjacent to existing residential development, as well as it lying adjacent to a primary road providing access to and from Mangawhai. In these respects the plan change includes a building height control that acknowledges the adjacent Residential zone and also requires restricted discretionary activity consideration for any future commercial activities. The revised plan change provisions received as further information during the adjournment of the hearing made it clear, for example, that any application for resource consent, as opposed to any built development, is a restricted discretionary activity.

Whilst the existing and proposed provisions largely provide sufficient recognition of the adjacent Residential zone the submissions demonstrated the need for some further considerations as part of a restricted discretionary activity application. In particular, the opportunity for nuisance elements from any activity in proximity to the site boundaries with the Residential zone, for example servicing or vehicle activity from close to the eastern boundary of the site to the rear of a building on the site. The associated effects could be addressed by way of some limitations on the use of this area but are more effectively dealt with as a matter for discretion in the restricted discretionary activity criteria. In order to address the concern of submitters, that we share, we have added two further matters to the restricted discretionary activity criteria as:

- *Whether the opening hours sufficiently acknowledge the adjacent residential area and whether there are measures to address any potential for disturbance to residents in it.*
- *Whether the use of those parts of the site lying adjacent to the neighbouring residential area recognises the potential to impact on the residents within that residential area by for example, opening and/or operating hours, times for service deliveries and collection, and lighting.*

With the provisions included in the plan change, and the additional provisions included following our consideration of submissions and a site visit, we find the potential effects on residential amenity and, the potential effects of commercial activities are effectively dealt with by the plan change provisions.

13.3 Traffic and Pedestrian Matters

The concerns raised in submissions included traffic generated by the proposal impacting on Molesworth Drive which is already very busy; the risk created by increased traffic to pedestrians; and the impact of the increased traffic on the road intersection.

These concerns, centred around the potential for increased traffic volumes, were addressed by Ms Curreen at the hearing but those concerns were not supported by Mr Scanlen for the applicant nor by the Council's engineer Mr Smith. It is apparent that traffic volumes are increasing with on-going development at Mangawhai and it is then a matter of assessing when and what may be needed to accommodate it, particularly with regard to traffic safety, pedestrians and access out of Estuary Drive and Norfolk Drive to Molesworth Drive.

Roading improvements that would see the Council taking an area of land at the south-western corner of the site were discussed at the hearing. However both the engineers concluded it was not necessary at this time for reasons that included there being no definitive plan regarding what may be needed. The Council's planner Ms Hansen agreed and recommended in her report that no land be taken for this purpose. She stated *this is due to any intersection upgrade that is yet to be finalised and the requirements which are currently unknown.*³

We acknowledge that may be an appropriate response at this time and note further, that the Council can resolve what may be needed at this intersection and arrange to take the land, with that being done sooner if it is considered the land take may be prejudiced by future development on the site. That does not however appear to be the case.

There is no evidence that the traffic volumes in Mangawhai will do other than continue to increase and in that respect the Council does need to consider what roading improvements may be necessary to accommodate the growth in the wider network.

The matter of access, parking and traffic management is otherwise a matter for Council's discretion in assessing any proposals for the site with the assessment criteria including considerations of parking provision, internal access and access/egress. These provisions in the plan change ensure due regard to the traffic movements associated with proposed development on the site and the opportunity for any land take required can be resolved immediately by Council if desired or later as part of the consideration of development on the site. There is also an opportunity to consider pedestrian safety, both external and internal to the site, that being a particular

³ Section 42A report, clause 9.59

concern of Ms Curreen in both her submission and presentation at the hearing. The provisions ensure the Council has the opportunity to influence traffic and parking arrangements associated with future building and activities on the site.

The provisions particularly provide for consideration of the access points to the site so that access can be arranged in manner that it does not impact on the function of Molesworth Drive as a main entry/exit route for Mangawhai, nor on neighbouring residents.

Otherwise we find agreement with the traffic assessment we received with the application and with the evidence of Mr Scanlen, supported by the Council's engineer at the hearing.

13.4 Geotechnical and Stormwater matters

The concerns expressed in a submission are with the reliance on a geotechnical report from 2007 and it leaving some issues unresolved. In particular, relating to the subsoils and the water drainage from this area, and there being no stormwater detention plan for managing stormwater discharges from this area. In these respects, Ms Curreen pointed out at the hearing concerns for harbour water quality, the greater extent of hard surfaces on a site developed for commercial purposes and the reddish-brown colour of water that currently discharges from the site and which was stated to be related to the type of soils and their poor drainage characteristics.

The application includes a geotechnical report and a stormwater assessment report. The former may be from 2007 but, as outlined in the application, the site has remained vacant and has not altered since that time. The report concludes that the land is suitable for development subject to recommendations that include boreholes being used to verify there is no underlying peat stratum and it is noted that any future application for development on the site would require a geotechnical report.

In relation to stormwater, an assessment has been prepared and the details provided in a report included with the application. It demonstrates that stormwater can be adequately designed to ensure that any post-development flows are the same or less than pre-development flows, even with 100% impermeable surfaces as the Commercial zone provides for.

We note stormwater is an assessment criteria included as part of the consideration of future development on the site and in this respect we find it is covered by the plan change provisions.

13.5 Other matters

We found that some of the wording in the plan change provisions, as proposed was not totally consistent and could be amended without changing the intent of the plan change. We raised this matter during the hearing and sought that the issues raised be addressed by way of further information to clarify some of the proposed provisions. In this respect, Mr Webb as legal counsel for the applicant sought time to make some amendments. We granted that request and subsequently received, as stated above, revised provisions and proceeded to close the hearing.

The plan change provisions can also we consider, and as discussed above, be usefully complemented with two further assessment criteria for the purpose of considering applications for restricted discretionary activity consent. The additional criteria are based on concerns of submitters and our visit to the neighbourhood. The additional criteria are:

- *Whether the opening hours sufficiently acknowledge the adjacent residential area and whether there are measures to address any potential for disturbance to residents in it.*
- *Whether the use of those parts of the site lying adjacent to the neighbouring residential area recognises the potential to impact on the residents within that residential area by for example, opening and/or operating hours, times for service deliveries and collection and lighting.*

We have made a further amendment to the plan change provisions to take account of the current Rule 13.10.8 – Separation Distance for Noise Sensitive Activities, whereby a separation distance of 300m is required when establishing a dwelling, otherwise a restricted discretionary resource consent is required for it. The Commercial zoning sought for the site would mean any residential section that currently has not been built on within 300m of the subject site will need resource consent. That is not an intention of the plan change, nor something we desire so we have made a consequential amendment to this rule which will allow for residential dwellings to be established within the 300m parameter without the need for resource consent. That was recommended by the Council's planner and we agree.

We also record that we have had regard to the infrastructure that is available to the site or can otherwise be provided. A stormwater assessment report was provided with the application that confirms that stormwater can be adequately designed to ensure

that post-development flows are the same or less than pre-development flows. These details are confirmed in the evidence from the applicant and by the Council's engineer. There is no water supply available for the site but it is of a size that can provide for an adequate supply from rain water detention and storage, or similar.

The Council's planner confirmed in the section 42A report, that consultation had taken place with Te Uri o Hau as mana whenua. Their response states they have no issues with the plan change but they have also stated they would like to be involved in any discussions regarding the decommissioning of the underground wastewater treatment infrastructure. That infrastructure has previously been decommissioned but we accept their interest in its removal from the site and we have provided for it in the plan change provisions.

14.0 STATUTORY CONSIDERATIONS

The plan change is to be considered in terms of the provisions in the RMA outlined above, under Statutory Context in this decisions report. These provisions were addressed in the application, in the applicant's legal submissions and planning evidence at the hearing and in the section 42A report from the Council's planner. The submissions, and the evidence of the one submitter presenting at the hearing, perhaps understandably focussed on the effects of the plan change, if approved.

We address the statutory context below in terms of the provisions the RMA directs us towards, and in terms of the evidence presented, in order to provide our findings from all the information provided to us.

14.1 National Policy Statements (NPS) and National Environmental Standards (NES)

The NPS relating to the coast is considered below. The other consideration in these respects relates to the former activities on the site falling for consideration under the NES for Assessing and Managing Contaminants in Soil to Protect Human Health. The former activities related to a wastewater treatment facility on the site which once serviced neighbouring residential development. It has been decommissioned and the dripper lines removed and the tanks can be removed when any earthworks are undertaken on the site. The Council planner has reported that the former facility accordingly does not pose any risk to human health of the receiving environment and that a NES assessment, that outlines that there are no issues with respect to contaminants resulting from the wastewater tanks, was provided with the application for the plan change.

The NPS on Urban Development Capacity 2016 is also relevant. The Mangawhai area is an area experiencing growth. The provision of additional commercial land through the mechanism of a private plan change is consistent with the relevant objectives and policies of this NPS which, amongst other things seek to achieve efficient and effective urban environments to provide for social, economic, cultural and environmental wellbeing and also to ensure that there is sufficient feasible development capacity.

We find no NPS of NES matters preventing the plan change proceeding.

14.2 New Zealand Coastal Policy Statement 2010 (NZCPS)

The site is within the coastal environment being within close proximity (some 200m) from the Mangawhai Harbour such that the NZCPS is a relevant consideration. We find in respect of the range of policies that:

- Tangata whenua, Te Uri o Hau, have been consulted and an additional provision is now included in the plan change provisions to recognise their interest in the removal of the wastewater infrastructure from the site.
- The site can be adequately serviced with respect to infrastructure.
- The plan change is consistent with consolidating the existing settlement.
- The site has earlier been deemed to be appropriate for commercial use and development through the granting of resource consent, although we acknowledge this in itself does not necessarily lead to the plan change being approved.
- The plan change would not result in any adverse impact on the visual qualities or natural character of the coastal environment given particularly the built environment around the site.

In these respects we find the plan change is not contrary to the NZCPS.

14.3 Northland Regional Policy Statement (RPS)

The proposed RPS was made operative on 9 May 2016, the day before the plan change application was formally received by Council and adopted for the purpose of going through the First Schedule RMA process for consideration. We therefore consider only the newly made operative document.

There are a number of policies relating to the coastal environment, natural character and waste management and the storage of hazardous substances. In these respects, the site is located in an area with limited natural character as these values have

previously been compromised through residential, and other forms of urban development. It is also located between the three settlement areas at the Village, the Heads and Molesworth Peninsula and in a location which would consolidate development and avoid sprawling or sporadic development. The area to the north of the site was previously assessed as being suitable for a service station, including the storage of hazardous substances with resource consent granted for it. That consent has now expired and that site developed for residential purposes. These matters can all be addressed through the plan change provisions with the storage of hazardous substances also being managed through existing District Plan provisions for the Commercial zone.

Further, we find the plan change to be consistent with provisions relating to providing for continued growth and economic wellbeing at Mangawhai. Reverse sensitivity is dealt with by way of existing controls in the District Plan and by additional controls introduced by the plan change.

In all these respects we find the proposal to be consistent with the RPS for Northland.

14.4 Other regional plans

The other regional plans that have statutory status, include the Regional Coastal Plan, the Regional Air Quality Plan and the Regional Water and Soil Plan. We find agreement with the applicant that none of these plans are of relevance. We note in respect of the Coastal Plan that although the site is within the coastal environment it lies outside the coastal marine area and is not in an area identified as having natural character or landscape values of significance.

14.5 Non-statutory plans and strategies

There are a number of plans and strategies that apply that we have also considered and find that they are either supportive of the plan change in general terms or, in the case of the more specific plans for this area, have been absorbed into the District Plan or are currently under preparation. These include:

- Strategy for the Sustainable Economic Development of Northland (as updated 2007-2011)
- Regional Community Growth Strategy
- Mangawhai Structure Plan 2005 (largely now included in the District Plan)
- Mangawhai Town Plan (under preparation).

14.6 Sections 31 and 32 RMA

Section 31 addresses the functions of territorial authorities under the RMA and includes:

- a) *the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district;*
- b) *the control of any actual or potential effects of the use, development, or protection of land, ...*

We find nothing in the plan change that conflicts with the functions of the Council under the RMA. The plan change provisions take account of any actual or potential effects of the development that may proceed in terms of its provisions.

Section 32 provides for the consideration of alternatives, benefits, and costs and requires that an evaluation must be carried out. A further assessment is required to be made by Council prior to making a decision on the plan change.

The application contains a section 32 analysis which addresses the relevant matters. The plan change does not propose to change or amend or add any objectives or policies to the District Plan and limits any changes to the rules, specifically the proposed amended Rule 14.10.5 and proposed new Rule 14.10.30. It also evaluates five options in concluding that a rezoning to the existing Commercial zone in the District Plan with additional provisions is the most appropriate option.

A further analysis on the section 32 evaluation is required prior to making a decision on a private plan change. We have had regard to all the evaluation material provided with the application and in the evidence for the applicant, along with the section 42A report from the Council's planner. We also note that no submitter challenged the plan change on the basis of the section 32 considerations.

We find that the information provided with the application, together with the additional considerations in evidence from the applicant's planner and the Council's planner, provide for us to conclude that the section 32 considerations of the RMA are met.

As discussed above, under Other matters, an area of potential concern is with regard to the current Rule 13.10.8 – Separation Distance for Noise Sensitive Activities, whereby a separation distance of 300m is required when establishing a dwelling, otherwise a restricted discretionary resource consent is required for it. We have addressed that above and made a consequential amendment to the plan change provisions accordingly. We note that was recommended by the Council's planner and

we agree.

14.7 Part 2 RMA

We find with regard to Part 2, being the purpose and principles of the RMA, the plan change to be in accordance with its sustainable management purpose. It will enable people and communities to provide for their social wellbeing and for their health and safety whilst sustaining the potential of the land resource to meet the reasonably foreseeable needs of future generations and will avoid, remedy or mitigate any adverse effects of related activities on the environment.

In terms of the associated principles of the RMA, the plan change does not impact on any matters of national importance (section 6) and has particular regard to the efficient use of the land resource, the maintenance and enhancement of the local amenity values and of the quality of the local environment (section 7). In these considerations, and of section 8 (Treaty of Waitangi) the interests of Maori have been addressed through the consultation with Te Uri o Hau and the consequent inclusion of an additional provision in the plan change that takes account of their interest in the removal of the earlier wastewater infrastructure on the site.

In all these respects we find that the considerations we are to have regarding Part 2 of the RMA are met.

15.0 CONCLUSIONS

We have considered the relevant statutory matters in the assessment of the plan change and find, from all the information provided to us that it is consistent with the matters we are to have regard to in terms of the Resource Management Act 1991. We have had particular regard to the submissions and made some changes to the plan change provisions to meet some of the concerns.

We find the site is suitable for the rezoning sought and further, that with the amendments made to the plan change provisions, that the potential for any adverse effects are appropriately avoided, remedied or mitigated to the extent they would be no more than minor.

16.0 OVERALL DECISIONS

Acting under a delegation from the Kaipara District Council to hear and decide the proposed plan change and the submissions the Commissioners, pursuant to clauses

29 and 10 of the First Schedule to the Resource Management Act 1991, resolve that:

- **The Proposed Plan Change 3 to the Kaipara District Plan is approved with the modifications described below; and**
- **The submissions which support the Proposed Plan Change and/or seek further changes to the Plan Change are accepted to the extent that the Plan Change is approved with modifications described below; and**
- **All other submissions, including those opposing the Plan Change, are rejected.**

The reasons for the above decisions on the Plan Change are included in the discussion in this decision report and can be briefly summarised as being:

- The Plan Change will assist with the lack of commercial space at Mangawhai, especially in providing for an increasing population.
- The Plan Change controls provide for relevant matters to be assessed as part of restricted discretionary activity consideration of proposals.
- There is an existing resource consent that provides for commercial development on the site.
- The Plan Change can be affected with minimal changes to the District Plan and its provisions. The additional provisions are largely specific to the site rather than applying across the district. The Mangawhai Harbour Overlay remains for the site.
- The relevant provisions of the Resource Management Act 1991 have been addressed and are met.
- The Plan Change is supported by a range of relevant reports from specialists advising the applicant and supported by the Council officers' analysis of the provisions.
- Where appropriate, the concerns of submitters have been taken account of with some amendments made to the Plan Change provisions.

The following records the decisions on the submissions before we provide the modifications we have made as part of our decisions and a final copy of the plan change and the associated planning map.

The decisions on the submissions are grouped, discussed and amendments made in terms of the following broad categories:

- Providing for Commercial Activities in Mangawhai;
- Residential Amenity and Effects of Commercial Activities;
- Traffic and Pedestrian Matters;
- Geotechnical and Stormwater Matters.

We note that under the RMA, individual decisions on each and every submission or the specific relief sought in the submissions is not required but decisions can be grouped in the manner we have done.

The decisions below reference the particular submissions and/or parts of the submission being decided, the submitter's name, a summary of the concern and the decision sought by the submitter. These details are taken from the Council's section 42A report. We then provide our decisions on the submissions and the reasons for the decisions. The decisions are addressed under subject headings as above.

While the relevant statutory matters may not necessarily be referred to directly, we record that appropriate consideration has been given to these and any other relevant matters in making these decisions.

Providing for Commercial Activities in Mangawhai

Sub No.	Sub name	Summary	Decision sought
DPNCD3.6.1	Helen CURREEN	The current Land Use Consent (2007) was granted in a climate of extreme Council dysfunction. This impacted on planning decisions in an environment where the then District Plan was seriously failing to curtail inappropriate development. There was considerable community concern and opposition to development of this and several adjacent sites at the time.	No specific relief is sought.
DPNCD3.6.2	Helen CURREEN	This area is seen as Mangawhai Gateway. It should look lush green and appealing for people driving north up the causeway. Commercial development - large buildings,	That the application is declined and the current consent lapse and the rezoning remain Residential (Harbour

		parking and signage would be unsightly.	overlay).
DPNCD3.6.5	Helen CURREEN	Mangawhai already has two shopping areas and lots of quite random commercial development. The Estuary Estate's plan within the current District Plan will provide for any future need of commercial and business development. This application represents piecemeal commercial development and is simply very poor planning.	That the application is declined and the current consent lapse and the rezoning remain Residential (Harbour overlay).
DPNCD3.6.6	Helen CURREEN	This application is in the absence of any actual proposal for the site and requests a further loosening of Council planning controls.	That the application is declined and the current consent lapse and the rezoning remain Residential (Harbour overlay).
DPNCD3.1.1	Malcom Peter DAVEY	Commercial activities should be contained to the current Village and Heads Commercial zones.	That the land not be designated Commercial but retain its current Residential status.
DPNCD3.7.1	MANGAWHAI MUSEUM AND HISTORICAL SOCIETY INC.	This area must be aligned with the proposed Mangawhai Development Plan. We are aware that a group has been formed to undertake this planning process and have a concern that this lot may not be consistent with the final Mangawhai Development Plan.	I would encourage communications between both parties to ensure consistency with this development plan.
DPNCD3.7.2	MANGAWHAI MUSEUM AND HISTORICAL SOCIETY INC.	Mangawhai Museum and Historical Society Incorporated wish to be heard in all discussions relating to the intended use (residential or commercial) of the area.	Regardless of whether this area is rezoned or not, Mangawhai Museum should be consulted with throughout this process in its entirety due to the close proximity.
DPNCD3.7.3	MANGAWHAI MUSEUM AND HISTORICAL SOCIETY INC.	I need confirmation of ability by you as Council to keep prudent controls in place, even if this area is rezoned. Mangawhai is already a very fragmented town when considering residential vs commercial. One of the goals of the Mangawhai Development Plan is to reduce	No specific relief sought.

		the risk of this continuing. Good communication between landowner and community should result in a positive outcome.	
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Decisions

- 1) **Reject submission points 3.6.1, 3.6.2, 3.6.5 and 3.3.6 of Helen CURREEN** as the focus of the Plan Change is on how the proposed changes will fit with the District Plan structure in terms of Objectives and Policies, giving effect to the Regional Policy Statement, and to ensure that Part 2 RMA matters are met rather than to the merits of a specific development. Appropriate controls already exist in the Commercial Zone and the proposed additional rules will help strengthen the provisions already in place rather than weaken the provisions. Two additional assessment criteria are added, as a consequence of submissions, to take account of the neighbouring residential area, these additional criteria relating to opening and/or operating hours, service deliveries and collections and lighting on that part of the site close to the Residential zone. No Changes to the Proposal.
- 2) **Reject submission point 3.1.1 Malcolm DAVEY;** and
- 3) **Reject submission point 3.7.1 of the MANGAWHAI MUSEUM AND HISTORICAL SOCIETY INC.** as it seeks consistency between the Proposed Plan Change and a document, the Mangawhai Town Plan or Development Plan that is not yet completed and is subject to change. This is also likely to be a non-statutory document. No Changes to the Proposal; and
- 4) **Accept in Part submission point 3.7.2 of the MANGAWHAI MUSEUM AND HISTORICAL SOCIETY INC.** as the Plan Change process allows an opportunity to be heard in terms of what development may occur onsite, however in terms of future development, the right to be heard or have a say on a development is limited to the process that is undertaken. For example if a Resource Consent is needed or not. No Changes to the Proposal.

Reasons for the decisions:

- 1) The Mangawhai Town Plan has no documents at this stage that can be used to assess the Proposed Plan Change against, and the Plan Change and Mangawhai Town Plan follow two different processes that are not currently compatible in terms of the RMA. The Plan Change is following a formal process under the RMA while

the Mangawhai Town Plan is following a non-statutory process which has no statutory timeframes attached to the process.

- 2) The Mangawhai Museum and Historical Society Incorporated can express their views through the Plan Change process at a hearing which they had indicated they would do. Any development that occurs whether as a Residential or Commercial Zoned site will be subject to the RMA provisions. These may or may not require consultation with neighbouring property owners. Restricted discretionary activity status for future proposals will provide sufficient opportunity for input by neighbouring property owners if there are effects that warrant this input.
- 3) The Proposed Plan Change introduces new provisions for the site which are tighter than the existing Commercial zone rules. These provisions are in addition to the existing Commercial zone and are directed to the particular circumstances of the site and are complemented by provisions added by the Hearing Commissioners.

Residential Amenity and Effects of Commercial Activities

Sub No.	Sub Name	Summary	Decision sought
DPNCD3.6.3	Helen CURREEN	The area behind is residential and this land should also be consistent with that for the benefit of the adjacent residents.	The area behind is residential and this land should also be consistent with that for the benefit of the adjacent residents.
DPNCD3.3.2	Marion Elizabeth NAISH	Security, lack of privacy, noise and unattractive surroundings that do not enhance this part of Mangawhai need to be addressed.	Plan Change 3 should not proceed. The developer should apply for a more precise development with more detail of proposed use of the land, so that any future work can benefit all in the area.
DPNCD3.4.1	William Grant NAISH	As the longest boundary connected to this land we could be affected in many ways -loss of privacy, noise, ambient lighting at night, security to our property from people using the Commercial area.	Refuse the Plan Change. Let the developer apply for a precise development under current discretionary activities allowed for residential areas. This way we can all have a say on what happens. With the change to Commercial the developer can do pretty much as they want.
DPNCD3.4.2	William Grant NAISH	This is a quiet residential area. We don't need 12m high buildings restricting	Refuse the Plan Change. Let the developer apply for a precise development

		views, creating shading and wind tunnels.	under current discretionary activities allowed for residential areas. This way we can all have a say on what happens. With the change to Commercial the developer can do pretty much as they want.
DPNCD3.5.2	Glennis STORMONT	Have opening hours been discussed as living in close proximity to an all night station would be most disturbing to myself and other property owners bordering and living near to the proposed development.	No specific relief sought.

Decisions:

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| <ol style="list-style-type: none"> 1) <i>Reject submission point 3.6.3 by Mrs Helen CURREEN.</i> 2) <i>Reject submission point 3.3.2 by Marion Elizabeth NAISH.</i> 3) <i>Reject submission point 3.4.1 and submission point 3.4.2 by William Grant NAISH.</i> 4) <i>Accept in part submission point 3.5.2 by Mrs Glennis STORMONT.</i> |
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Reasons for the decisions

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| <ol style="list-style-type: none"> 1) The existing Commercial zone provisions combined with the proposed new provisions in the plan change will adequately address reverse sensitivity issues associated with security, lack of privacy, noise, lighting and unattractive surroundings. The Plan Change controls, as proposed have particular regard for activities on that part of the site close to the Residential zone boundaries. Those controls have been complemented with additional provisions following the consideration of the submissions. 2) Should an all-night service station or similar be proposed in the future then the opening hours along with other associated effects can be considered as part of a restricted discretionary activity application. Similarly, with respect to the times for any servicing that may be sought on that part of the site close to the Residential zone boundary. |
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Traffic and Pedestrian Matters

Sub no.	Sub name	Summary	Decision sought
DPNCD3.6.7	Helen CURREEN	Traffic in the area is already a problem and creating risk for pedestrians. The Museum has just developed	That the application is declined and the current consent lapse and the rezoning

		the Molesworth driveway as their main entrance (counter to their consent). This will only make matters worse.	remain Residential (Harbour overlay).
DPNCD3.1.2	Malcolm Peter DAVEY	Traffic generated by commercial on this site would impact on Molesworth Drive which is already a very busy road impacted by museum and the activity zone.	That the land not be designated Commercial but retain its current Residential status.
DPNCD3.3.1	Marion Elizabeth NAISH	Ours is a small one exit street (Norfolk Drive) consisting of mostly permanent residents either young families or retired. Increased traffic is of concern. School bus stop is on Estuary Drive, on boundary of this land.	Plan Change 3 should not proceed. The developer should apply for a more precise development with more detail of proposed use of the land, so that any future work can benefit all in the area.
DPNCD3.5.1	Glennis STORMONT	A vehicle survey seems to have been taken in 2008 which can no longer be relevant given the number of permanent households which have increased in the surrounding area including Estuary Drive. Vehicles from adjoining areas use Estuary Drive as access to Molesworth Drive. What plans have been made to accommodate traffic turning from one street to another, especially given the variable speed limits in close proximity to the intersection?	Confirmation that the proposed development does not encroach on the safety of the vehicle and pedestrian traffic in the area.
DPNCD3.5.3	Glennis STORMONT	Pedestrian traffic which involves the museum, the proposed period village adjacent to it and also the existing commercial area in Molesworth Drive has increased over the years and would also need to encompass any new development on the site.	Confirmation that the proposed development does not encroach on the safety of the vehicle and pedestrian traffic in the area.

Decisions:

- 1) Reject submission point 3.6.7 by Helen CURREEN.**

- 2) **Reject submission point 3.1.2 by Malcolm Peter DAVEY.**
 3) **Accept in part submission point 3.3.1 by Marion Elizabeth NAISH.**
 4) **Accept in part submission points 3.5.1 and 3.5.3 by Glennis STORMONT.**

Reasons for the decisions

- 1) Additional developments can be expected to continue on the Molesworth Peninsula which will also impact the intersection of Estuary and Molesworth Drives. Those developments and the Plan Change for the site will create an opportunity to upgrade the intersection. The land indicated as possibly being required for an intersection upgrade is unlikely to be affected by the Plan Change and is not required at this time in terms of the evidence provided on this matter.
- 2) A peer review of the traffic assessment generally confirmed the information within the traffic assessment submitted with the Plan Change. It is agreed that vehicle and pedestrian safety should be considered when the site is developed. The restricted discretionary activity approach to future development will provide for that to be the case.
- 3) Vehicle and pedestrian traffic will continue to increase at Mangawhai. In this respect it has already be recognised that the road intersection will need upgrading in future regardless of the outcome of the Plan Change.

Geotechnical and Stormwater Matters

Sub No.	Sub Name	Summary	Decision sought
DPNCD3.6.4	Helen CURREEN	The current application to some extent depends on previous reports for the 2007 application. The Geotechnical Report for instance leaves some issues unresolved. In particular the subsoil of this area (Peat Swamp) and the water drainage from this whole area adjacent to Molesworth Drive. This is further acerbated by Council's repeated failure to have a stormwater detention plan for water from this area.	That the application is declined and the current consent lapse and the rezoning remain Residential (Harbour overlay).

Decision

- 1) **Reject submission point 3.6.4 by Helen CURREEN.**

Reason for the decision

- 1) Geotechnical issues that may be affected by stormwater can be managed through appropriate design when development of the site occurs. This is included as part of the restricted discretionary activity consideration of future development on the site.

The following modifications are made to the text of the Plan Change 3:

- Rule 14.10.30, Special Provisions, revision of the Rule as submitted by the applicant at the hearing in accordance with Attachment 1 in order to clarify the wording, to

make the wording more consistent with the Resource Management Act 1991 and to remove the provision relating to a 2.5m planted buffer given that can be considered as part of the revised provisions.

- Planning Map, consequential amendment to the planning map showing the subject site to remove the planted buffer.
- Rule 14.10.30, adding two additional assessment criteria to provide for consideration of opening hours and the use of those parts of the site lying closest to the Residential zone.
- Rule 13.10.8, consequential amendment to provide for residential development within 300m of the site, which would otherwise require restricted discretionary activity consent with the modifications.
- Rule 14.10.30, Assessment Criteria, amendment to add a criterion relating to consultation with the local Iwi group regarding any proposed removal of the former wastewater facility from the site.

The final Plan Change provisions and a plan of the subject site for inclusion in the Kaipara District Plan are included as Attachment 1.



Alan Watson

Chair, for Hearing Commissioners Burnette Macnicol and Alan Watson
19 May 2017

Attachment 1: Final Plan Change provisions for inclusion in the District Plan

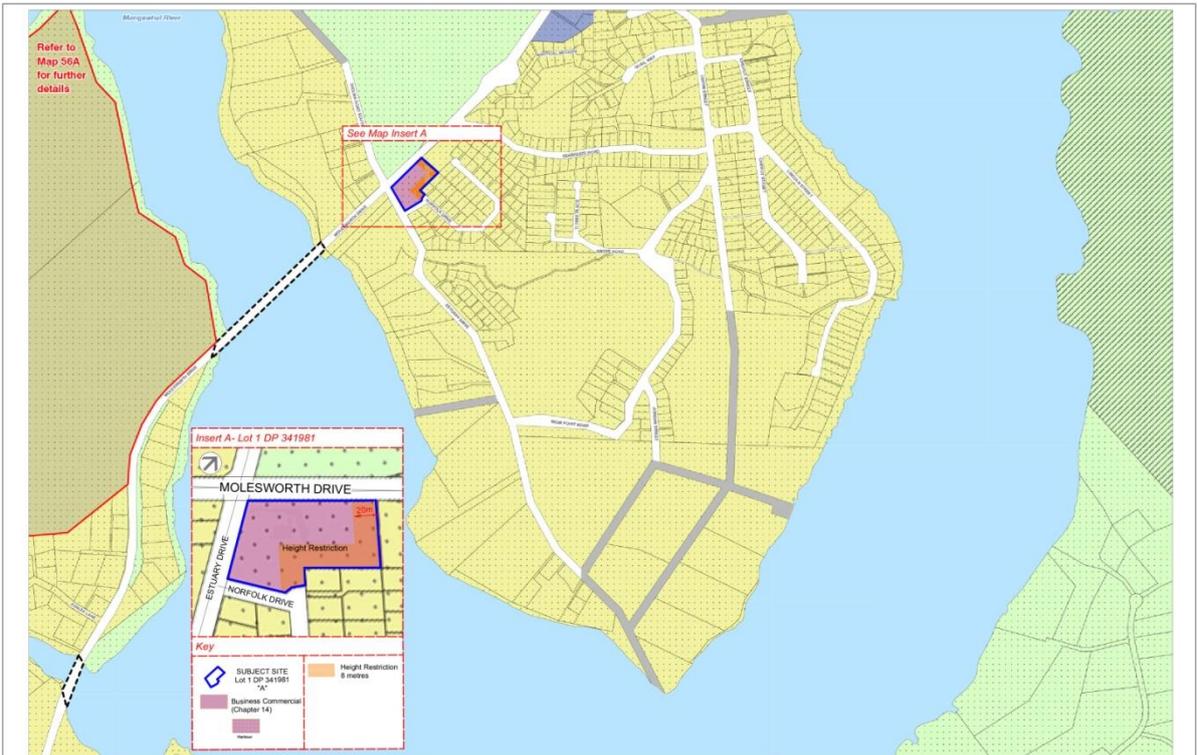
Rule	Parameter	Permitted Performance Standard	Activity	Activity Status if the activity does not meet the Performance Standard	Assessment Criteria
14.10.5	Maximum Height	(1)Commercial Zone Only Any building is a Permitted Activity if: a) <i>The building does not exceed 12 metres in height except on Lot 1 DP 341981, Area Marked A on Planning Map 55 where the Special Provisions in 14.10.30 apply. This is the site at the corner of Molesworth Drive, Estuary Drive and Norfolk Drive at Mangawhai.</i>		Restricted Discretionary Activity	Assessment Criteria to remain status quo under provision 14.10.5

...

14.10.30	Special Provisions	(1) Lot 1 DP 341981, Area Marked A on Planning Map 55. Any building or establishment of an activity on Lot 1 DP 341981 notated on Planning Map 55 as "A" will be a restricted discretionary activity and the Council's discretion will be limited to the matters over which the Council has retained discretion, and the assessment criteria set out in this Rule 14.10.30.		Restricted Discretionary	Council will restrict its discretion to the following matters when considering and determining an application for resource consent: <ul style="list-style-type: none"> a) Provision of infrastructure; b) Geotechnical issues; c) Access, parking and traffic management; d) Pedestrian and cycleway safety, connections and linkages e) Landscape, visual connections and residential amenity; f) Reverse sensitivity; and g) Crime prevention through environmental design. The Council will consider the following assessment criteria when considering and determining an application for resource consent: <ul style="list-style-type: none"> a) Whether any built development (including car parking) is supported by a design statement (report) prepared by a suitably qualified professional; b) Whether the proposed development is serviced by adequate infrastructure for wastewater, stormwater, potable water, power and telephone; c) Whether the proposed
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				<p>development is supported by adequate geotechnical reports;</p> <p>d) Whether the design and layout of the proposed development provides for adequate access to the proposed buildings, sufficient onsite parking, internal access capability and access/egress from the main entrance(s) and whether such arrangements avoid adverse effects on the road network and neighbouring properties;</p> <p>e) The extent to which pedestrian and cycleway connections and visual links between Estuary, Molesworth and Norfolk Drives are provided for;</p> <p>f) Whether a landscape plan has been provided to demonstrate the provision of landscape amenity and/or to avoid remedy or mitigate adverse visual amenity effects for areas fronting the road boundaries, and/or the residential boundaries of the site;</p> <p>g) Whether buildings fronting the road boundaries of the site have active street frontages, and whether appropriate amenity is provided for with activities to be established in those areas;</p> <p>h) Whether the buildings are consistent with the Mangawhai Design Guidelines (sections 5 and 6 in particular);</p> <p>i) Whether the design of any building ensures that infrastructure services and communication devices are concealed and/or treated as part of the overall design of any building;</p> <p>j) Whether reverse sensitivity effects on adjacent residential areas are considered and addressed;</p> <p>k) Whether the Ministry of Justice National Guidelines on Crime Prevention through environmental design (CPTED) have been implemented in the design of buildings and infrastructure on the site;</p> <p>l) Whether opening hours sufficiently acknowledge the</p>
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				<p>neighbouring residential area and whether there are measures to address any potential for disturbance and loss of amenity;</p> <p>m) Whether the use of those parts of the site lying closest to the neighbouring residential area recognises the potential to impact on those residents by for example, measures such as opening and/or operating hours, service deliveries and collection and lighting; and</p> <p>n) The extent of consultation that has been carried out with the local Iwi authority regarding any proposed removal of the former wastewater facility from the site.</p>
13.10.8	Separation Distance for Noise Sensitive Activities	<p><i>(3) Except the following is a permitted activity and is excluded from the Standards of 13.10.8:</i></p> <p><i>Any noise sensitive activity within 300m of the cadastral boundaries of Lot 1 DP 341981 being the site at the corner of Molesworth Drive, Estuary Drive and Norfolk Drive at Mangawhai.</i></p>		



Key

	SUBJECT SITE Lot 1 DP 341981		Height Restriction 8 metres
	Business Commercial (Chapter 14)		Residential



Scale: 1:7,500 @ A3
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KAI PARA DISTRICT PLAN - OPERATIVE VERSION - NOVEMBER 2013

Map Series One
 Land Use : Mangawhai

Map 55 of 80

