BEFORE THE ENVIRONMENT COURT

ENV-2021-AKL-

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

IN THE MATTER of an appeal pursuant to Clause 14 of the First Schedule to the RMA against the decision of the Kaipara District Council on Proposed Plan Change 78 to Chapter 16 of the Kaipara District Council Operative District Plan

BETWEEN Clive Richard Gerald Boonham

Appellant

AND Kaipara District Council

Respondent

NOTICE OF APPEAL

Dated 09 June 2021

To: The Registrar
Environment Court
Auckland

INTRODUCTION

1. I, **Clive Richard Gerald Boonham** (the appellant) appeal against a decision of Kaipara District Council of 28 April 2021 accepting and adopting the recommendation of the Hearing Panel (the Panel) in respect of Private Plan Change 78 (PC78) in respect of Chapter 16 (Estuary Estates) of the Kaipara District Council's operative district plan.

2. For the sake of clarity, I also appeal against the recommendation to the Kaipara District Council made by the Panel in respect of PC78 on 12 March 2021.

3. I made a submission, an additional submission and a further submission on PC78 and presented a statement of evidence and oral evidence at the hearing of PC78 in support of those submissions.

4. I am not a trade competitor for the purposes of section 308D of the Resource Management Act.

5. I received notice of the decision of the Kaipara District Council on 30 April 2021.

6. The decision was made by the Kaipara District Council (the Council).

PART OF THE DECISION APPEALED

7. I am appealing against:

- The whole of the recommendation of the Panel, and

- The whole of the decision of the Council to accept the recommendation of the Panel.

REASONS FOR THE APPEAL

Failure to deal with Mangawhai Central proposal lawfully

8. The proposed Mangawhai Central proposal was a significant development, probably the largest ever in Kaipara, and certainly in Mangawhai. The proposal was first presented to the Council and the Mangawhai community in 2017.

9. Mangawhai Central Limited (MCL) had purchased Estuary Estates which had its own Chapter 16 in the Council's operative district plan. It was pivotal to the proposed development that Chapter 16 would be largely replaced through a private plan change that would enable the Mangawhai Central development to proceed on the scale proposed.

10. The proposed development triggered the Significance and Engagement Policy of the Council and required significant statutory decision-making because of the significant effects on the community and the character of Mangawhai, the need for a significant increase in wastewater infrastructure (a "significant activity"), along with the appropriate funding, and all the other considerations associated with such a major development. These, in turn, triggered the need to consider the requirements of the Local Government Act 2002 (LGA 2002) in respect of statutory decision-making and statutory consultation, the Council's Engineering Standards and the Mangawhai Spatial Plan, and the National Policy Statement relating to Urban Development (NPS-UD 2020).

11. In particular, the significance of the proposed development required decision-making by the elected members, the governing body of the Council (section 41 LGA 2002), under sections 76 – 81 LGA 2002. It

also required statutory consultation with the community pursuant to sections 81 to 87, 93 to 94, and especially section 97.

12. The Mangawhai Central website includes a timeline which states that: "Subdivision and Plan Change lodged with Council in late 2017". If that is correct then it was on an informal basis. However it does show that by that date the Council was fully aware of how MCL intended to proceed with its development.

13. The Council failed to deal with the development proposal pursuant to statutory and other requirements. Instead MCL, with the apparent approval of the Council, put the pivotal plan change to one side and proceeded to obtain numerous consents that were in accordance with the proposed development in the proposed plan change, but were actually obtained under the existing Chapter 16 of the operative district plan. The parallel courses of the Chapter 16 processes and the plan change process are illustrated in the Timeline in Appendix A.

14. Most of the consents related to earthworks and fill and were granted on a non-notified basis by the Council. A consent for a supermarket, a main street shopping centre, and a subdivision was granted by a hearing panel, again pursuant to Chapter 16 of the operative district plan. The expert consultants of MCL persuaded the hearing panel that the numerous amendments to Chapter 16 better served the purposes of the RMA and the district plan. Coincidentally, the consented outcome aligned with the proposals under the proposed plan change, which still had no legal status. Subsequent consents for a Bunnings store and a Mobil service station have been granted non-notified by the Council under Chapter 16. Likewise, various consents have been obtained from the Northland Regional Council (NRC) for earthworks and drainage and for consents to draw water from a bore and from two water courses.

15. At the date of the Panel's recommendation 11 consents had been issued by the Council (10 non-notified) and 11 consents had been issued by the NRC. All were issued under Chapter 16. In the PC78

recommendation the Panel stated that "*these consents form part of the existing environment and have some relevance to our recommendation to approve the Plan Change*". No doubt that was one of the reasons for proceeding with consents prior to lodging the plan change application.

16. Effectively, the Council staff incorrectly dealt with the Mangawhai Central proposal by dealing with individual aspects of the proposal as separate matters under Chapter 16 through the RMA consent processes, and did so under delegated authority. By adopting this strategy, decision-making by the governing body and consultation with the community were avoided. Whether this was a deliberate strategy or not is not known.

17. The end result was that there was a fundamental break down in governance. Despite the significance of the proposal, the governing body of the Council, the elected members, did not make any decisions in respect of Mangawhai Central. The statutory decision-making was effectively hijacked by the chief executive and her staff. The elected members were largely unaware of the various consents that were being processed by Council staff. Likewise the community was left completely in the dark and was not involved in any statutory consultation process.

18. The PC78 application was finally lodged with the Council on 03 December 2019, over two years after the first consent was obtained under Chapter 16, and after numerous other consents had been granted or applied for.

19. The acceptance, or not, of PC78 was the last opportunity for the Council to consider its statutory and other obligations that were triggered by the significant development proposal.

Unlawful acceptance of PC78

20. The Council decision on 03 April 2020 to accept PC78 as a private plan change was unlawfully made because:

    a) The decision was unlawfully made under delegated decision-making arrangements pursuant to the COVID-19 Pandemic of 23 March 2020.

    b) The decision was made by only three elected members, Mayor Jason Smith, Deputy Mayor Anna Curnow, and Councillor Peter Wethey.

    c) In making the decision, the three elected members and the chief executive and her staff breached the understanding behind the urgency resolution of 23 March 2020 that only basic core service matters would be decided under urgency and any issue of significance would be deferred until the full governing body could convene.

    d) The three elected members made the decision without any consultation with the other elected members, even though this was possible.

    e) The three elected members made the decision by signing the recommendation of the chief executive and the draft resolution separately and at different times. They did so without any joint consideration of:

        i. The extent of their delegated powers under the urgency resolution and the understanding as to how those powers were to be used.

        ii. The integrity of the advice of the chief executive.

iii. The significance of the decision and the significance of the proposed development.

f) They also made the decision on one of the most significant issues to come before the Council without:

i. Any legal advice on the issue.

ii. Any detailed advice from the chief executive and her staff on all of the various requirements that need to be satisfied before a plan change is accepted.

iii. Any advice on the broader governance issues that were triggered by the proposed significant development and the need to delay any decision on the plan change until the requirements for statutory decision-making and consultation had been complied with.

g) The three elected members simply "rubber-stamped" the flawed recommendation of the chief executive.

h) In failing to comply with their legal obligations, the three elected members showed their eagerness to "push through" the plan change. They also showed their predetermined views on the plan change and the proposed Mangawhai Central development.

i) The recommendation report from the chief executive failed to give the appropriate advice to the elected members:

i. It treated the application as a simple RMA process and failed to consider the broader issues triggered by the significance of the Mangawhai Central development referred to above. This was the last opportunity for the governing body as a whole to consider the Mangawhai

Central proposed development in its entirety as required by the provisions of the LGA 2002.

ii. The decision related to a significant issue that should be decided by all the elected members.

iii. The decision did not come within the core service requirement of the urgency delegation.

j) The chief executive advised in her recommendation of 25 March 2020 that the decision had to be made immediately because of the statutory deadline in the RMA. In addition to the failure to give advice in the previous paragraph, the chief executive failed to advise that:

i. The decision should be deferred pursuant to the advice from Local Government New Zealand in respect of delaying decision-making during the Covid 19 epidemic.

ii. The decision could be deferred under sections 37 and 37A of the RMA.

k) The resolution delegating decision-making under emergency powers was dated 23 March 2020. The chief executive's recommendation was prepared by and dated 25 March 2020. This closeness in dates raises the question of why a decision of such fundamental significance for the future of Mangawhai was not made by the full governing body of the Council before the emergency powers were granted.

l) The timing inevitably raises the possibility that the emergency powers were deliberately granted immediately before the deadline for acceptance of PC78 so that the decision to accept the plan change could be made solely by the three elected members named in the emergency delegation.

m) There was no prejudice or delay to the applicant in delaying the decision-making. The applicant had already obtained numerous consents for the proposed development under Chapter 16 which enabled earthworks and construction to continue. The applicant had delayed in applying for the plan change for 2 years. A further delay to enable the governing body to make a decision on a significant issue in compliance with legislation could not in any way be prejudicial.

Wastewater infrastructure

21. One of the most important issues before the Panel was the issue of adequacy of the provision of infrastructure for the overall development and whether the proposal was "infrastructure ready" as required by the NPS-UD 2020. I am concerned only with infrastructure relating to wastewater and to water supply. Without adequate wastewater services and an adequate water supply the proposed development could not proceed.

22. In respect of wastewater, both the Council and MCL, and their expert consultants, maintained that there was adequate current capacity to accommodate the demands of Mangawhai Central in the Mangawhai Wastewater Scheme (MCWWS). This stance had been adopted in previous consent applications. The scope of PC78 was therefore limited to establishing if those assertions were correct.

Adequate current capacity for Mangawhai Central?

23. To establish whether the MCWWS had sufficient capacity to accommodate Mangawhai Central was a simple mathematical calculation which should have been bread and butter work for the Council engineering staff and all the expert consultants involved.

24. The process involved:

    a) Obtaining an independent expert report on the current capacity of the MCWWS.

    b) Establishing the capacity required (the number of connections) by the proposed development.

    c) Establishing a timeline for when the new connections were needed.

    d) Using this information to calculate if the MCWWS had adequate capacity.

Capacity needed to accommodate Mangawhai Central minimised

25. The first error of the Panel was to minimise the capacity that was needed for Mangawhai Central. It did so in two ways.

26. First, the Panel adopted (at paragraph 142) without question or investigation an incorrect premise advanced by the Council:

    > *142. As a reminder, we must accept that the infrastructure base case includes the 500 dwellings already provided for under the existing Estuary Estates chapter 16 ODP provisions. The relevant additional capacity for our consideration is the 500+/- extra dwelling units proposed by PC 78 above that base case figure*

    That is incorrect. Chapter 16 "permits" a maximum of 500 lots but it does not provide wastewater infrastructure for those lots. This false assertion was rebutted during the hearing, but the Panel clearly preferred to accept the Council version without enquiring further.

27. Second, the Panel adopted (at paragraph 142) the figure of 1000 lots for Mangawhai Central despite the fact no actual figure was ever

suggested or established for the development proposal. Experts considered that there could be as many as 1500 or even 1700 lots based on the proposed amendments to Chapter 16.

28. These two wrong assertions played a large part in the Panel reaching its decision.

Misrepresentations as to the current capacity of the MCWWS

29. According to an MCL consultant, unnamed operators at the MCWWS verbally advised that the scheme "*has capacity to accommodate approx. 850 units from Estuary Estates and any additional units could be accommodated"* with an upgraded or new rising main. This was not only hearsay, it was also incorrect. There was no provision in Chapter 16 for any connections to the wastewater.

30. The Council's section 42A report relied on an expert engineering consultant who advised:

> *Based upon discussions with KDC staff and the review of the documents provided to me as part of my assessment, it is my opinion that the existing wastewater treatment plan does have sufficient capacity to cater for additional connections.*

31. One of the documents provided was the November 2019 WSP report. The conclusion the expert consultant drew from that report, that the MCWWS has sufficient capacity to cater for "additional connections", was technically correct but also highly misleading. The issue was not whether the scheme could accommodate additional unquantified connections, but whether it could accommodate 1,000 to 1,700 connections. In addition the expert consultant failed to make clear that that the whole thrust of the WSP report was that there were only a limited number of connections left before major and expensive upgrades in capacity were needed.

32. This vague assurance of capacity based on hearsay and misrepresenting the WSP report, and other equally vague assurances of adequate capacity, were relied on by MCL and its expert consultants.

33. The Council failed to provide its expert consultants and MCL's expert consultants with all of the recent reports of independent experts on the capacity issues faced by the MCWWS.

34. As the MCL relied solely on the representations of the Council and its consultants, and on its own consultants, as to the adequacy of the current capacity of the MCWWS, there was no need to consider any future planned capacity.

Expert consultants failed to follow the Code of Conduct

35. In establishing their opinions and reaching their conclusion on capacity, the expert consultants for both parties failed to comply with the Environment Court's Expert Witnesses' Code of Conduct. In particular they:

    a) Relied on hearsay statements of Council staff and plant operators, and opinions and conclusions of other experts based on those same sources.

    b) Failed to investigate and establish the actual current capacity of the MCWWS, relying on vague statements such as having "additional" capacity.

    c) Failed to ascertain the actual capacity required by the Mangawhai Central proposal. Without this vital figure no assessment of capacity was possible.

    d) Failed to ascertain the timeline for the connection of units under the Development Proposal. Again this was a vital piece of information for assessing capacity.

e) Failed to consider independent reports, or seek them out, on the issues and the limited capacity of the MCWWS obtained by the Council but not made available during the hearing.

f) Failed to obtain and use all of the above-stated information to calculate the adequacy of the current capacity of the MCWWS and to establish if it had the capacity to accommodate the demand of Mangawhai Central proposal over the proposed time scale.

Panel's decision on the current capacity of the MCWWS

36. In respect of the assertions of current capacity, the Panel:

a) Unreasonably relied on the misrepresentations of capacity by the Council and its consultants and by MCL and its consultants.

b) Failed to give due weight to the evidence of submitters especially in light of the clear misrepresentations of the Council in respect of capacity.

c) Failed to investigate further the contents and conclusions of the November 2020 WSP report, and to seek other relevant reports not disclosed by the Council.

d) Failed to give due weight to the acknowledgement of the Council that there were only 389 connections available before capacity was exhausted. (Note that this revelation was only made in the further information provided by the Council during the hearing recess.)

e) Failed to require MCL to establish the actual capacity needed to accommodate Mangawhai Central.

f) Failed to require MCL to establish over what time scale that capacity would be needed.

"Further information" requested by Panel on planned capacity

37. As a consequence of the compelling evidence presented by submitters during the hearing on the lack of current capacity of the MCWWS, the Panel sought "further information" from the Council in respect of the future planned capacity increases for the MCWWS, along with funding proposals. The information was to be provided during the recess and considered when the hearing resumed in February 2021.

38. The Council responded with further information from Mr Sephton, Council General Manager Structural Services. That information included some of the earlier incorrect assertions as to current capacity, with a refusal to provide details of planning in the draft LTP for 2021/2022 because it had not been finalised. It included vague assertions about what would be included in the draft LTP including a road map to discuss options for increasing capacity in the future. There were no definite plans, within the LGA 2002 meaning, for increasing capacity or any LGA 2002 compliant provisions for funding to increase in capacity.

Denial of fair process and breach of natural justice

39. The Panel wrongly allowed new evidence on a new issue outside the scope of the original application for PC78 to be adduced whilst denying submitters the right to make submissions on that issue.

40. In various interchanges via memoranda with the Panel, during the recess, I objected to the validity of the request for "further" information on the basis that requiring information about future planned capacity was outside the scope of the original PC78 application, and was not therefore "relevant and reasonably necessary to determine the application" under section 41(4) of the RMA. The original application had relied solely on there being adequate current

capacity. The information required was "new" information on a "new" issue.

41. I also highlighted the fact that the Panel had failed to extend to the submitters the same opportunity and right to provide information on the new issue. In addition, the submitters were not being given the opportunity to rebut the submissions of the Council on the new issue before the Panel. I argued that this was a breach of fair process and a denial of natural justice.

42. Even if the Panel accepted that "future planned" capacity was in scope of the original application, the interests of natural justice required that submitters should be entitled to present evidence and rebutting evidence on that issue to counter the submissions that the Panel had allowed from the Council.

43. Despite that, along with another submitter, I provided two further memoranda to the Panel with new information to rebut the further information provided by the Council on future planned capacity. I also presented further evidence to the effect that the Council had misrepresented the current capacity of the MCWWS.

44. At the reconvened hearing in February 2021 the Panel announced that the further information from submitters provided to the Panel on the extended scope of the application and to rebut the further information of the Council, would not be accepted as part of the hearing because "it had not been requested by the Panel".

45. This was a fundamental denial of fair process and a breach of natural justice.

Panel's reliance on questionable further information

46. Despite the incorrect assertions and vague information supplied by Mr Sephton, and despite the refusal to accept any rebuttal evidence from submitters, the Panel (at paragraphs 161 and 162) wrongly relied on

Mr Sephton's further information. The Panel accepted that it was "*Council's present factual position <u>for the purpose of this Plan Change</u>"* and emphasised *"its importance to our decision"*. (My underlining)

47. The Panel appeared to take the view, from the above comment, that the requirement for future infrastructure planning and funding had a lower threshold under a plan change, overlooking the fact that PC78 was part of an ongoing substantial development proposal that was already well under way.

48. At paragraph 166 the Panel actually acknowledged the uncertainty in Mr Sephton's assertions of future planning and that he only "*indicates the route to be taken"*. The Panel also accepted that *"no decisions have been made*" in respect of capacity upgrades, and agreed that "*the upgrades were not secured"*. Yet, despite those concessions, the Panel concluded: "*We take the view that the route ahead is sufficiently certain as to enable us to tick that particular box*".

49. The "further information" provided by Mr Sephton cannot support such a conclusion. It contained no information about planning decisions in terms of the LGA 2002. That is, proposals adopted by the elected members and consulted on with the community. The information provided simply included ideas and options advanced by Council staff for increasing capacity in the future that were to be finalised at a later date. That box should not have been ticked.

50. It is clear that the Council staff did not understand the meaning of planning in the LGA 2002 sense, and considered that any loose proposals or options for the future were sufficient. It is unclear if the Panel was aware of the difference.

Limited capacity and impending capacity crisis ignored

51. The Panel also gave no weight in its decision to Mr Sephton's statement in his further information that there were only 389 connections left in the MCWWS before capacity was reached, and that

they were being taken up through normal growth at the rate of 80 to 100 a year. That meant that capacity would be exhausted - without a single connection from Mangawhai Central - by 2024.

52. The Panel also failed to take into account the statement of Mr Gordon, legal counsel for MCL in his closing address to the hearing, when he advised that the consented supermarket would connect later in 2021 and that the individual lots would start connecting in 2022. That information, taken together with the information in the previous paragraph, made it clear that there was going to be a crisis in capacity in the very near future. That crisis would be even worse because there was no planned capacity in the draft LTP.

53. In fact, the Panel did acknowledge at paragraph 167 that there was an impending crisis in capacity: "*Clearly a new disposal option will be required in due course – and imminently."* However, the Panel adopted the "back-up" check strategy which permitted a lower level of scrutiny of capacity at the plan change stage on the basis that any lack of capacity would be picked up later in the development process. By adopting this strategy the Panel could effectively ignore the evidence of a lack of capacity, and leave it to someone else to make the hard decision later in the process. This is discussed further at paragraph 91 below.

Compliance with NPS-UD 2020

54. The Panel considered at length whether the National Policy Statement on Urban Development 2020 (NPS-UD 2020) applied to the situation, and decided that it did. However, the Panel wrongly decided that the required capacity of the MCWWS was "*infrastructure ready*" in the short to medium term (up to 10 years) adding, "*for the purposes of a plan change*" (paragraphs 57 and 163). Again, the Panel wrongly considered that there was a lesser requirement for infrastructure capacity for a plan change. At paragraph 163 the Panel stated that a "*plan change only provides the structural framework for the development*". Even if that is correct, the imminent crisis because of a lack of current capacity, and a total lack of statutory planning for

future capacity, could scarcely be categorised as a "structural framework for the development".

55. In making that statement the Panel failed to consider the actual wording of the NPS-UD 2020, clause 3.4(3). (See also paragraph 167.) It requires that in the short term (1-3 years), which is clearly the situation in this instance, that there must be adequate existing development infrastructure to support the development of the land, and in the medium term (3 to 10 years) either that there is adequate existing development infrastructure, or funding for adequate infrastructure to support development of the land is identified in a long-term plan. The local authority must be satisfied that that the additional infrastructure to service the development capacity is likely to be available. None of those requirements was satisfied.

56. The Panel acknowledged this in paragraph 168 when it acknowledged in reference to the NPS-UD requirements that:

> *Not all the 'ducks are yet lined up', but they are sufficiently aligned for a plan change purpose.*

Yet another reference to the lower level of infrastructural adequacy required for plan changes. On the facts available in this instance there was very little evidence of capacity to meet the requirements of the NPS-UD. With the crisis looming in current capacity, and the absence of any planned future capacity, it would have been more accurate to conclude that there was a complete absence of ducks to align or line up.

November 2019 WSP report

57. Despite the fact that the November 2019 WSP report stated that it was intended to inform the community and the elected members, it was kept secret by Council staff. It was not revealed to the elected members nor the community. Its existence was discovered because a Council's expert consultant made a passing reference to it, and I

discovered it by accident just before the hearing. I introduced it at the hearing.

58. As noted earlier, the contents of the report were ignored in the submissions and evidence of the expert consultants for the both the Council and the MCL. (Except for the misleading conclusion from the report by a Council consultant.)

59. The WSP report warns of the capacity issues of the MCWWS treatment plant and disposal field, and the substantial cost ($38 million) of an alternative disposal system being required as early as 2026.

60. However, the full content of the report was not considered by the Panel because the Panel clearly gave more weight to the opinions and conclusions of the expert witnesses from the Council and MCL, as opposed to the evidence of a submitter.

Revelation of only 389 connections outstanding

61. The acknowledgment that there were in fact only 389 connections available was made by the Council during the reconvened hearing in February 2021. This was a pivotal piece of evidence that established beyond any doubt that the capacity of the MCWWS was actually worse than described in the WSP report. It was also a fundamental challenge to the integrity and veracity of the opinions and conclusions of the expert witnesses for the Council and MCL. However, it was not considered until the reconvened hearing and was not given the weight that it deserved by the Panel. Again, the Panel wrongly relied more on the opinions and conclusions of the expert consultants.

Final submissions of expert witnesses

62. The final submissions of the expert consultants on the current capacity of the MCWWS in the reconvened hearing did not alter in any way, despite the revelation of the contents of the WSP report and the Council's acknowledgement of there being only 389 connections

remaining. The expert consultants all continued to support the original opinions and conclusions of each other, with no reference to the contents of the WSP report or the revelation of the 389 connections. It appears that the Panel wrongly gave greater weight to this confirmation of those original opinions and conclusions, over the contradictory evidence, solely because of the status of the expert witnesses.

Local Government Act 2002 (LGA 2020) requirements ignored

63. The Panel appears to have been blind-sided by its narrow view of a plan change only triggering the provisions of the RMA and various policies and plans. In my submissions and in my address at the hearing I drew attention to the fact that the development proposal for Mangawhai Central triggered obligations under section 97 of the LGA 2002. I emphasised that in my submissions at the hearing. Section 97 requires that a decision to significantly increase the level of service of a significant activity (the MCWWS) must first be explicitly provided for in a long term plan and the proposal must be included in a consultation document. This was the very issue that submitters had complained of. The Council was issuing consents and approving a plan change for a major, infrastructure-hungry development without the appropriate capacity and without any plans for future capacity and any funding being consulted with the community.

64. No decision on PC78 could be made by the Panel until the Council had complied with its statutory and other obligations in respect of future infrastructure and capacity.

Misunderstanding of "consultation"

65. The issue of the lack of consultation, which was raised by many submitters, was considered by the Panel in paragraphs 214 to 219. The conclusion was that "appropriate consultation has occurred".

66. The Panel misunderstood the complaints and only considered the low level of consultation required as part of a plan change process under the RMA. The actual concerns of the community were that the Mangawhai Central proposal, as a significant proposal, had not been consulted with the community in compliance with the requirements of the LGA 2002. Consents were being issued in secret (non-notified) or, in the case of the supermarket consent, it was advertised on 17 December 2019 and not in the local newspaper. The community and the elected members were unaware of what was happening. The community felt that the Council was doing secret deals with MCL without any transparency or accountability.

67. The problem appears to stem from the fact that the Council chief executive and her staff do not understand the statutory requirements of decision-making and consultation, and that cavalier approach to statutory requirements is encouraged by Mayor Smith and Deputy Mayor Curnow.

68. It is difficult to assess the motivation of those who direct the Council, but it is possible that the Council may have deliberately adopted the strategy to deal with the proposed development piecemeal through RMA processes, thereby avoiding the decision-making and consultation processes in the LGA 2002. It appears to have treated the PC78 process as the final rubber stamp that allowed the development to proceed. It clearly failed to anticipate the resentment in the community and the opposition to PC78 which became apparent in the PC78 hearing process.

Adequacy of water supply

69. Somewhat surprisingly the consents for the supermarket, Main Street and a subdivision, for the Bunnings store and for the Mobil service station were all granted on the representation of the Council that there was an adequate water supply.

70. This was despite the fact that at the public meeting to promote Mangawhai Central in 2019, MCL acknowledged that providing an adequate supply of potable water would be a major problem.

71. The reality of a precarious water supply was conveyed strongly and clearly to the Panel by numerous submitters at the hearing, with emphasis on the changing weather patterns, with rainwater tanks proving to be insufficient, with bores drying up, and water suppliers running out of water.

72. As a result of these submissions the Panel sought further information from the Council on future plans for water supply and the funding.

73. During the recess, Mr Sephton, for the Council, advised in his further information document that the Council would not be providing any reticulated or other water supply to Mangawhai Central.

Supplementary evidence from MCL incorrectly allowed

74. During the recess, the Panel advised that it would receive "supplementary evidence" from MCL to be considered when the hearing reconvened. The Panel specifically clarified that it was not to include new evidence, but was to be limited to "further information to assist the Panel to understand the conclusions already reached by the experts, and/or clarify certain matters".

75. MCL provided information on a new consent, granted by the NRC during the recess, to take water from two watercourses.

Breach of natural justice and fair process

76. Through a memorandum to the Panel, I objected to the broadening of the scope of the water supply issue by introducing a completely new and unheralded source of water secured by an NRC consent just before the reconvened hearing.

77. I pointed out that submitters were being denied their fundamental right in natural justice to make submissions on this new evidence. I also made submissions to the Panel on the new issue.

78. At the reconvening of the hearing in February 2021 the Panel accepted the new evidence of MCL. However, the Panel ruled that information from submitters provided to the Panel in respect of the new water source would not be accepted because it had not been requested by the Panel.

79. As the Panel rejected submissions from the submitters because they had not been requested, then, in a fair process, it should also have rejected the further evidence from MCL on the same grounds, namely that the information had not been requested. Or, more pragmatically, it should have allowed the new evidence from MCL and allowed submitters the opportunity to respond to the new information.

80. This was a fundamental denial of fair process and a breach of natural justice.

No definite proposal for water supply

81. The Panel, at paragraph 147, acknowledged the concern in the community that the MCL development should not exacerbate the existing water supply situation and agreed that it was "*an appropriate concern and one that should be resolved as part of the current plan change"*

82. However, the Panel wrongly adopted a lower level of adequacy of water supply, suggesting that resource consents should be taken at "face value" (paragraph 152) as providing adequate supply <u>on a plan change basis</u>. The Panel acknowledged the matters raised by the submitters, but suggested that these were not impediments to <u>a plan change</u>. (My underlining)

83. During the hearing MCL, through its legal counsel, acknowledged that it had no plans for how the water supply was to be taken, conveyed, stored, treated and reticulated, and could not explain, in light of the Council's refusal to be involved in the supply of water, how MCL was going to cope with the unknown obligations of a "water supplier" once the Water Services Bill was enacted.

84. Despite this acknowledgement by MCL, the Panel held wrongly that when considering the sufficiency of water supply for a plan change such matters as "treatment and reticulation etc", must follow and be resolved prior to actual development and occupation (paragraph 152). In other words, despite what the Panel stated in paragraph 81 above, the provision of a certain and adequate water supply in a plan change application required a lower standard of compliance, and the full assessment could be deferred until later in the consenting process. (See paragraph 91 below.)

85. The Panel satisfied itself that "*adequate provision can and has been made for sufficient water supply for the intended development*". It also suggested misleadingly in paragraph 153 that the two surface water take consents gave certainty of sufficient supply over their 35 year life. In fact a closer examination shows that the consents were issued on the following basis and conditions:

    a) There is no certainty of any quantity of water supply. The consent simply grants the right to draw water up to a certain volume, but only if the required volume is available, and provided that the residual flow does not drop below a certain volume.

    b) The two water courses in question are dried up for a large part of the year. Consequently water is drawn at "high flows" and needs to be stored in a huge (100,000m3) reservoir for use during the "low flows". So storage, treatment and reticulation plans are an essential part of establishing a sufficient water

supply. (Note that the requirement is for a certain and adequate water supply, not just a water source.)

c) The available flow rates in the MCL consultant's report (Williamson Water & Land Advisory Limited) were not based on actual flow rates but were simulated using a long term historical model. Estimates of daily rainfall and evaporation were obtained from NIWA. *"As there were no flow monitoring data available on the streams of interest, parameters were specified based on our professional judgement and understanding of the local soil type and underlying geology."* In other words, the volume of flow available was based on abstract modelling, estimates, and professional judgement. The consultant's concern about the accuracy of the figures was illustrated by the following recommendation:

> *It should be noted, while the catchment flow modelling and reservoir water balance assessment detailed above provide an appropriate preliminary assessment, the catchment flow models have not been calibrated/validated against measured flow data. Therefore, the reliability analysis and assessment of impact on downstream flows is considered indicative relative responses only at this stage, and we recommend installation of flow gauges at both take locations to confirm the median flows.*

d) The NRC report states:

> *The council has no information on median flows within this catchment.*
>
> *This model has been independently peer reviewed and the conclusions of this review stated that, <u>in general</u>, the median flow may be predicted by the model <u>with reasonable confidence</u>.* (My underlining)

The underlined parts suggest that there is no certainty of supply.

e) Each year the NRC may review the allocation of the resource under section 128 of the RMA to deal with any adverse effects on the environment.

Issues with the bore consent

86. The Panel also failed to take into account the limitations on the bore consent:

a) The bore consent gives the right to draw a certain volume of water, but only if it is available.

b) The NRC may review the consent at any time if there is saline intrusion.

c) The NRC may review the allocation of the resource annually under the RMA if there are adverse effect on the environment.

d) The consent was issued of 20 years rather than the normal 35 years because:

Whilst the applicant has demonstrated a need for the water quantity sought, there remains some uncertainty as to the nature of, and water need for, future commercial and residential developments for which the water take has been sought.

e) If a Water Shortage Notice is issued under the RMA the NRC can order a reduction in the amount of water taken or impose a temporary cessation of the flow.

Water Services Bill, the Three Waters proposals and drought

87. The Panel failed to take into account the effect of the Water Services Bill once it is enacted, and how it will affect the MCL's proposals for a water supply, given that the Council will not be involved in any water

supply for Mangawhai Central. The Government's plans in respect of the Three Waters Policy were not considered by the Panel despite the fact that regulations around the supply of water are likely to change dramatically in the near future. There was no evidence to suggest that MCL will be in a position to supply a certain and adequate water supply

88. The Panel failed to take into account the dire warning of submitters about the need for larger and perhaps several water tanks, of bores drying up, and water having to be brought in from Auckland. The historic models used to assess the flow for the bore and the two takes from water courses are all tentative and based on historic data. No provision was made by the Panel for current drought conditions.

No evidence to support the finding of the Panel on water supply

89. In summary, there was no evidence of an *existing* water supply for the development. In respect of *future infrastructure* the Council advised that it would not be involved. MCL advised that it had no current plans for developing the infrastructure to provide a water supply from the three water sources that it had identified.

90. Despite the complete lack of current infrastructure, no plans for future infrastructure, and no certainty of an adequate supply, the Panel proceeded to tick the box for water capacity. Not only that, at paragraph 153 it looked into its crystal ball and speculated that an alternative supply would be available in the future to supply the whole of Mangawhai.

Illusory "backstop" check argument used to allow lower threshold of compliance

91. The Panel wrongly used the argument of there being a "backstop" check on the requirement for infrastructure. It suggested that there could be lower level of wastewater and water supply adequacy at the plan change stage, because any lack of adequacy would be picked up further down the consenting process. This argument is evident in paragraphs 152, 163 and 167 of the Panel's recommendation.

92. The Panel also suggested that a development would stall and be compromised if the lack of adequacy of infrastructure existed at the subsequent stages, and added that that was the development risk (paragraph 152). In taking this approach the Panel deliberately and wrongly minimised the importance of establishing adequacy of infrastructure at the plan change stage. It also ignored the clear evidence that the development was in fact already well under way.

93. The Panel was also aware that a consent was granted in May 2020 for the supermarket, Main Street and a subdivision. The consent was granted by a hearing panel chaired by Mr Greg Hill, who also chaired the PC78 Panel. The consent was granted on the basis of the Council's confirmation that there was currently adequate wastewater capacity and an adequate water supply. Other consents for a Bunnings and Mobil service station have also been granted non-notified on the assurances of Council staff of adequate current wastewater capacity and water supply. The Panel chair, and presumably the other members, were therefore aware that the back-stop check argument did not actually work in practice.

94. I also draw attention to the fact that most of the provisions of Rule 16.3.10 of Chapter 16 relating to staging developments and having infrastructure "operational" are being deleted under PC78.

95. The "backstop check" argument was not raised by any of the parties in submissions, or during the hearing. In its recommendation the Panel therefore wrongly relied on an argument that it had introduced itself.

96. This argument proved to be critical. It was subsequently adopted by Mayor Jason Smith and Councillor Peter Wethey to successfully pressure the other elected members into accepting the Panel's recommendation, on the basis that establishing the capacity of infrastructure at the plan change stage was not essential as it would be dealt with at a later stage of the consent process.

New information post hearing

97. Since the hearing ended in early February 2021, new information has come to light, or the assertions on which the Panel's recommendation was based have been discredited to such an extent that the recommendation of the Panel is no longer "safe".

Contradictory evidence finally accepted

98. During the hearing, the pivotal information in the WSP report and the acknowledgement of the Council that only 389 connections remained were treated like unwelcome guests who challenged the conclusions of the expert consultants. The Panel clearly found it difficult to consider that the expert witness conclusions could be wrong. Consequently, the Panel failed to give the contradicting evidence its due weight. It was only after the hearing that the full significance of the contradictory evidence became apparent.

Historic reports revealed

99. Since the hearing I have obtained a suite of expert reports, through a LGOIMA request, that, with the November 2019 WSP report, paint a challenging picture of the various maintenance and capacity issues of the MCWWS.

Adoption of draft LTP 2021/2031

100. The Panel's request for further information during the recess sought information on: What is the infrastructure planning being undertaken for wastewater disposal and what are the funding decisions?

101. In his response Mr Sephton of the Council did not refer to the contents of the draft LTP because it had not been finalised. He gave his own version on what he believed it would contain. The draft 2021/2031 LTP has now been adopted, has been through the consultation process, and is now being deliberated on by the elected

members. Its actual contents are now available for scrutiny, rather than having to rely on the representations of Mr Sephton during the hearing.

102. The consultation document of the draft LTP includes a section on Mangawhai Wastewater. It contains a jumble of proposals and options and incorrect facts. The financial proposals are incomprehensible and there is complete failure to respond to the concerns of the community about the current status and future of the historic debt for the MCWWS.

103. It appears that neither the Council nor the Panel members actually understand that any decision-making for future planning and funding is obliged to go through statutory processes under the LGA 2002. The so-called "planning" included in Mr Sephton's further information, and the so-called "planning" in the adopted draft 2021/2031 LTP are merely ideas, options or proposals of the Council staff. They have still to be investigated, refined and considered. Once finalised they need to be included in a report to be considered and approved by the elected members before being included in a consultation document in a long term plan if they trigger the Significance and Engagement Policy or section 97 of the LGA 2002. The proposals then have to be consulted with the community, go through the final deliberations of the elected members before they are finally adopted by resolution of the elected members as part of the LTP. Only then do they become the "planning" referred to in statutory documents and the NPS-UD.

104. It is clear that the ideas and options relating to increasing capacity in the consultation document are not "future planning" in the legal sense. The timeline infographic in that document makes it clear that the various options proposed still have to be considered and the decision-making process and consultation will not take place for some years. The only legal plan is for the balancing tank which has been the subject of three reports to the elected members and is now going

through the procurement stage. However, that planning has been carried out under the current 2018/2028 LTP.

105. The consultation document does however make it clear that there are only 389 connections remaining and that they are being used up at the rate of 100 per year through normal growth, without any allowance for Mangawhai Central. With no legal planning for future capacity (except for the balancing tank) there will be a crisis of capacity by 2024, and earlier if the lots in Mangawhai Central start connecting next year.

MCWWS historic debt

106. In March 2021, in response to a LGOIMA request, the Council acknowledged that the model for repayment of part of the historic debt of $58 million has been flawed since 2012 because of a misunderstanding of the capacity of the MCWWS and how many connections it could accommodate. It appears that the $24.9 million of the debt is stranded with no provision for repayment.

107. Despite the huge concern of the community and the elected members, the Council is in denial and has failed to publicly acknowledge what the issues are and how they are to be resolved. In fact it has put out a media release denying that there are any issues with the debt. There is no reference to the historic debt issues in the draft LTP. It is impossible for the Council to make any funding decisions for future wastewater capacity funding until the financial issues have been resolved.

108. The Council is also limited in its options because of the expressed aims in the draft 2021/2031 LTP that rate rises will be kept to less than 5% and that the external debt will not exceed $60 million. That provides very little room for the funding of wastewater infrastructure that is required to meet demand in the very near future, bearing in mind that the 2019 WSP report estimated that a new

disposal field would cost $38 million and would be needed in the near future.

Council decision to accept the Panel's Recommendation

Failure to provide relevant information before making a decision on the Panel's recommendation

109. The Council's chief executive failed to provide the elected members with all of the information necessary for them to comply with their legal obligation to make a fully informed decision on the issue before them. Further the chief executive failed to comply with her implicit obligations under section 42(2)(b) of the LGA 2002 to provide advice to the members that was fair and balanced, and not based on a predetermined outcome.

110. The elected members, by unanimous resolution, had delayed the vote on the Panel's recommendation and asked the chief executive to provide further information on the capacity of the MCWWS and the situation in respect of the $24.9 million historic MCWWS debt. The chief executive issued a report that repeated the factual stance on wastewater capacity taken by the Council staff during the PC78 hearing process, and in the consultation document for the draft LTP. The report failed to address the elected members' concerns on the issues of wastewater capacity and the issues surrounding the historic MCWWS debt.

"Propaganda" media release

111. The chief executive's report was immediately followed by the publication of media release by Mayor Jason Smith and the chief executive, and presumably supported by other persons within the Council. The release was reported almost verbatim in the two local newspapers. The release stated that the historic debt was "*crystal clear*" and that it would be "*paid by developers as the township grows*" and that "*the finances are right on track"*. It quoted the Mayor as

saying that the report from the chief executive to the elected members "*should put to bed any speculation and misinformation that has surrounded the [MCWWS] since the cost overrun 10 years ago*". The release stated that the draft LTP outlined the expansion of the wastewater system over the next ten years increasing the capacity to 5,000 connections.

112. The press release was a deliberate attempt to mislead the community, and to mislead the elected members and to put pressure on them to adopt the Panel's recommendation.

Council meeting of 28 April 2021

Elected members subjected to undue pressure and coercion

113. The staff report accompanying the resolution was biased and slanted to achieve the acceptance of the Panel's recommendation by stating that it was the only option, and by threatening negative outcomes if that course was not followed. Again this breached the statutory obligations of the chief executive under the LGA 2002, and showed the bias and predetermination of all of those responsible for the contents of the report.

114. At the Council meeting, immediately prior to making the decision on the Panel's recommendation, the elected members were given oral "legal advice" from legal counsel for the Council. The advice was biased and slanted to achieve the acceptance of the Panel's recommendation by insisting that it was the only option, and by threatening negative outcomes if that course was not followed. The strength of the legal Council's emphasis on negative outcomes was such that an elected member questioned whether the legal advice was for the benefit for the elected members in making their decision or for the benefit of the Council. The elected member responded to the "advice" by suggesting that legal counsel was "holding a judicial review hammer over our heads", and was "threatening us". The member felt that the elected members were being "railroaded by legal advice".

115. The motion to accept the recommendation of the Panel was proposed by Mayor Jason Smith and seconded by Councillor Peter Wethey. Councillor Wethey had been the deputy mayor when the Mangawhai Central proposal was first presented to the Council. They were both ardent supporters of the Mangawhai Central proposal and highly critical of those who raised any concerns about the capacity aspects of the MCWWS and the financial situation concerning the historic debt and future debt. During the debate on the motion they both expressed extreme views which went beyond their roles as proposer and seconder, confirming their bias and predetermination in respect of the issue. In their addresses supporting the motion both of them adopted the 'back-stop check' argument of the Panel, namely that the decisions on capacity could be left until the consenting process further down the development track. They also reinforced and recommended the slanted approach of the staff report and the advice of legal counsel.

Council decision to accept the Panel's recommendation

116. The decision to accept the Panel's recommendation was passed by 6 votes to 2. Deputy Mayor Anna Curnow had recused herself from the decision-making because of her role as one of the Panel.

117. The decision was legally flawed because:

a) The proposer and the seconder, Mayor Jason Smith and Councillor Peter Wethey had previously shown their bias and predetermination. They should have been recused from proposing and seconding the motion and from voting on the motion because of their clearly illustrated predetermination and conflict of interest.

b) The chief executive failed to comply with her statutory obligations in respect of providing independent information and advice to the elected members.

c) The chief executive and her staff misrepresented the current capacity of the MCWWS.

d) The bias and predetermination of the chief executive and her staff, Mayor Jason Smith, Councillor Peter Wethey, and other persons.

e) The pressure and coercion exerted on the elected members by the chief executive and her staff, Mayor Jason Smith, Councillor Peter Wethey, legal counsel, and other persons.

f) The conflict of interest and undue pressure exerted by Deputy Mayor Anna Curnow

Conflict of interest of Deputy Mayor Anna Curnow

118. The Council erred in appointing Deputy Mayor Anna Curnow as a member of the hearing panel for PC78. This was the first time that an elected member was appointed to such a hearing panel. It was absolutely clear that the issues before the Panel were highly contentious and demanded the appointment of commissioners who were completely independent of the Council.

119. On a narrow view the application for the plan change was an RMA process and therefore an operational matter, and was treated as such by the chief executive and her staff. However, as stated above, the Mangawhai Central development was a significant development that triggered statutory obligations at a governance level under the LGA 2002. There was a fundamental conflict between in the Council between these two statutory processes. It was therefore impossible for an elected member to make decisions in an RMA process when the statutory role of the elected members was effectively being sidelined.

120. PC78 was also highly contentious in that it set the community against the Council. Mayor Smith and former Deputy Mayor Wethey

had shown complete support for the proposal at public meetings and the chief executive and her staff supported the proposal wholeheartedly and readily granted consents. On the other side, the community felt betrayed by MCL and the Council because of their secretiveness and the failure to consult. This was a situation that clearly demanded completely independent commissioners. The Panel chair's repeated protestations at the hearing that Deputy Mayor Curnow was wearing a different (commissioner's) hat was received with complete scepticism by the community

121. To avoid any conflict of interest it would have been necessary for Deputy Mayor Curnow to recuse herself from any Council discussion, consideration, or any decision-making involving Mangawhai Central in any way. As that did not happen, her role as a commissioner was compromised.

122. In addition, Deputy Mayor Curnow owned two properties in Mangawhai and would therefore be directly affected by any operational decision or any governance decision in respect of Mangawhai Central.

123. Although Deputy Mayor Curnow does not represent the Kaiwaka-Mangawhai ward, like all elected members she represents all the ratepayers of the district and has an obligation to act in their best interests.

124. Deputy Mayor Curnow was one of the three elected members who unlawfully accepted PC78, as discussed in paragraph 20 above. In doing so she showed an unquestioning support of PC78 and that she had a predetermined view on the PC78 issues.

125. Deputy Mayor Curnow subsequently showed her predetermination, put pressure on other elected members, and involved herself in certain actions which clearly conflicted with her role as an RMA Commissioner. As an example of the conflict of interest, Deputy Mayor Curnow took part in all Council workshops on

the draft LTP and Council meetings when issues relating to the capacity, future capacity, and funding of the MCWWS were considered. She voted on issues, both prior to, during, and post the hearing of PC78. She also took part in elected members' deliberations on the draft 2021/2031 LTP which included many of the Mangawhai Central issues, especially in relation to future planned capacity and funding.

126. On 21 April 2021 in Mangawhai (post the hearing but before the decision on the Panel's recommendation) Deputy Mayor Curnow chaired the hearing of submissions on the draft 2021/2021 LTP attended by all of the elected members (except for Mayor Smith who was not available). Many of the issues raised by the submitters in their submissions and in person related to the concerns of the community about the representations of the Council about the capacity of the MCWWS and the failure of the Council to respond to community concerns about the historic debt and future funding. Although two days were allocated for the hearings and only half of one day was used up, the Deputy Mayor rigidly applied the limit of 5 minutes per speaker, and effectively prevented the submitters from expressing their critical views on the approach of the Council staff and chief executive, and Mayor Smith to the Mangawhai Central proposal.

127. Other elected members were immediately critical of the attitude of the Deputy Mayor, with one calling it "tyrannical". The submitters present were shocked and obtained the impression that the Deputy Mayor sided completely with the actions and views of the Mayor and the chief executive and her staff in respect of the Mangawhai Central issues. By her behaviour in front of the other elected members and submitters, she clearly showed her predetermination in respect of issues that she had voted on as a Panel member.

RELIEF SOUGHT

128. I seek:

a) An order from the Court that the whole of PC78 be withdrawn or rejected.

b) Costs

Comment on relief

129. MCL was fully aware of the fundamental issues of wastewater capacity and water supply when it first purchased Estuary Estates, and when it planned the development. It was a situation of caveat emptor. It would also have been aware of the statutory and other obligations to provide adequate infrastructure and for the Council to comply with statutory and other requirements.

130. MCL deliberately chose to apply for consents under Chapter 16 and delayed the lodging of PC78.

131. It is abundantly clear, even after the PC78 hearing and recommendation, that there are still very serious concerns about the lack of infrastructure for adequate wastewater services and the provision of a certain and adequate supply of water. This also affects the size of lots in the development. With a shortage of water it will probably be necessary for future lots to have enough space for two water tanks.

132. Without some certainty in respect of these matters the development cannot proceed. It is therefore sensible that PC78 is withdrawn and that the development proceeds as already permitted under Chapter 16. Once MCL has established how it is going to service the development with wastewater services and a water supply, and once the Council has complied with its legal obligations relating to those issues, it is open for MCL to seek a further plan change based on the planned and agreed infrastructure.

133. This will necessarily bring about delay and further costs, but they arise solely because of the approach adopted by MCL to the proposed development.

Attachments

134. I attach the following documents:

a) a copy of my submission;

b) a copy of my additional submission;

c) a copy of my further submission;

d) a copy of the recommendation of the Panel;

e) a copy of the Council's media release;

f) a copy of the Council decision: and

g) a list of names and addresses of persons to be served with a copy of this notice.

Signature: Clive Richard Gerald Boonham

"Clive Boonham"

Date: 09 June 2021

Address for service: Mr Clive Boonham
PO Box 401005
Mangawhai Heads
Mangawhai 0541

Telephone: 0211467099

Email: cliveboonham@gmail.com

APPENDIX A

TIMELINE

DATE	RMA PROCESSES	PC78
2017		
April	Initial viewing by Viranda partners	
23 June	First public meeting	
11 August	Carpark and viewing platform consent issued	
September	Carpark construction completed	
17 December	NRC consents: • bulk earthworks • discharge of stormwater • diversion of stormwater	
Late 2017	Subdivision and Plan change lodged with KDC?	
2018		
April	Second public meeting	
June	First public workshop	
23 August	Heritage NZ earthworks authority	
December	Iwi blessing.	
October	Earthworks consent granted	
2019		
April	Bulk earthworks begin.	
28 May	Bulk earthworks consent. Import fill	
May	Stage 1A earthworks completed.	
6 June	NRC Bore consent granted	
September	New World supermarket announcement.	
5 October	KDC consent for hard fill granted	
October	Third public meeting.	

25 November	KDC consent granted to realign Molesworth Drive with roundabouts	
03 December		PC78 lodged with KDC
17 December	Supermarket, main street and subdivision publicly notified	
2020		
03 April		Council accepts PC78
28 May	Consents granted for supermarket and associated development and subdivision of the service zone.	
May	Molesworth Drive upgrade begins	
13 November	KDC Mobil consent decision granted.	
23-25 November		Hearing for PC78
2021		
7 February		Reconvened hearing PC78
12 March		PC78 Panel recommendation
18 March	KDC Bunnings consent granted	
28 April		KDC accepts PC78 Panel decision

NOTE TO APPELLANT

You may appeal only if—

• you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and

• in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and one (1) copy of this notice with the Environment Court within **30 working days** of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 presently $600.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within **30 working days** of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within **5 working days** after the notice is lodged with the Environment Court.

Within **10 working days** after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, 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).

ADVICE TO RECIPIENTS OF COPY OF NOTICE OF APPEAL

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

• within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and

• within **20 working days** after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a 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 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.