

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

**of an appeal under clause 14(1) of
Schedule 1 of the Resource
Management Act 1991**

BETWEEN

**Douglas Lloyd and Others acting
through Mangawhai Matters
Incorporated**

Appellant

AND

Kaipara District Council

AND

**Notice of Appeal against a Decision on Private Plan Change 78 to the Kaipara
District Plan**

Mangawhai Matters Incorporated
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**Notice of Appeal against a Decision on Proposed Plan Change 78 to the Kaipara
District Plan
9 June 2021**

To: The Registrar, Environment Court, Auckland

1. Douglas Lloyd (Submitter 90), Peter Nicholas (S68), Rachael Williams (S71), Joel Cayford (S144) , and Philip McDermott (S54) (the Submitters) submitted individually to Proposed Private Plan Change 78 to Kaipara District Plan (lodged 3 December 2019) and joined together as Mangawhai Matters Society Incorporated (MMI) to make a Further Submission (FS71) in opposition. The Further Submission was supported by expert evidence called by MMI.
2. The Plan Change was adopted by Kaipara District Council on 28 April 2021 on the recommendation of a Panel comprising two independent commissioners and the Deputy Mayor.
3. The decision was notified by letter to submitters dated 30 April 2021 and publicly by press announcement on 10 May 2021.
4. The Submitters, supported by MMI, appeal against certain provisions in the Plan Change, as set out below.
5. Neither the submitters nor MMI are trade competitors for the purpose of s 308D of the Resource Management Act 1991.

THE PROVISIONS AND PARTS OF THE DECISION APPEALED ARE AS FOLLOWS:

Residential Capacity (FS71 pp5-6)

The expert assessments in support of the application for PC78 are based on a difference in yield between ODP Chapter 16 Estuary Estates and PC78 of “*approximately 500 additional household units/retirement units*” (Statement of Evidence – Engineering of James Dufty, para 4.8). This is less than estimated yield “enabled” by the provisions of the proposed plan change so that the Commissioners’ recommendations and the Council decision are based on under-estimation of potential impacts.

The Commissioners accepted evidence on infrastructure demand based on the MCL baseline estimate of 1,000 total dwellings, 500 more than in the Operative District Plan Chapter 16, Estuary Estates. This was justified in part because “*it appears, on its face, that the MSP [Mangawhai Spatial Plan, July 2020] generally ‘supports and envisages’ urban and residential intensification as proposed by MCL at Mangawhai Central*” (Commissioners’ Report, para. 69).

The dwelling density and typology assumptions in the MSP, which appear aligned with PC78, were accepted by the Commissioners although not subject to testing in the Hearing. No engineering assessments were provided to support the long-term population and land use scenario favoured in the MSP (based on growth from around 5,000 residents to more

than 17,000 over 25 years) . Consequently, the MSP remains an aspirational document based on a single projection that does not necessarily reflect the carrying capacity of Mangawhai locality with reference to the three waters, transport requirements, community assets, natural values, and funding ability.

Under these circumstances, PC78 should be treated as a test of the veracity of the MSP rather than being validated by it.

Based on residential zone areas and minimum section size, the capacity proposed for Estuary Estates/Mangawhai Central in PC78 exceeds the 1,000 dwellings adopted to assess its impact. We estimate an increase of 720 (to a total of 1,220, FS71, p5). No evidence was offered disputing this estimate, even though it is significant that it substantially exceeds the figure used to assess the impact of adopting PC78.

Provision for Integrated Residential Development (IRD), Retirement Facilities, visitor accommodation, and dwellings in Business Subzone 1, together with the likelihood of a lift in summer peak population, potentially add further to this estimate.

We note, also, that the Commissioners accepted an historical estimate of average household size (2.5 persons, Commissioners' Report, para. 48) rather than the estimate associated with recent growth (2.9 persons, 2013-2018). Given the implicit assumption behind both the MSP and PC78 that migration will dominate growth, the latter figure is a more appropriate basis for projecting future population. Under these circumstances, an increase of 1,250 people (Commissioners' Report para 49) is a 15% underestimate (200 people) based on the nominated 500 additional households, or a 51% underestimate (640 people) based on enabled household numbers (720), excluding the additional sources of capacity listed above. Given that the 2018 population in Mangawhai Heads was 1,995 and in the Village 936 (Commissioners' Report, para 47), this is a significant under-representation for the purpose of assessing the incremental demands on the natural environment and existing infrastructure and amenities.

Relief Sought:

An increase in the minimum section size to 600sqm in the Residential 3A zone and a cap of 850 permitted dwellings including those in IRDs, retirement villages, and the Business 1 zone, with any extensions subject to the additional discretionary conditions proposed under the topics below.

Potable Water Supply (FS71, p8)

(1) Underestimation of demand

The Commissioners accepted the assurances of the applicant that sufficient potable water supply could be provided based on the assessment and assurance provided by witness for the applicant, Mr Williamson. This assumed reticulation of 420 residential lots, 200 retirement village lots, and the commercial area (para 27).

Based on 60% development of Residential 3A zoning, we estimate a potential for 590 lots (or more) in the zone. Integrated residential development is provided for within an

overlay and as a discretionary use in Residential 3A and 3B zones. This is likely to add to the dwelling yield, while modern retirement villages regularly exceed 200 residents. (E.g., fourteen planned retirement villages outlined by Ryman in its 2020 Annual Report average over 300 beds. Summerset's 32 villages currently average around 200 residents.)

(2) Consent for stream takes still required.

Mr Williamson's assurances of sufficient water rely on obtaining consent from Northland Regional Council to withdraw high flows from streams that flow into the Tara Stream, an estuary of the Mangawhai Harbour. Conditions of consent should reflect expectations about future flows under increased drought frequency and impacts on the water quality of Mangawhai Harbour from a reduction in total and in particular high-water flow.

(3) Requirement for summer top-ups

The Mangawhai aquifer is fully committed and any further drawdown risks saltwater intrusion. This places seasonal deliveries to existing and future non-reticulated residents at risk. Any shortfall in the capacity to deliver to reticulated sites adds to this, either through deterioration in aquifer water quality or occasional drought conditions that fall outside historical variance in stream flows.

(4) Fire Fighting Requirements

The Council's approach to meeting the expectations that new buildings (including dwellings) will have reserved water storage capacity (10 cubic metres) to meet the expectations of Fire and Emergency New Zealand needs to be clarified to establish whether there will be a requirement to provide storage capacity on individual lots.

Relief Sought:

New provisions to Chapter 16 of the ODP covering:

- All reticulated residential sites to provide minimum on-site storage capacity of 25 cubic metres.
- All non-reticulated sites required to provide a minimum of 50 cubic metres water storage on site.
- No subdivision below 600m² allowed prior to confirmation of NRC consent for intakes and storage capacity sufficient to reticulate 600 dwellings.

Traffic Impacts: (FS71, p9)

(1) Old Waipu Rd Connection

The Commissioners accepted that a new connection to the Old Waipu Rd was out of scope (Recommendations Report 29) but did not adequately consider the consequential impact referred to in the S42A report on its traffic review which recommended:

that Council's Planner consider that a development cap of 850 dwellings is appropriate for inclusion onto PPC 78. If 850 dwellings are exceeded in the implementation of PPC 78, we consider that Restricted Discretionary activity status should apply, and additional traffic effects assessment should be required to be undertaken and any identified mitigations undertaken. (Attachment 11, Flow Transportation Specialists, p15)

(2) Arterial Roads

No consideration was given to the impact of increased commuting to employment centres in Auckland and Whangarei on the rural road network.

(3) Local Roads

The impact on local roads and intersections of the additional traffic generated at full development as described under Topic 1, above.

Relief Sought:

- Cap residential development at 850 dwellings (including IRDs) until such time as a connection is provided to the Old Waipu Rd
- Accept the recommendation that providing for dwellings (including IRDs) in excess of 850 across the area subject to PC78 is discretionary, with reference to matters to be considered in exercising discretion (16.10.8.2 Assessment Criteria for Restricted Discretionary Activities), insert after (k), a new condition along the following lines:
 - (l) Existing and probable traffic volumes, including commuter and weekend traffic, on key intersections (as identified in (k, above) and arterial roads, the latter including Insley Rd-Tomorata Rd-Waiteitei Rd to Wellsford and Auckland; the Kaiwaka-Mangawhai Rd, and Cove Rd (in consultation with the Northland Transport Alliance);
- Require additional traffic analysis to incorporate the additional traffic movements associated with household and population figures to better reflect enabled development, larger households than incorporated into the applicant's evidence, and to consider the impact of commuting on the surrounding rural network, particularly routes accessing SH1. The results of such analysis should be then used to inform the estimation of future road expenditure and the calculation of Financial Contributions.

Stormwater Management and Harbour Quality (FS71, p8)

Stormwater and sediment from Mangawhai Central when developed will discharge into adjacent wetland areas, Tara Stream, and Mangawhai Estuary which is currently healthy and the home of many ecosystems and a food source of dependent shore- and seabirds, including almost the entire population of the endangered New Zealand Fairy Tern.

The applicant argued that compliance with the district-wide regional consent for stormwater network discharges would be sufficient to avoid adverse effects from stormwater discharges, and further that "*best practicable options*" would be applied at the time of subdivision consents.

Commissioners were advised by the applicant's ecological review expert that best practices for erosion and sediment control should be adopted because a detailed assessment of likely effects of sediment runoff on marine communities had not been carried out (Kelly, para. 41).

Commissioners were advised by the applicant's stormwater review expert (Leahy, para. 35) that existing landuse patterns in Mangawhai are such that: the estuary has limited urban development draining into it; urban development has been on large scale lots with limited impervious coverage; and much of the existing urban development runoff goes to soakage. He stated that interventions would be needed to reduce risk of deterioration of

estuary sediment quality. Leahy (36, 37 and 41) and was critical of KDC's dated engineering standards; the applicant's reliance on best practicable options; and stated that these did not address the complexity of stormwater outcomes sought in comprehensive stormwater measurement.

The commissioner's decision does not reflect these experts' uncertainty around effects at this site and the need to address potential shortfalls in proposed stormwater systems, and do not provide for the planning and application assessment provisions needed to ensure that stormwater systems are in place that can be relied upon to prevent the adverse effects of mobilized sediment on the estuary health from a large rainfall event.

Relief Sought:

In the absence of more definitive scientific evidence then a precautionary approach should prevail with fit-for-purpose stormwater management provisions as part of PC78 including:

- That minimum lot size for a housing unit should not be less than 600 square metres;
- That all lots include at least one 25 cubic metre storage tank to be used for stormwater flow attenuation and detention, which can also be used for water supply;
- That best practice approaches aimed at maximizing retention and soakage are adopted rather than best practicable engineering options
- That subdivision applications should demonstrate to the satisfaction of a qualified engineer hydrologic neutrality in the event of 1 in 100-year storm event.

Community Amenities (FS71, 3.5(f) and 3.6, page 12)

The resident population has paid for (through rates) or developed through voluntary funding and labour an extensive network of community facilities and amenities¹, many of which are close to capacity. Council-funded activities include the surf beach and harbour car parks and amenities such as the library.

Financial Contributions provide the opportunity for buy-in to existing services by new residents as well as provision for their expansion or replication to cope with additional demand.

Relief Sought:

- Provision for Financial Contributions to be directed into the Council's Community Activities and Asset Accounts, based on depreciated asset values. These amounts will be in addition to contributions associated with future works required to accommodate the additional households.

Staging and funding of development (FS71, p13)

The Commissioners' report is based on "*the view that Mangawhai, for the purposes of PC78, is an urban environment and the NPS-UD therefore applies*" (para 44).

However, PC78 does not provide for infrastructure-ready development as required by the NPS in the short-term (NPS 3(a) "*adequate existing infrastructure*"); the medium term

¹ These include the Domain and associated sporting and meeting facilities; the Museum; the Historic Village, the Boat Ramp, the Surf Club, the Activity Zone, and an extensive walking track network.

(NPS 3(b) “funding for adequate infrastructure to support development of the land is identified in a long-term plan”); or the long-term, at least in any detail, (NPS 3(c) “development infrastructure to support the development capacity is identified in the local authority’s infrastructure strategy (as required as part of its long-term plan”).

This needs to be redressed in the interest of fiscal prudence, transparency, and compliance with the provisions of the NPS-UD, with particular reference to expansion of the wastewater system, including trunk network, plant, and disposal.

Relief Sought:

The District Plan for Mangawhai Central currently has an objective:

16.3.10 Staging and Financial and Development Contributions

To ensure that the timing of subdivision and development of the Estuary Estates Structure Plan area is coordinated with the provision of infrastructure needed to serve the area and that development contributes its share of the growth-related costs of this infrastructure.

Omission of the equivalent requirement for wastewater infrastructure means that subdivision applications can be processed without regard for the availability and funding of the adequacy of wastewater infrastructure and services and no defined requirement for funding by the development, leaving the council, the community, and the developers exposed to the risk of infrastructure shortfalls, excessive costs, and a failed development.

We seek:

- Retain Chapter 16 Objective **16.3.10; Staging and Financial and Development Contributions**
To ensure that the timing of subdivision and development of the Estuary Estates Structure Plan area is coordinated with the provision of infrastructure needed to serve the area and that development contributes its share of the growth-related costs of this infrastructure.
- Retain Chapter 16 Policy **16.3.10.1 (3):**
By requiring development to contribute at the time of subdivision and/or development (including at the building stage) to provide for infrastructure and reserve needs in accordance with Section 22.10.7 of this District Plan.
- Ensure there are sufficient mechanisms and assessment criteria within the revised Chapter 16 and Section 22 of the District Plan to give effect to this objective and policy.



Douglas Lloyd

June 9 2021

On behalf of

Mangawhai Matters Incorporated

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