

# Private Plan Change 78

**Urgent decision during the COVID-19 pandemic**

Date of report: 25 March 2020

Reporting officer: Paul Waanders, District Planner

## Purpose/Ngā whāinga

To seek a decision on whether the application for a private plan change by Mangawhai Central Limited should proceed to the next stage of the plan change process.

## Executive summary/Whakarāpopototanga

A private plan change (PPC) request was received on 03 December 2019 from Mangawhai Central Limited. The PPC seeks to rezone 130ha of land contained within the Estuary Estates Structure Plan of the Operative Kaipara District Plan 2013 (the District Plan).

The PPC area comprises of 83 Molesworth Drive, and Lots 1 and 4 DP 314200 Old Waipu Road, Mangawhai. Chapter 16, Appendix E and Maps of the District Plan contains the requirements for the development of Estuary Estates.

Council is required to decide on this application in accordance with Clause 25 of Part 2 of Schedule 1 to the Resource Management Act 1991 (RMA).

Clause 25 directs Council to either:

- 1 **Adopt** the request as if it were a proposed plan made by the Council, which must then be processed in accordance with the provisions of Part 1 of Schedule 1, Clause 25(2)(a); or
- 2 **Accept** the private plan change request, in whole or in part, which then triggers a requirement to notify the request, or part of the request under Clause 25(2)(b); or
- 3 **Reject** the private plan change request in whole or in part, in reliance on one of the limited grounds set out in Clause 25(4); or
- 4 **Determine** the request as if it were an application for a resource consent under Clause 25(3).

Council staff have followed all due RMA processes to get to this stage and are now seeking a Council decision on the application within the parameters of Clause 25. It is important to note that neither 'adopt' or 'accept' implicates that the plan change is or will be 'approved' by Council. The process of consultation through notification and hearings must be undertaken before the matter is submitted to Council for a decision to approve.

The decision now required from Council is only to enable the process to either continue or to be terminated. Any decision can be appealed by the applicant.

## Reason for urgent decision-making

Part 2 of Schedule 1 of the RMA prescribes the timeframe within which decisions have to be made. The plan change timeframes for this PPC are as follows:

- a) Request for PPC received, 03 Dec 2019 (day 1) – the clock starts
- b) Clause 23 request, 22 January (day 20) – the clock stops until this request is satisfied
- c) Clause 23 satisfied, 25 February 2020 (day 1) – the clock re-starts
- d) Clause 25 decision, 07 April 2020 (day 30 from (c) above) – decision must be made by

This therefore indicates a decision to accept or adopt in whole or part, or convert to a resource consent, or reject the private plan must be made by 07 April 2020, being 30 working days since satisfactory receipt of the clause 23 matters.

## Recommendation/Ngā tūhunga

That Kaipara District Council:

- a) Notes that this decision is urgent as it is required before 07 April 2020 under Clause 25 of the Resource Management Act 1991 that requires local authorities to provide a decision to accept or adopt in whole or part, or convert to a resource consent, or reject the private plan change within 30 working days of all Clause 23 requirements for the private plan change request being satisfied, which was met by the applicant on 25 February 2020.
- b) Accepts in whole, the Private Plan Change 78 – Estuary Estates by Mangawhai Central Limited, in accordance with Clause 25(2)(b) of the Resource Management Act 1991.
- c) Requests the Chief Executive publicly notify the private plan change.

## Context/Horopaki

The PPC was lodged by Mangawhai Central Limited, proposing the rezoning of the subject land, the modification of existing urban zones and the extension of the urban zones through an amended Estuary Estates Structure Plan.

The changes to the existing Estuary Estates Structure Plan are shown in the PPC Zoning Map (see Attachment A). These include:

- 1 Retain the Estuary Estates zone at 83 Molesworth Drive.
- 2 Amend Business 1 sub-zone to match its extent to the amended Estuary Estates Structure Plan and reduce its size to 5.32 ha from 7.5 ha.
- 3 Delete sub-zones 2, 4, 5 and 6.
- 4 Create new Residential sub-zones 3A, 3B, 3C and 3D replacing existing sub-zones 2, 3, 4, 5 and 6.
- 5 Amend Service 7 sub-zone to align with the ring road route outlined in the amended Estuary Estates Structure Plan which increases its size from 7.5 ha to 8.03 ha.
- 6 Create a new integrated residential development overlay over the new Residential 3A sub-zone.
- 7 Rezone Lots 1 and 4 DP 314200 from Residential to the new Residential 3B and 3C sub-zones, and new Natural Environment 8 sub-zone.

The existing Estuary Estates Structure Plan requires an update to reflect the new network for roads, walking, cycling, flood areas and natural area corridors, and new town centre and open space area. This is shown in PPC Structure Plan (see Attachment B).

The PPC request also requires changes to the provisions of Chapter 16 of the District Plan (see Attachment C for tracked changes and Attachment D for the clean version). Modifications to Chapter 16 pertain to the Estuary Estates description, zones, objectives, policies, rules and/or other methods to provide for the development of the site.

The PPC proposes that all existing Estuary Estates Structure Plan maps be removed and replaced with those proposed under this PPC. The map amendments relate to Maps 17, 55, 56 and 56A including those contained in Appendix E of the District Plan.

No other changes to the District Plan are proposed outside of Chapter 16. The District Plan will be altered after submissions have been heard and decisions to approve the Plan Change have been made and all appeals have been dealt with. This process will likely take a year to complete.

The PPC area comprises of a number of approved resource consents. These includes works approved for site preparation, remediation of soil contaminants, subdivision of land, road alignment, water take and stormwater discharge. These consents are still valid at this time. Other applications such as the industrial or service area subdivision, a supermarket and the main town development are currently being processed. As such, the PPC request also seeks to bring the zoning of the plan change area into better alignment with the existing approved consents and likely future use of the PPC area relative to the consents currently being processed.

## Discussion/Ngā kōrerorero

Any person can make a request for a PPC to the local authority under clause 21 of Schedule 1, RMA. The process for considering a PPC request is outlined in Part 2 of Schedule 1, RMA. After a request is made, further information can be requested under Clause 23, and request to modify under Clause 24 if the applicant agrees.

If an applicant refuses to provide any requested further information, under clause 23(6) a local authority can consider it has insufficient information to consider or approve the PPC and may reject the request or decide not to approve the PPC requested.

A request for further information was sought on 22 January 2020. The matters of clarification included:

- night-time landscape effects from artificial lighting
- water supply and storage capacity
- wastewater and stormwater management and discharge
- relevance of the blue-green infrastructure and alignment with the national policy statement on freshwater
- connection of the PPC area to existing and future transport networks for vehicles, pedestrians, cyclists and public transport
- pedestrian safety and flows within the PPC including provision of shared spaces
- natural area protection and enhancement
- housing affordability
- community facilities such as sport fields and courts
- design principles for developments within the PPC, and
- cultural integration and narration.

All matters within the information request were adequately satisfied on 25 February 2020.

While there are some outstanding matters from the further information request process that have not been addressed in detail, these are considered to be better addressed at the resource consents stage, or through the submission and hearing process.

It is acknowledged that any non-District or non-RMA related matters can be resolved in parallel to the PPC process.

After receiving a PPC request, receiving all required information and modifying the request (where relevant), the local authority is required to make a decision in accordance with Clause 25 as outlined above.

Council staff consider that the applicant has provided sufficient information to enable the request to be considered, and so do not consider the ground of rejection in Clause 23(6) to be available.

### Options

Kaipara District Council does not have a defined policy on the decisions to be made when a private plan change is lodged, so are therefore guided by Clause 25, specifically to choose 1 of the 4 options available:

- 'adopt' the plan change which then becomes a Council or public plan change;
- 'accept' the plan change in which case it remains a private plan change;
- 'reject' the plan change with very limited reasoning; or
- 'change' the plan change into a resource consent.

The options to either 'adopt' or 'accept' do not express that Council has approved the plan change. Consultation through notification and hearings still has to be undertaken before the matter is submitted to Council for a decision to approve the plan change.

The decision now required from Council is to enable the process to continue or be terminated. This decision can be appealed by the applicant.

Therefore, the four options must be considered and analysed against information received from the applicant and the legal requirements of the RMA.

**Option 1 – ‘Adopt’** the request, or part of the request, as if it were a proposed plan made by the Council itself.

The Council is able to decide to adopt the request, and process it, as though it were a Council initiated proposed plan change. A decision to adopt triggers the process set out in Part 1 of Schedule 1, which would then require the Council to consult as required in clauses 3 to 3C of Part 1. Following consultation, the Council would then need to notify the proposed plan change for submissions and conduct a hearing into submissions, if required. If adopted, all costs associated with the plan change would rest with the Council.

It is also relevant to note that the applicant has not requested that the Council adopts the PPC.

For the above reasons, it is not recommended that the Council decide to adopt the PPC.

**Option 2 – ‘Accept’** the private plan change request, in whole or in part, and proceed to notify the request, or part of the request, under Clause 26

If the Council accepts the request, in whole or in part, it must then proceed to notify the request, or part of the request under clause 26. After the submission period has closed, the Council would need to hold a hearing to consider any submissions, and a decision would then be made by the Council in relation to the request in accordance with Schedule 1 of the RMA. All costs associated with the request (including notification and any hearing) would rest with the applicant.

**This is the recommended option.** Once the hearings process is completed a recommendation will be made to Council to either ‘approve’ or ‘reject’ the private plan change.

**Option 3 – ‘Reject’** the private plan change request, in whole or in part (clause 25(4)).

The Council has the power to reject a private plan change request, in whole or in part, in reliance on one of the limited grounds set out in clause 25(4). If the private plan change request is rejected by the Council, the applicant can appeal that decision to the Environment Court under Clause 27 of Schedule 1.

The grounds for rejection under Clause 25(4) are as follows:

- a) the request or part of the request is frivolous or vexatious; or
- b) within the last two years, the substance of the request or part of the request has been considered and given effect to, or rejected by, the local authority or the Environment Court; or has been given effect to by regulations made under Section 360A; or
- c) the request or part of the request is not in accordance with sound resource management practice; or
- d) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or
- e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than two years.

The PPC contains a comprehensive section 32 report evaluation, including an assessment of the objectives and policies, and a sufficiently detailed assessment of environmental effects. The request is also accompanied by a range of specialist assessments in relation to the key matters considered to be material to the request, including transport, three waters, economic, ecology, geotechnical, urban design and landscape.

The request enables the nature of the plan change and its effects to be reasonably understood. It is therefore recommended that the Council not reject the private plan change request on the basis that it is frivolous or vexatious.

No plan change request nor any Operative District Plan provisions were developed within two years from the receipt date of the PPC. The original Estuary Estates PPC was lodged in 2006 and a decision was issued in 2008. Noting that this PPC was rolled over from what was then the Operative District Plan into what was then the proposed District Plan i.e. the current District Plan. It is therefore recommended that the Council not reject the request on the basis of this ground of rejection.

The substance of the PPC or part of the request, being rezoning land from does not relate to section 360A of the RMA which refers to regulations for amending regional coastal plans pertaining to aquaculture activities. It is therefore recommended that the Council not reject the request on the basis of this ground of rejection.

"Sound resource management practice" is a frequently used term but is not defined in the RMA. Case law indicates that "sound resource management practice" relates to scale of effects and alignment of any PPC to Part 2 of the RMA i.e. the purpose and principles. The applicant has considered the zoning options for the site and concluded that the proposed rezoning along with the introduction of new provisions including an overlay will result in a mixed-use development. That is anticipated to positively contribute to the existing business and residential zones under the operative District Plan while maintaining character and amenity of the area, and appropriately managing effects associated with servicing future development of the PPC area. A number of specialist reports support the PPC, and Council has engaged our own experts and relevant stakeholders who also support the PPC progressing to the next phase. While parts of the PPC need to be tested through the submission and hearings process, the scope and extent of the changes sought do not, in themselves, threaten the purpose and principles of the RMA. Having reviewed the applicant's planning and specialist reports and taken the purpose and principles of RMA into account, the PPC is considered to be in accordance with sound resource management practice. It is therefore recommended that the Council not reject the PPC on the basis that it is contrary to sound resource management practice.

The PPC request will not make the operative District Plan inconsistent with Part 5 of the RMA, which sets out the role and purpose of planning documents created under the RMA including that these must assist a local authority in giving effect to sustainable management purposes of the RMA. It is therefore recommended that the Council not reject the PPC on the basis that the substance of the request would make the Operative District Plan inconsistent with Part 5 of the RMA.

The Operative District Plan provisions relevant to the PCC were made operative in 2013. The provisions have therefore been operative for more than two years, and it is recommended that the Council not reject the private plan change request on the basis of this.

**Option 4** - Decide to deal with the request as if it were an application for a resource consent. The Council can decide to deal with a PPC as if it were an application for resource consent, however, in this case, the PPC seeks to rezone parts of the site and introduce overlay provisions to manage use and development. It is considered that the most appropriate process for achieving rezoning for this mixed-use development of the site is through a plan change process.

It is therefore recommended that the Council not decide to deal with the request as if it were an application for resource consent.

### **Policy and planning implications**

Adopting **Option 2** and 'accepting' the private plan change will release the application for notification and processing of the application according to the prescribed procedure.

### **Financial implications**

Private plan changes are processed with the ability to recover all costs from the applicant up to the Council's final decision. Any appeal costs and which party carries the burden will be determined as per the appeal hearings.

### **Risks and mitigations**

A single risk of a judicial review by a third party exists with the recommendation of this report. However, given the above analysis this risk is appropriately accounted for, and any likelihood of this situation is unlikely or low.

## Significance and engagement/Hirahira me ngā whakapāpā

The decisions or matters of this report do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via agenda on the website.

## Next steps/E whaiake nei

The PPC will need to be notified within four months of being accepted under clause 26 of Schedule 1 of the RMA.

All preliminary arrangements have been made for immediate notification once the Clause 25 decision is available.

## Attachments/Ngā tapiritanga

	Title
A	Private Plan Change 78 – Estuary Estates Zoning Map (Map56A)
B	Private Plan Change 78 – Estuary Estates Structure Plan Map (Map 56A)
C	Private Plan Change 78 – Estuary Estates DP Tracked Changes (Chapter 16)
D	Private Plan Change 78 - Estuary Estates DP Clean Version (Chapter 16)

**Recommendation approved by  
Louise Miller, Chief Executive**

Signature: 

Date: 30 March 2020

## Decision/Whakatau

That Kaipara District Council:

- Notes that this decision is urgent as it is required before 07 April 2020 under Clause 25 of the Resource Management Act 1991 that requires local authorities to provide a decision to accept or adopt in whole or part, or convert to a resource consent, or reject the private plan change within 30 working days of all Clause 23 requirements for the private plan change request being satisfied, which was met by the applicant on 25 February 2020.
- Accepts in whole, the Private Plan Change 78 – Estuary Estates by Mangawhai Central Limited, in accordance with Clause 25(2)(b) of the Resource Management Act 1991.
- Requests the Chief Executive publicly notify the private plan change.

**Decision approved by  
Dr Jason Smith, Mayor**

Signature: 

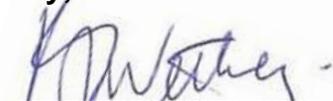
Date: 03 April 2020

**Decision approved by  
Anna Curnow, Deputy Mayor**

Signature: 

Date: 03 April 2020

**Decision approved by  
Peter Wethey, Councillor**

Signature: 

Date: 03 April 2020