



5.4 Kaipara District Plan: Estuary Estates Limited Private Plan Change N°22 - Operative

Policy and Planning Manager

3809.22

Council adopted Plan Change 22 at the 30 January 2008 meeting. The appeal period had now finished, with no appeals being lodged with the Environment Court. Plan Change 22 was now required to come before Council to formally become operative with the affixing of the Common Seal of the Kaipara District Council.

Public notice would then announce that Plan Change 22 is operative with the operative date being five working days after the notice appeared.

Resolved Taylor/Geange

- 1 *That pursuant to Clause 17 of the First Schedule of the Resource Management Act 1991, the proposed Plan Change 22 to the Kaipara District Plan be made operative.*
- 2 *That the approval of Plan Change 22 be effected by affixing the Common Seal of the Kaipara District Council to Plan Change 22.*
- 3 *That the resolution of Council to make Plan Change 22 operative be publicly notified in accordance with Clause 20 of the First Schedule of the Resource Management Act 1991.*
- 4 *That Plan Change 22 become operative on 5 May 2008.*

Reason for the decision

As no appeals have been lodged with the Environment Court, Plan Change 22 can formally become operative and a part of the Kaipara District Plan.

List Action Taken/To Be Taken	Signed: 	Date: 30 May 2008
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P64 5.3 Rating Policy N°3: Change to Instalment Due Dates

Finance Manager 2306.20

A report is attached that recommends the adoption, from 1 July 2008, of a common due date of the 20th, for all six rates instalments.

Recommended

That Rating Policy N° 3: Instalments, be amended to reflect one common due date for all six instalments, and that the due date be the 20th.

Reason for the recommendation

To simplify the due date regime, for the benefit of many ratepayers.

5.4 Kaipara District Plan: Estuary Estates Limited Private Plan Change N°22 - Operative

Policy and Planning Manager 3809.22

Council adopted Plan Change 22 at the 30 January 2008 meeting. The appeal period has now finished, with no appeals being lodged with the Environment Court. Plan Change 22 is now required to come before Council to formally become operative with the affixing of the Common Seal of the Kaipara District Council.

Public notice will then announce that Plan Change 22 is operative with the operative date being five working days after the notice appears.

Recommended

- 1 *That pursuant to Clause 17 of the First Schedule of the Resource Management Act 1991, the proposed Plan Change 22 to the Kaipara District Plan be made operative.*
- 2 *That the approval of Plan Change 22 be effected by affixing the Common Seal of the Kaipara District Council to Plan Change 22.*
- 3 *That the resolution of Council to make Plan Change 22 operative be publicly notified in accordance with Clause 20 of the First Schedule of the Resource Management Act 1991.*
- 4 *That Plan Change 22 become operative on 5 May 2008.*

Reason for the recommendation

As no appeals have been lodged with the Environment Court, Plan Change 22 can formally become operative and a part of the Kaipara District Plan.

Council Agenda : 9 April 2008

Item Policy
Author : Policy and Planning Manager
Attachments: No

**Kaipara District Plan: Estuary Estates Limited Private Plan Change N° 22 -
Operative**

Policy and Planning Manager 3809.22

Council adopted Plan Change 22 at the 30 January 2008 meeting. The appeal period has now finished, with no appeals being lodged with the Environment Court. Plan Change 22 is now required to come before Council to formally become operative with the affixing of the Common Seal of the Kaipara District Council.

Public notice will then announce that Plan Change 22 is operative with the operative date being five working days after the notice appears.

Recommended

- 1 *That pursuant to Clause 17 of the First Schedule of the Resource Management Act 1991, the proposed Plan Change 22 to the Kaipara District Plan be made operative.*
- 2 *That the approval of Plan Change 22 be effected by affixing the Common Seal of the Kaipara District Council to Plan Change 22.*
- 3 *That the resolution of Council to make Plan Change 22 operative be publicly notified in accordance with Clause 20 of the First Schedule of the Resource Management Act 1991.*
- 4 *That Plan Change 22 become operative on 5 May 2008.*

Reason for the recommendation

As no appeals have been lodged with the Environment Court, Plan Change 22 can formally become operative and a part of the Kaipara District Plan.

Excerpt of Minutes: Council Meeting 30 January 2008**5.15 Kaipara District Plan: Estuary Estates Limited Private Plan Change N° 22 Recommendation****Policy and Planning Manager****3809.22**

A recommendation from the Commissioners who heard the submissions on Estuary Estates Limited Private Plan Change N° 22, was circulated. An interim recommendation had been adopted by Council at their 10 October 2007 meeting. That interim recommendation, while approving the Plan Change, allowed time for modifications required to the Plan Change itself to be made in order to remove inconsistencies, provide clarity, improve workability and modifications as a result of the Commissioners' deliberations. Those modifications were now completed and the final recommendation was ready for adoption by Council.

The Council thanked Councillor Smith and Mr David Underwood for their considerable time and effort.

Resolved**Alspach/Taylor**

That Council adopts the final recommendation for Estuary Estates Limited Proposed Plan Change N° 22, as amended by the Commissioners following the 10 October 2007 Interim Decision dated 14 January 2008 and as enclosed along with the schedule of decisions on the submissions to it.

Reason for the decision

The final recommendation reflects Council's approach to planning and the underlying principles in the Mangawhai Structure Plan.

List Action Taken/To Be Taken	Signed : 	Date: 14/2/08
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5.15 Kaipara District Plan: Estuary Estates Limited Private Plan Change N° 22 Recommendation

Policy and Planning Manager 3809.22

A recommendation from the Commissioners who heard the submissions on Estuary Estates Limited Private Plan Change N° 22, was circulated. An interim recommendation had been adopted by Council at their 10 October 2007 meeting. That interim recommendation, while approving the Plan Change, allowed time for modifications required to the Plan Change itself to be made in order to remove inconsistencies, provide clarity, improve workability and modifications as a result of the Commissioners' deliberations. Those modifications were now completed and the final recommendation was ready for adoption by Council.

The Council thanked Councillor Smith and Mr David Underwood for their considerable time and effort.

Resolved **Alspach/Taylor**

That Council adopts the final recommendation for Estuary Estates Limited Proposed Plan Change N° 22, as amended by the Commissioners following the 10 October 2007 Interim Decision dated 14 January 2008 and as enclosed along with the schedule of decisions on the submissions to it.

Reason for the decision

The final recommendation reflects Council's approach to planning and the underlying principles in the Mangawhai Structure Plan.

5.16 Kaipara District Plan: Verano Properties Plan Change N° 24: Decision

Policy and Planning Manager 3809.24

A recommendation from the Commissioners who heard the submissions on Verano Properties Limited Private Plan Change N° 24, was circulated. The recommendations the Commissioners made were final. Council did not have the ability to modify their recommendation, only accept it or require that whole matter to be re-heard.

Resolved **Taylor/Geange**

That Council adopts the Recommendation Report by the Hearings Commissioners dated 21 December 2007, to Verano Properties Limited Private Plan Change N° 24 and submitters' schedule.

Reason for the decision

The recommendation reflects Council's approach to planning.

Council Agenda : 30 January 2008**Item** Policy**Author :** Policy and Planning Manager**Attachments:** Yes report**Kaipara District Plan: Estuary Estates Limited Private Plan Change N° 22****Recommendation****Policy and Planning Manager 3809.22**

A recommendation from the Commissioners who heard the submissions on Estuary Estates Limited Private Plan Change N° 22, is attached. An interim recommendation was adopted by Council at their 10 October 2007 meeting. That interim recommendation, while approving the Plan Change, allowed time for modifications required to the Plan Change itself to be made in order to remove inconsistencies, provide clarity, improve workability and modifications as a result of the Commissioners' deliberations. Those modifications are now complete and the final recommendation is ready for adoption by Council.

Recommended

That Council adopts the final recommendation for Estuary Estates Limited Proposed Plan Change N° 22, as amended by the Commissioners following the 10 October 2007 Interim Decision dated 14 January 2008, and as enclosed along with the schedule of decisions on the submissions to it.

Reason for the recommendation

The final recommendation reflects Council's approach to planning and the underlying principles in the Mangawhai Structure Plan.

IN THE MATTER

of the Resource Management Act 1991

AND

in the matter of **PROPOSED PRIVATE PLAN
CHANGE 22** by **ESTUARY ESTATES LIMITED** to
the Kaipara District Plan to introduce new special
zonings to Rural zoned land at Mangawhai.

**FINAL RECOMMENDATIONS REPORT
BY THE HEARINGS COMMISSIONERS**

Introduction

The Hearings Commissioners ("the Commissioners") issued a recommendations report dated 28 September 2007 in relation to this matter.

The Commissioners conducted a hearing for the Proposed Plan Change on 14, 15, 16 and 30 August 2007 at the Mangawhai Surf Club at Mangawhai. That provided the opportunity to hear from the applicant, the submitters and also the reporting officers for the Kaipara District Council ("the Council"). The recommendations report of 28 September 2007 records all the relevant details including:

- A description of the Proposed Plan Change.
- The appointment of three Commissioners with a delegation from the Council.
- Details of the hearing.
- Details of the submissions.
- A commentary on the various issues that the Commissioners considered.
- A discussion on the statutory context for the Proposed Plan Change.
- A conclusion.
- An overall recommendation.

That overall recommendation by the Commissioners was for the Council to approve the Proposed Plan Change with modifications and to accept, accept in part or reject the submissions to the extent that the Proposed Plan Change is approved with modifications.

In their consideration of the Proposed Plan Change, and the submissions to it, the Commissioners found a number of amendments to it were necessary. Those amendments are largely to improve the workability of the Proposed Plan Change by

removing some inconsistencies within it, making its provisions clearer and generally refining the provisions of it. Importantly, the amendments are not to alter the overall thrust of the Proposed Plan Change but rather only to amend details of it.

The Commissioners recommended to the Council that the Proposed Plan Change be approved as an interim decision with the details of the amendments being resolved before a final decision is released.

The process of consideration of the amendments, to be carried out by the Council's reporting officers along with the applicant, was not to provide the opportunity for the applicant to make any amendments other than to concur or otherwise with amendments that largely improve the workability of the Proposed Plan Change.

The Council resolved to adopt the recommendations of the Commissioners and made the Interim Decision at a meeting in Dargaville on 10 October 2007 following which the process of consideration of the amendments necessary to the Proposed Plan Change was initiated by the Commissioners.

The Interim Decision

The Council resolved on 10 October 2007 to adopt the following, as recommended by the Commissioners:

That pursuant to Clauses 29 and 10 of the First Schedule of the Resource Management Act 1991:

- The Proposed Plan Change 22 to the Kaipara District Plan is approved with modifications; and
- Those submissions and further submissions which support the Proposed Plan Change are accepted to the extent that the Plan Change is approved with modifications; and
- Those submissions and further submissions which seek further changes to the Proposed Plan Change are accepted to the extent that the Plan Change is approved with modifications; and
- Except to the extent provided above, all other submissions and further submissions are rejected.

That then left the matter of the amendments to the Proposed Plan Change to be completed.

The Current Situation

The Commissioners met in Warkworth on 11 December 2007 to consider the amendments that had been co-ordinated by the reporting officer for the Council. The Commissioners found from their examination of the amended provisions that amendments had been made along the lines they had sought. The Commissioners summarise those amendments as being made for reasons of consistency and clarity of

the provisions and for removing some errors. The amendments include, for example, some amendments to the text for clarity, rationalising of the activities lists in the respective zones, and relocating some provisions within the Proposed Plan Change.

The Commissioners are satisfied, and confirm, that the amendments do not alter the overall thrust of the Proposed Plan Change but rather amend details of it in the manner that they found necessary from their earlier consideration of it.

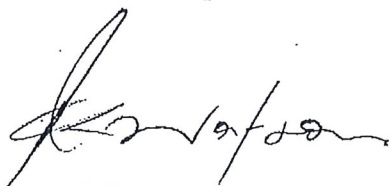
The Commissioners are therefore now in a position to issue their final recommendation on the Proposed Plan Change as below, which can be adopted by the Council as the final decision on the Proposed Plan Change.

Final Recommendation

That the Kaipara District Council adopts Proposed Plan Change 22, as amended by the Commissioners following the earlier Interim Decision, and as enclosed along with the schedule of decisions on the submissions to it.

Advice Note

The Commissioners note that the Plan Change introduces provisions to the District Plan that are a little different to the existing Plan provisions insofar as they include a comprehensive set of design and environmental guidelines. The Council will need to ensure it has the resources to deal with the associated administration of these new District Plan provisions.



A R Watson

Chair, Hearings Commissioners Panel

Comprising Messrs Tom Smith, David Underwood and Alan Watson

14 January 2008

Minutes of the Special Council Meeting - 10 October 2007

1 Opening : Mayor

1.1 Present

Mayor P King, Councillors R Alspach, B Burnett, B McEwing, W Salter, T Smith,
J Sutherland, G Taylor, I Tiller, N Tiller, D Underwood

1.2 In Attendance

J McKerchar, V Anich, B Holden, C Lichtwark McInnes, M Vincent, B Ware (KDC Staff)
A Watson (Commissioner)

2 Public Excluded Items

Resolved Sutherland/Alspach

That the public be excluded from the following part of the proceedings of this meeting namely: Estuary Estates Private Plan Change No 22 Interim Recommendation, Chief Executive's Performance Appraisal (Staff)

The general subject matter of each matter to be considered while the public is excluded, the reasons for passing this resolution in relation to each matter and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act, 1987 for the passing of this resolution are as follows:

<i>Subject matter to be considered:</i>	<i>Ground(s) under Section 48 (1) for the passing this resolution:</i>
<i>Estuary Estates Private Plan Change No 22: Interim Recommendation</i>	<i>Section 48 (1)(a), Section 7, Section 7(2)(b)(ii)</i>
<i>Chief Executive's Performance Appraisal (Staff)</i>	<i>Section 48 (1)(a), Section 7, Section 7(2)(b)(ii)</i>

Reason for passing this resolution in relation to each matter

This resolution is made in reliance of Section 48 (1)(a) of the Local Authority Official Information and Meetings Act and the particular interest or interests protected by Section 7 of that Act Section 7 of the Official Information Act 1982, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public.

Section 7 (2)(b)(ii) would be unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.

2 Public Excluded Minutes : 10 October 2007

2.1 Estuary Estates Limited Private Plan Change No 22 to Kaipara District Plan: Interim Recommendation

Policy and Planning Manager 3809.22

An interim recommendation from the Commissioners who heard the submissions on Estuary Estates Limited Private Plan Change N° 22, was circulated. The recommendation was interim in that modifications were required to the Plan Change itself in order to remove inconsistencies, provide clarity, improve workability and modifications as a result of the Commissioners' deliberations.

The recommendations the Commissioners made were final. Council did not have the ability to modify their recommendation, only accept it or require that whole matter to be re-heard.

Discussion

Mr Watson outlined the process that had been undertaken and spoke of the appropriateness and validity of an interim decision. He said that he had had discussions with Andrew Green of Brookfields who had confirmed that an interim decision was both an acceptable way to proceed and binding on the Council. In effect, if Council approved the interim decision then it was approving the plan change while allowing for "tweaking" of the provisions.

He said that in the main those submitting against the proposal had let themselves down by either providing little or no evidence to support their concerns. The effect of this was that Commissioners had not been provided with strong, viable reasons for not approving the plan change whereas the case put by the applicant and its advocates for approving the plan change was both professional and strong.

Resolved Alspach/Taylor

- 1 *That Council adopts the interim Recommendation Report by the Hearings Commissioners dated 28 September 2007, to Estuary Estates Limited Private Plan Change N° 22 and submitters' schedule.*
- 2 *That Council authorises the Commissioners to decide on the modifications required to Estuary Estates Limited Private Plan Change N° 22, and to then release the final decision.*

Reason for the decision

The interim recommendation reflects Council's approach to planning and the underlying principles in the Mangawhai Structure Plan. Adopting the interim recommendation provides an opportunity to remove inconsistencies, improve clarity and workability of Plan Change N° 22 for Council and all users of the Plan.

Council Agenda : 10 October 2007

Item Policy
Author : Policy and Planning Manager
Attachments: Yes report

**Kaipara District Plan: Interim Recommendation on Private Plan Change Request
Estuary Estates Limited (N° 22)**

Policy and Planning Manager 3809.22

An interim recommendation from the Commissioners who heard the submissions on Estuary Estates Limited Private Plan Change N° 22, is attached. The recommendation is interim in that modifications are required to the Plan Change itself in order to remove inconsistencies, provide clarity, improve workability and modifications as a result of the Commissioners' deliberations.

The recommendations the Commissioners make are final. Council does not have the ability to modify their recommendation, only accept it or require that whole matter to be re-heard.

Recommended

- 1 *That Council adopts the interim Recommendation Report by the Hearings Commissioners dated 28 September 2007, to Estuary Estates Limited Private Plan Change N° 22 and submitters' schedule.*
- 2 *That Council authorises the Commissioners to decide on the modifications required to Estuary Estates Limited Private Plan Change N° 22, and to then release the final decision.*

Reason for the recommendation

The interim recommendation reflects Council's approach to planning and the underlying principles in the Mangawhai Structure Plan. Adopting the interim recommendation provides an opportunity to remove inconsistencies, improve clarity and workability of Plan Change N° 22 for Council and all users of the Plan.

IN THE MATTER

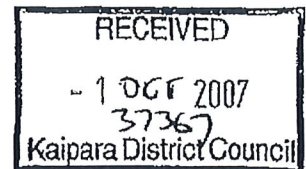
of the Resource Management Act 1991

AND

IN THE MATTER

of **PROPOSED PRIVATE PLAN
CHANGE 22** by Estuary Estates Ltd to
the Kaipara District Plan to introduce
new special zonings to Rural zoned land
at Mangawhai

**RECOMMENDATIONS REPORT BY THE
HEARINGS COMMISSIONERS**



AN INTERIM DECISION

1. It is important to state at the outset of this recommendations report that the Hearings Commissioners recommend to the Council that the decision on the proposed plan change should be in two parts.
2. **The Commissioners recommend firstly, that this recommendations report be adopted as an Interim Decision that approves the proposed plan change, with the associated amendments to the details of the provisions in the proposed plan change to follow as the second part of the decision upon it.**
3. By way of explanation, the decision by the Council has three components to it being:
 - A decision report on the proposed plan change, that being this report, if the Council adopts it. That is, a decision to approve the proposed plan change.
 - Decisions on each of the submissions to the proposed plan change. That is, to accept, accept in part or reject the individual submissions, and further submissions.
 - A copy of the proposed plan change that is amended in accordance with the Council's decisions on it and the submissions and the advice received from Council's reporting officers/consultants. That is, the proposed plan change with amendments by the Council.
4. This recommendations report, if adopted by the Council, is the first component of the decision on the proposed plan change. Enclosed with it is the second part of the decision which is the decisions on each of the submissions and further submissions. When these components are adopted by the Council then they become the Council's decisions on the proposed plan change. That is,

approval of the proposed plan change subject to amendments to be made to the details of it.

5. The third component would then be worked on by the Council's advisers, along with the applicant, to reflect the amendments that the Commissioners find are necessary. The amendments to be made are largely to improve the workability of the proposed change by removing some inconsistencies within it, making its provisions clearer and generally refining the provisions of the proposed plan change. The amendments do not alter the overall thrust of the proposed change but rather amend details of it. This is important in the context of the Commissioners' recommending an Interim Decision on the proposed change whilst these amendments are considered in detail with the applicant. That is, the recommendation is that the proposed change be approved with the details of the amendments resolved before the Final Decision is released.
6. The amendments will not change the decision to approve the proposed plan change. Also, the process of consideration of the amendments with the applicant does not provide any opportunity for the applicant to make any amendments other than to concur or otherwise with the Council's advisers in making amendments that largely improve the workability of the proposed change by removing some inconsistencies within it, making its provisions clearer and generally refining the provisions of the proposed plan change. Final approval of the amendments will be by the Council on the basis of recommendations from the Hearings Commissioners and the Final Decision then released..
7. Appeal rights associated with this matter will not apply until the release of the Final Decision.

THE PROPOSED PLAN CHANGE

8. Estuary Estates Ltd lodged a request with the Kaipara District Council for a private plan change to the Kaipara District Plan ("the district plan") under the First Schedule to the Resource Management Act 1991 ("the RMA"). This is described as Proposed Plan Change 22. It seeks to introduce seven new special zonings by way of a structure plan to land situated along Molesworth Drive, Mangawhai.
9. That land, or site, is located approximately midway between the existing settlements of Mangawhai Heads and Mangawhai Village and is on the southern side of Tara Creek, a major tributary of the Mangawhai Estuary. It is currently accessed from Old Waipu Road although there are farm gates providing access from Molesworth Drive. It covers an area of approximately 129ha. The site is currently used for grazing stock and is zoned Rural in the district plan.
10. The proposed private plan change provides for a mixed use development that will assist in catering for the growing residential, business and commercial needs of Mangawhai. It comprises a structure plan, the Mangawhai Estuary

Structure Plan, and seeks to introduce provisions for seven new zones into the district plan, which would relate to this site only. It would provide for approximately 500 houses including townhouses, terraced housing, apartment buildings and stand-alone houses. Approximately 4ha of land could be developed for mixed use activities (retail, office, residential) together with 2.2ha for community uses such as a fire station, churches and halls. A service area of 3.3ha is also proposed providing for such activities as a wastewater treatment plant, service and transport related activities. Approximately 60.6ha of open space and reserves would be provided.

11. The proposed change includes detailed objectives and policies and associated rules for subdivision, development and roading within the site. It includes design and environmental guidelines that are to be used in assessing applications for resource consent. The approach adopted is to provide rules and activity tables with a view to encouraging integrated development through the use of a controlled activity process. Developments falling outside the definition of comprehensive development will require consideration as discretionary activities.
12. The documents presented with the private plan change request include the structure plan details and a series of specialist supporting reports.
13. For the purposes of this recommendations report the proposed private plan change 22 will be referred to as "the proposed change" or "the proposal", Estuary Estates Ltd as "the applicant" and the Kaipara District Council, being the regulatory authority, will be referred to as "the Council".

APPOINTMENT

14. The Council delegated authority to three Hearings Commissioners ("the Commissioners"), pursuant to the Resource Management Act 1991 ("the RMA"), to hear the proposed change and the submissions to it and to make recommendations on the decisions that should be made on those matters to the Council. The Commissioners are Mr Alan Watson, an independent Commissioner as Chair, and Kaipara District Councillors Tom Smith and David Underwood.

THIS REPORT

15. This report includes a commentary on the issues raised regarding the proposed change as part of the basis for the recommendations that are made in relation to the proposed change and the submissions to it. Those issues are addressed under the "Effects" headings included in the planning report on the application prepared for the Council by Ms Michele Perwick, Planning Consultant. The report includes a discussion on the statutory context for the proposed change and concludes with the Commissioners' recommendations to the Council.

THE HEARING

16. The hearing took place on 14, 15, 16 and 30 August 2007 at the Mangawhai Surf Club at Mangawhai. The Commissioners had earlier had the opportunity to peruse the details of the proposed change, the submissions to it and the report prepared by Ms Perwick, prior to the hearing. The Commissioners carried out a visit to the site and locality before the hearing on 14 August 2007.
17. At the hearing the late submission from the New Zealand Fire Service was accepted by the Commissioners. The report by Ms Perwick was initially taken as read on the basis that it had been circulated to all parties prior to the hearing and because Ms Perwick would have the opportunity to speak to her report later in the proceedings, and to comment on the presentations by the applicant and the submitters. The proposed change was introduced by Mr Michael Savage, Legal Counsel for the applicant, who called the witnesses listed below to provide evidence in support of it. The submitters then wishing to address the Commissioners made presentations. At the reconvened hearing on 30 August 2007 Ms Perwick presented a statement addressing her report and commenting on the presentations by the applicant and submitters before introducing statements from other consultants who had input to the reporting exercise for the Council. Mr Savage then presented a right of reply and called some rebuttal evidence.

18. Appearances were from:

Applicant:

Mr Michael Savage, Legal Counsel
Mr Mark Rowbotham, Applicant
Mr Craig Matheson, Real Estate Agent
Mr Dennis Scott, Landscape Architect
Mr Kelvin Norgrove, Planner/Economist
Dr Douglas Wilson, Traffic and Transportation Engineer
Dr Philip McDermott, Economist
Mr Mark Kearney, Civil Engineer
Mr Gary Clarke, Civil Engineer
Mr Barry Kaye, Planner
Mr Matthew Rowbotham (in attendance)

Tabled evidence from:

Mr Rodney Clough, Archaeologist
Mr Kori Lentner, Geotechnical Engineer
Mr Nigel Clunie, Ecologist
Mr Mark Poynter, Marine Ecologist

Submitters:

Mr John Dickie for the Mangawhai Residents and Ratepayers Association, accompanied by four members of the Association
Mr John Dobrowolski
Mr Michael Lister for the NZ Fire Service
Mr Colin Bennett for the Mangawhai Harbour Restoration Society
Mr Colin Bennett for himself

Mr Earnest Hurley
Mr Michael Hurman
Mr Ray Jones
Mr Herbert McCarthy
Mr Owen McShane
Ms Martina Tschirky
Dr Clayton Bennett, statement read on his behalf by Mr
Herbert MacCarthy
Ms Shyrel Burt for the Burt Family Trust

Tabled evidence from:
Ms Helen Curren
Mr John Dickie for the Mangawhai Residents and
Ratepayers Association

Council Officers: Ms Michele Perwick, Consultant Planner
Mr Adam Thompson, Consultant Property Market Analyst
Mr Michael Winch, Consultant Engineer
Mr Mark Seakins, Consultant Engineer
Ms Venessa Anich, Planning Manager (in attendance)
Mr Andrew Green, Legal Adviser (in attendance)
Mr Grant Hewison, Legal Adviser (in attendance).

SUBMISSIONS

19. Submissions relating to a range of matters were received to the proposed change. In broad terms the relief sought by those submissions was as follows:

Decline the Plan Change

- Decline in its entirety.
- Decline in part.

Traffic/Roading/Infrastructure

- Transport impact assessment be undertaken.
- Defer decision until traffic effects on state highway and its intersections are assessed.
- Prohibit use of Old Waipu Road for vehicular access to Estuary Estates land.
- Priority provision for pedestrians.
- Require a stormwater management plan.
- Satisfactory resolution of flooding/climate change matters.
- Suitable provision made for emergency services and infrastructure.

Ecological, Historic, Landscape and Amenity Values

- Landscaping works to be completed prior to sale of lots.
- Require covenant.

- More reserve space.
- Bonds or other safeguards to developer to ensure high standards, planning, design and implementation.

Reduce Intensity of Development

- Do not allow 500 sections.
- Do not allow infill housing.
- Minimum site size of 2000m²/apply a Rural-Residential zoning.
- Apply a lower density of housing.
- Maintain semi-rural nature.

Business and Industrial Zones

- Commercial zone be declined.
- Decline Zones 1, 2 and 3.
- Relocate Service zone.
- Amend provisions to include appropriate mix of activities, access, building form, function and size.

Management of Growth

- Plan change to be considered as part of a long-term development plan for Mangawhai.
- Council to take a proactive planning role in managing growth in Mangawhai.
- Integrate plan change into district plan review.

Approve the Plan Change

- Support the plan change.
- Support subject to conditions.

Other

- Undertake an archaeological survey of site.
- Provide a boat ramp.

20. At the hearing the Commissioners had the opportunity to hear presentations from submitters and through questions, to have some discussion with them relating to their concerns.

REVISIONS TO THE PROPOSED CHANGE

21. A number of revisions were made to the proposed change subsequent to its notification. This matter was raised by Mr Michael Savage in introducing the proposed change at the hearing. The revisions are detailed in the evidence of Mr Barry Kaye who pointed out that these were made in order to address concerns expressed in submissions and from conferring with the Council's

reporting officers. The revisions are matters of detail that the Commissioners consider are appropriate. The revisions are considered by the Commissioners to be within the scope of the original application. The recommendations in this report are based on the proposed change incorporating the revisions.

THE ISSUES

22. The issues raised in submissions, and by the Council's officers/consultants reporting on the proposed change, other than the statutory considerations needed, are addressed below under convenient headings:

Economic and Social Effects

23. It was under this heading that the main concerns in relation to the proposal were advanced. Those concerns were for the effects the proposal, both in terms of the amount of land sought to be zoned and its location, would have upon the existing settlement of Mangawhai. That is, the effects on the existing Commercial zoned areas at Mangawhai Heads and at Mangawhai Village and the effects on the existing Residential zoned areas. Those effects relate to additional commercial space potentially adversely affecting the trade available to the existing commercial outlets and additional Residential zoned land potentially adversely affecting the supply and demand of available Residential sites.
24. The effects the proposal could have in these respects differ between the applicant's experts and the expert reporting for the Council. These predicted effects rely on base calculations of population growth and related factors by the respective experts. As stated, this was a primary concern advanced by submitters in opposition and it appeared to be fundamental to the recommendation by the Council's reporting planner that the proposed change request be declined.
25. **The applicant's experts** described, in evidence, details from their earlier reports, the growth that had been occurring at Mangawhai and the reasons for it. They worked on the basis of 4% population growth per year through to 2026 as the basis for stating that Mangawhai's population could more than double between 2006 and 2026 to reach about 3,650 people and 1,700 permanent households. The 2006 figures are 1,670 people and 770 dwellings. The analysis of how this growth in population translates through to commercial floorspace and land area demands indicated that by 2026 the following additional zoned land is likely to be required:

- | | |
|----------------------------------------------------------------------|-------|
| • Commercial uses (retail and offices) | 2.5ha |
| • Other household oriented services
(maintenance, automotive etc) | 1.8ha |
| • Other employment
(manufacturing, transport and storage etc) | 2.7ha |

26. That is, a need for an additional 7ha to cope with business land requirements.¹
27. The analysis of residential development referred to the Council's Eco-Care Wastewater Drainage District which includes the Heads and Village areas at Mangawhai and goes further west into the rural area. It was stated the Council's statistics were that there was an estimated total of 2,005 lots in that area in mid-2007. The analysis presented for the applicant is that subdivision capacity at 2006 within that area was 650 lots such that with an annual increase of 50 lots the capacity can be expected to be exhausted before 2017. In order to provide for the additional long term residential development that is expected it would be necessary to be zoning additional land for it.²
28. The applicant's experts saw Mangawhai and its close environments as a fast growth area and the issue then becoming one of how Mangawhai should deal with strong growth. The high population growth rate anticipated leads to demands for a greater range of goods and services and demands for land for those purposes. The applicant's experts emphasised the occupation of land for future growth would take time, but would occur over a 20-year planning period. Part of this would be associated with an element of increasing self-sufficiency arising out the resulting investment and consequently the greater range of goods and services that can be offered locally.
29. In relation to concerns for significant trade diversion from the existing centres, the experts saw a more likely outcome being the existing two centres sharing in the growth that the proposal was responding to and could well stimulate. There may be some changes in the mix of activities at each centre, a normal response to changes in the market place, but the long term prospect was for them to continue to meet convenience and some neighbourhood shopping demand, and some social and recreational needs. Some distributional impacts were acknowledged, insofar as some residents, or some residential locations, are inevitably favoured over others. However, as with any shopping centre location, this did not mean that people who live in the vicinity of the existing centres would have to go to the proposed centre for their daily convenience goods.
30. The experts saw it being good practice to adopt a planning horizon of at least 20 years, and ideally 30 years, without being too prescriptive. This would provide for certainty in forward planning, particularly in respect of growth directions and patterns and broad land use commitments, without unduly trying to predetermine or prescribe particular outcomes. The aim, they stated, was to provide for foreseeable needs without unreasonably limiting future choices.
31. In relation to social effects it was pointed out that under-investment in retail capacity as a result of the land and planning constraints would limit reinvestment and most likely see higher rents applying to aging retail premises. These would likely feed into higher prices and reduced service

¹ Evidence of Dr P McDermott, para's 37 and 11

² Evidence of Mr K Norgrove, para's 3.1 to 3.16

levels for local customers. As well as the adverse impacts associated with higher local costs, households would have to continue to carry the costs of long-distance travel to satisfy higher order or more specialized shopping and service needs. Also, without the opportunity for a comprehensive commercial area to be developed at a central location, pressure is likely to continue for further ad hoc, piecemeal commercial activities at sites removed from the existing centres. They pointed out the claim that the proposal would increase vehicular traffic movements ignores the already and increasingly dispersed nature of Mangawhai. The experts did not see that a central commercial area, with capacity for whole-of-community facilities, was contrary to the social development of Mangawhai which currently has two small convenient centres, neither of which has the capacity to provide a strong area-wide focus. A planned central site, with adequate capacity, would do much to overcome Mangawhai's current fragmentation and restore some order to the ad hoc development currently taking place. It would avoid the disruption or traffic severance issues that might be associated with over-extending one or other of the current centres.

32. The evidence for the applicant was there is substantial demand to be met, which justifies the land use provisions made within the proposal. The proposal was seen to provide the benefits of a positive, comprehensive and flexible approach to the prospect of growth rather than a constrained, defensive and ad hoc approach. The proposal would become an important and coherent centre to the district, benefiting both current and future residents, meeting growth pressures, and doing so in a way that minimizes the costs associated with long-distance travel for commuting, shopping and other purposes.
33. The experts for the applicant additionally presented evidence that pointed out:
 - It not being practical to expect the existing commercial centres to accommodate a majority share of the total projected demand for business land and floor space given it is equivalent to doubling their existing land area by 2026.
 - There are two recent commercial development proposals outside the existing commercial zone amounting to 42% of the total existing retail and commercial gross floor area in the Mangawhai area and demonstrating the impracticality of assuming that new development will simply squeeze into the existing zoned area.
 - There being constraints in the existing centres in terms of site size and configuration, land values, amenity-design and traffic conflicts contributing to pressure for out of zone commercial uses.³
34. **The Council's reporting officers**, in reporting on the proposed plan change request, had arranged for a peer review of the economic information included with it. That review raised a number of concerns largely based around the proposed introduction of the projected amount of additional retail floor space being likely to have significant effects on the trading

³ Evidence of Mr K Norgrove, para's 4.8 and 4.13

performance (on economic viability) of existing centres. This additional supply would in itself represent more than what is estimated to be sustainable in the market, meaning there is a strong likelihood that there would be a significant trade diversion from the existing centres to the proposed centres, theoretically up to 100% and practically, up to around 75% (effectively reducing the existing neighbourhood centres to local convenience centres). These effects were seen to be distributional effects that are more than minor adverse effects. The analysis indicated that although no retail capacity remained at the Heads there are several opportunities for adjacent residential land to be used for retail and that there is considerable retail capacity remaining at the Village.

35. In relation to the residential component of the proposal the peer reviewer found that Mangawhai currently has sufficient supply to meet demand for approximately 15 years and that the proposal may potentially over-supply the market leading to inefficiencies being an increased cost of providing infrastructure; residential growth patterns becoming sporadic; quality and size of houses being built may be reduced reflecting the drop in land prices, although this is a market rather than a resource management issue; and, an oversupply of residential and future zoned Residential land resulting in large quantities of land being made unavailable for productive (primary produce) uses prematurely. In terms of industrial land, the statement was made that there would appear to be limited capacity remaining and there are grounds of rezoning 2 to 2.5ha of land.
36. That peer review exercise was followed up in evidence from the author at the hearing who pointed out he had adopted a "conservative" growth forecast of approximately 2% per annum; had adopted a sub-regional market as that in which he saw Mangawhai as effectively competing for growth; and, had adopted past trends over a longer time period than the applicant and forecast these over a shorter time period than the applicant. He pointed out that adopting an optimistic growth forecast, as the applicant had done, runs the risk of oversupplying land, which has inherent adverse effects.
37. The peer reviewer reiterated his concerns in relation to distributional effects pointing out that if further land is zoned, the impact on existing centres could in practical terms be up to 75% trade diversion. That is, 75% of retail spent diverted from existing centres to the proposed centre. That was, in his opinion, an adverse impact that could be considered as more than minor and would effectively change the role and function of these centres. He saw the proposed centre effectively being comprised of the same types of stores that are located in the existing centres, and therefore being in direct competition with them. Of particular importance would be the very likely relocation or replacement of the two "Four Square" shops. He saw the greatest level of accessibility being achieved from building on the existing two-centre network rather than a one-centre network for these reasons.
38. There was no need for additional residential lots in Mangawhai in the short to medium term future according to him. He considered the proposal sought to provide a large proportion of lots at similar sizes and of a similar nature to

those provided in the Heads and the Village areas, and that these will compete directly with these existing areas.

39. **The Commissioners** received comprehensive information in relation to all of the above. That included the application details, the evidence presented at the hearing by the respective experts for the applicant and for the Council. They also received information from some of the submitters, including that presented by Mr John Dickie on behalf of the Residents and Ratepayers Association. Whilst that information shows differences of opinion between the current supply and demand of both commercial and residential land at Mangawhai, it is clear that increasing population growth will require increasing amounts of land for both those purposes. It then becomes a matter of what amount of land is appropriate and where that should be located. Such assessment needs to be made in the context of the evidence put before the Commissioners.
40. The Commissioners believe it is fair to say that they largely concur with the evidence for the applicant, that being presented as the "optimistic" approach to growth at Mangawhai. There has been significant population growth at Mangawhai in recent years and increased pressure on land for subdivision and development. Mangawhai is influenced by the greater Auckland catchment in these respects and the appeal that this coastal area, in reasonable proximity to Auckland, has for a growing number of persons. That leads to demands for an increasing range of goods and services and the matter of how that can be arranged.
41. The evidence was that the existing Heads and Village centres provide local convenience needs but are limited, as was also shown by the Commissioners' observations, in terms of the ability to expand given the current zoning regimes at those centres, existing development and land title arrangements. On the other hand, the proposal would provide for development of an alternative "greenfields" site in a comprehensive manner including residential and commercial activities. With the spreading nature of the Mangawhai urban form, as again evidenced from the Commissioners' observations, such a new centre will be able to provide for the local convenience needs of its residents, and provide for a wider commercial service to the Mangawhai settlement, in a manner than is not able to otherwise be provided.
42. The Commissioners have given careful consideration to the concerns relating to distributional impacts. They find from the evidence, and the opportunity to ask questions of the parties, that these effects have largely been overstated. In practical terms the Commissioners do not accept that distributional effects of such an adverse nature are likely to occur. In forming that conclusion, the Commissioners rely on the evidence put before them.
43. Similarly in terms of the amount of land to be zoned, that is supported in the evidence of the applicant. If that proves to be overly optimistic then the evidence presented was that the adverse effects associated with an over-

supply of such land are not to the same degree as those that would be experienced from under-provision of it. Mangawhai can be expected to continue to grow. There was no debate about that point. The debate is about the rate of that growth and when additional zoned land will be needed to accommodate it. The Commissioners consider this matter of timing was well summarised in a statement from Dr Philip McDermott when making some concluding remarks about his figures for commercial land,

*"Uncertainty around them (the areas required for commercial zoned land) will translate into timing variations rather than into any likely reduction in the long-term. Given the generally conservative nature of our assumptions, the likelihood is that this land area will be required sooner rather than later."*⁴

44. He went on to say further,

*"Failing to provide a balance between residential expansion underway in response to strong and growing demographic demand...and associated employment needs...may slow growth, but will not stop it."*⁵

45. In addition to the timeframe within which the zoned land would be taken up, the Commissioners are recommending there is the opportunity for further investigation of the staging of the development in the Business 1 and Community 2 zones in order to achieve consolidated development in these zoned areas. This is discussed below. It was principally in relation to the Business zoned land that some concerns were expressed about the take-up of it and such staging would assist in meeting those concerns.
46. The Commissioners note that concerns were raised by some submitters in relation to the effects of trade competition. The Commissioners are directed by Section 74 of the RMA that they must not have regard to trade competition in their considerations of changing the district plan. In this context too, the Commissioners note the acknowledgement by the Council's economic consultant regarding the qualitative analysis that occurs as part of the quantitative analysis that is applied to these considerations relating to distributional effects. All the experts that presented evidenced focused on quantitative analysis but also, out of necessity, provided some qualitative analysis regarding what they considered might eventuate. In similar fashion the Commissioners have had particular regard to the quantitative analysis but also, in a qualitative sense, note that all of this work is carried out in the context of a coastal and holiday settlement that has undergone rapid change in recent years with no clear signs or reasons, in terms of what was put in front of the Commissioners, that it will change in any significant manner over a planning period of 20 years. The Commissioners consider that to be an appropriate term for such planning.

⁴ Evidence of Dr P McDermott, Attachment 1 being the report of May 2007 addressing Growth Prospects and Employment Land Needs, section 6, page 31

⁵ Ibid section 6, page 31

47. The evidence and the supporting information provided by Mr John Dickie for the Residents and Ratepayers Association is acknowledged by the Commissioners. Mr Dickie responded to comments from the Commissioners about the need for evidence of an empirical nature to support his views about availability and demand and subsequently produced a report from Strategic Risk Analysis Limited that addressed the market for residential sections at Mangawhai. The author of that report did not appear at the hearing and correspondence was later presented by the applicant from the author that pointed out concerns for his report being used at the hearing. In doing so that person provided other comments that could arguably be seen to be in support of the proposal. The Commissioners can therefore give little weight to that information.
48. In all the circumstances, the Commissioners find that the economic effects, and the associated social effects, from the proposal are acceptable and that the proposal is based upon a comprehensive analysis of the reasonably expected future for Mangawhai.

Visual, Landscape and Amenity Effects

49. The proposed change was accompanied by a report from D J Scott Associates which addresses the potential landscape and visual effects arising as a consequence of the proposed change. It includes design and environmental guidelines that are to be used as part of the structure plan provisions. The report addresses a wide range of matters applying the integrated catchment management process as a landscape analysis tool in a manner that ensures that the important landscape patterns and catchment related considerations are appropriately addressed. These details were supplemented by comprehensive evidence from Mr Dennis Scott at the hearing.
50. The proposed change would inevitably result in significant changes to the landscape character of the area. However this is in the context of a site which does not have high levels of landscape value and one which has relatively low levels of landscape sensitivity. Further, this change is in the context of the proposed structure plan layout that sees an extensive green network throughout the site acting in a screening and buffering role. Rather than providing details that repeat the Scott report and evidence, the Commissioners record that the analysis was comprehensive, analytical and demonstrated that the proposal is able to be accommodated in a manner which avoids significant adverse visual effects or effects on the landscape values of the locality, including the natural character of the estuarine/coastal environment.
51. One matter relating to amenity considerations was the concern that should the proposal proceed, that it would in fact be along the lines that the applicant was portraying in plans and text supporting it. This was raised in presentations from Messrs Colin Bennett, John Dobrowolski and John Dickie. The Commissioners agree that is a valid consideration. Those submitters may speak from experience with other developments. The

Commissioners need to work on the basis that the applicant will proceed in the manner described in the proposed change details but otherwise, the design and environmental guidelines are part of the proposed change and it will be a duty for the Council in processing the resource consents to ensure the high standards of building and site design are met. To this end the Commissioners seek confirmation of landscaping establishment by way of a staged planting programme in the proposed change for the whole of the site, with priority given to the major structural planting of elevated areas. Structural planting should be established in advance of development stages to ensure that the green network and associated planted areas have an opportunity to mitigate development in a reasonably short timeframe.

52. The Commissioners note that the proposed change will introduce provisions to the district plan that are a little different to the traditional provisions insofar as they include a comprehensive set of design and environmental guidelines. The Council will need to ensure it has the resources to deal with the associated administration of these new district plan provisions.

Intensity and Scale of Residential Development

53. A number of concerns were raised by submitters that the level of proposed development is excessive, and in particular areas is of an intensive nature, in a manner that would result in significant impacts on natural character and amenity values and a loss of enjoyment of property and lifestyles. Property owners along Old Waipu Road had particular concerns in terms of overlooking the application site.
54. The Commissioners recognise the intensive nature of parts of the proposed change and that it is seeking to introduce a different residential character and built form to that which has been traditional at Mangawhai. However the information and evidence was that the level of intensity in itself does not necessarily create adverse effects, and that it can be satisfactorily managed. Such management is very much a part of the structure plan approach embraced by the proposed change. The manner in which the various elements of the structure plan are to be managed was demonstrated by the wide ranging considerations the applicant has had in relation to it, and as provided in the evidence of the applicant's various experts at the hearing.
55. In reporting on the proposed change Ms Perwick pointed out rural-residential activity had been signalled in the Mangawhai Structure Plan as more appropriate for the site than its current rural zoning. She supported that approach acknowledging, in agreement with the applicant, that the land is not of particularly high productive value.
56. The proposed change would see more intensive use of parts of the land and indeed a variation of densities across it, including rural-residential. This development concept is based on the integrated catchment management approach and analysis carried out by Mr Dennis Scott. That determines the parts of the site that are capable of development, and to what intensity. The Commissioners agree with that approach which demonstrates the land is

capable and suitable to be developed in accordance with the proposed change.

57. Further, the services required for development in accordance with the proposed change are able to be provided. Mr Mark Kearney confirmed that wastewater could be managed on the site on a stand-alone basis but also mentioned the Council's EcoCare wastewater project that was planned to provide a reticulated service to the developed parts of Mangawhai. The site was outside the area planned for that service but the methodology would allow for it to be connected at a future time. Mr Kearney pointed out that the applicant had given approval for the EcoCare rising main to pass through the application site to the future disposal site.
58. The Commissioners therefore see the opportunity to develop this land in a more intensive manner than rural-residential as being consistent with an approach of making efficient use of the land resource. They note there are policies in the district plan, and statements in pre-district plan review information, that seek to see the concentration of residential development within and adjacent to existing settlements, management of peripheral residential expansion in a manner that promotes efficient resource use and the placement of rural-residential development around existing settlements in a manner that makes efficient use of infrastructure. The proposed change can be considered to be consistent with these planning outcomes.

Effects on Ecology, Sites of Significant Indigenous Vegetation and Significant Habitats of Indigenous Species and the Coastal Environment

59. The location of the application site close to the Mangawhai Estuary is a matter needing to be taken into account. The nature of the application site and locality in these respects is reflected in the proposed change insofar as it incorporates retention of the majority of bush cover and coastal margins within protected public open space areas. It has been the subject of specific consideration by ecologists Messrs Nigel Clunie and Mark Poynter.
60. The physical effects of the development on the natural environment arising out of the provision of infrastructure have been addressed by engineering specialists, being Messrs Gary Clarke and Mark Kearney, with those details in turn being reviewed by the Council's consultant engineers, Messrs Mark Seakins and Michael Winch. All the details relating to stormwater management and disposal; wastewater disposal; and, earthworks are able to be satisfactorily managed in the context of the proximity of the site to the Mangawhai Estuary. Some modifications are made to the proposed change to include further provisions as agreed by the engineers. Future resource consent applications will also be required to the Northland Regional Council in relation to the relevant regional plans which will provide further consideration of issues relating to the infrastructure discharges of the proposal.

61. The Commissioners note the presentations at the hearing by the applicant's engineers and the Council's engineers were very helpful in demonstrating these matters could all be practically resolved.

Traffic and Transportation Effects

62. There were concerns for potential traffic effects arising from a connection between part of the proposed change area and Old Waipu Road and also in relation to Molesworth Drive. Transit New Zealand raised concerns in respect of the traffic impacts on the State Highway network. Further concerns were in relation to pedestrian safety.
63. The issue of the connection with Old Waipu Road was overcome by removing that connection for vehicles. The Commissioners were also advised that the concerns of Transit NZ, which did not attend the hearing, were being addressed directly with it and were likely to be resolved.
64. The application details and the evidence from the applicant, together with the review by the Council's advisors, did not raise any issues that had not been considered or that were not capable of being arranged in terms of the evidence presented to the Commissioners. For the applicant, Dr Douglas Wilson commented on design details being able to be arranged to ensure that appropriate traffic design principles and treatments are incorporated into the proposal. The design guidelines would ensure that road and traffic users' (vehicular, pedestrian and cyclists) safety, and the efficiency of the surrounding road network, were not adversely compromised. He stated further that the proposal, as regard to transportation, land use activity and all engineering and infrastructural aspects, is consistent with the spirit of the Council's Mangawhai Structure Plan. With its intended mixed land use, he stated, it incorporates sound transport planning and engineering principles that will ensure sustainable development principles are specifically designed for and controlled, in comparison to continued spread and ad hoc development. Dr Wilson saw the provisions and design guidelines within the proposed change allowing for an attractive living environment with appropriate and sustainable transport linkages and access to mixed commercial, light industrial and recreational areas.
65. A matter discussed in some detail during the course of the hearing was the two intersections where the proposed change area intersected with Molesworth Drive and the traffic treatment relating to it. The concept of roundabouts at these intersections was discussed. It was agreed that these works should be carried out by the applicant who would provide sufficient room for two-laning of the traffic routes to be formed at a later date if needed. An indicative plan of the land area required to accommodate the two-laning has been prepared (Attachment A).
66. Mr Michael Winch explained a number of related matters in his report to the Commissioners. He said the site was included in the area covered by the Council's Roading Development Contributions Policy, formulated under the Local Government Act 2002, which would apply to the development that

would occur in terms of the proposed change. That Policy provides funds for the upgrading of arterial and collector roads in Mangawhai and particularly, for the widening of Molesworth Drive with footpaths on either side of it. Mr Winch advised that a further financial contribution under the RMA is unnecessary and that a financial contribution cannot be taken under the RMA for the same purpose as a contribution is taken under the Local Government Act.

Effects of Natural Hazards

67. The proximity of the application site to the Mangawhai Estuary meant potential matters of inundation from storm events and predicted sea level rises needed to be addressed. Concern was expressed that a comprehensive analysis of the potential flood hazard on this site had not been carried out as part of the application details. However this was a matter that received close attention at the hearing, and in evidence, particularly from Mr Gary Clarke. It was demonstrated that the development plan does not propose to significantly change existing ground levels adjacent to the estuary and that those levels are considered satisfactory to afford adequate protection from inundation from predicted maximum sea levels.
68. The geotechnical evidence was that whilst there are some areas of slope instability on the more elevated portions of the site, and the low-lying portions contain soft/compressible substrata and in some places a hardpan and high ground water levels, that competent engineering design and construction would result in satisfactory development of the application site. The evidence was that there are sufficient geotechnically related checks, procedures and safeguards that occur through the subdivisional land development process to allay any concerns in relation to the nature and extent of the earthworks and the overall suitability and stability of the land for development.

Water Supply

69. The lack of a reticulated water supply to Mangawhai meant that there was a need to demonstrate an adequate supply of water will be available for the proposal. This was addressed in the evidence of Mr Mark Kearney who pointed out there are three types of water sources within the development, being rainwater harvesting, surface (ponded) water and ground water. In addition there is the availability of tankered water, being water brought to the site from external sources. Only roof collected rainwater systems with adequate storage are suitable for potable water use and this would be the manner in which all household potable water would be supplied using water storage tanks which would be buried or screened from view. Where the use of roof collected rainwater may be insufficient for some commercial/industrial use and for intensive multi-level residential developments then larger water storage tanks may be required. He also commented on the possibilities of ground water supply and surface water supply but stated otherwise, where such supply may be insufficient, that mobile water supply would be utilised.

70. The Commissioners acknowledge that for some commercial/industrial use and for intensive multi-level residential developments, water supply can be arranged by way of larger storage tanks and tankering to the site in the manner described by Mr Kearney. That will clearly be an alternative that does need to be adopted from the evidence of demand for water by those activities. It is not an ideal arrangement and may impose some constraints on future development.

Structure Plan Process and Timing

71. A Mangawhai Structure Plan had been prepared and adopted by the Council in January 2005 and the Kaipara District Plan is currently being reviewed. The latter is anticipated to be released for public comment in late 2008. A number of submitters were of the view that the proposed change should be considered as part of the review of the district plan, which would incorporate the outcomes from the Mangawhai Structure Plan, rather than at this time.
72. The proposed change was considered to be consistent with the Council's Mangawhai Structure Plan by Messrs Dennis Scott and Barry Kaye for the applicant. They referred to it adopting the integrated catchment management approach to the site and developing design and environmental guidelines consistent with the Structure Plan. They also pointed out the Structure Plan was a non-regulatory, strategic document designed to assist with decision-making relating to future growth and that it did not attempt to identify specific locations for development and growth but rather ways of responding to various development pressures as they arise. The Council's reporting planner acknowledged those points but stated that the Structure Plan also suggested that the site should be for rural-residential activity with the commercial centres for Mangawhai being at the Heads and the Village. The Commissioners find that the proposal is not entirely consistent with the Mangawhai Structure Plan in these respects. It is however a document prepared for planning purposes in the form of a guide and without being prescriptive as to the location and form of future development. It is a non-regulatory document to be given limited weight in terms of the current considerations of the Commissioners who find it does not prevent the consideration of the proposal on its merits and against the other relevant statutory provisions in the RMA.
73. The Commissioners note that the RMA provides an opportunity for plan changes to be applied for at any time and consider it is not realistic to defer such an application, particularly given the lengthy time process associated with a district plan review exercise. In this case, the applicant has undertaken considerable and comprehensive analysis associated with the proposal. That leads the Commissioners to the conclusion that this analysis is likely to be more than would be obtained through a district plan review exercise for this one part of the Kaipara District. Indeed, the Commissioners can only describe the analysis as considerable and comprehensive and note that the applicant had engaged specialist consultants to advise on all the relevant aspects of the proposed change.

74. The Commissioners find that the structure plan process and the process of the review of the proposed district plan do not, and cannot, prevent the consideration of the proposed change at this time. Neither do they consider it is reasonable to do so given the growth of Mangawhai and the associated analysis carried out by the applicant. The reporting planner for the Council also advised that the consideration of the proposed change could not be deferred to become part of the district plan review.

Staging

75. The staging of the zoning in the proposed change was raised by some of the parties, including the Council's reporting planner, as a means of controlling the rate of development and mitigating impacts that too much zoned land being available could have at Mangawhai. That was not supported by the applicant, apart from a brief comment in closing legal submissions, and it was not a matter on which the Commissioners received any advice or information regarding how it would be arranged in the context of the proposed change.
76. The Commissioners found that whilst such staging is in principle a sound concept, they did not receive information sufficient to satisfy them it was necessary to control the rate of development or mitigate effects relative to the rest of Mangawhai. The evidence of the applicant identified the need for the zoned land and its uptake would then be left effectively to the market in the knowledge that it was required over a 20 year planning period.
77. Having said that the Commissioners consider there could be some benefit in staging the development of the Business 1 and Community 2 zones in order to achieve consolidated development in these zoned areas. It may be, for example, that development should commence at one end of these zoned areas and proceed across them rather than occur on a more piece-meal basis. The Commissioners seek that this be a matter given consideration by the Council's advisers in their discussions with the applicant in making amendments to the details of the proposed change.
78. The Commissioners note that the proposed change does include staging in relation to the development of the land. The provisions set out how staged development shall occur in ensuring that infrastructure, roading and the open space elements of the structure plan are established at early stages of development. This includes the infrastructure and roading that must be established before any individual zone can be developed with some flexibility being provided to respond to local needs. Furthermore, the Commissioners are of the view that staging should be extended to include the development of structural planting, as referred to above, to ensure that the mitigation provided by the green network and associated landscaping is established and maturing throughout the course of developing the project.

Amendments to the Proposed Change as a Result of the Consideration of It

79. The report prepared for the Council by Ms Michele Perwick had attached to it a number of specialist peer review reports that address details of the proposed change. These had been arranged by the Council as part of reporting on the proposed change and used by Ms Perwick in her overview planning report on the proposed change.
80. The reports are by:
- Mr Mike Farrow of Littoralis, addressing landscape issues
 - Mr Mark Seakins of Seakins Engineering Solutions Ltd, addressing infrastructure and engineering issues
 - Ms Jacqui Coleman of Becas, addressing geotechnical issues
 - Mr WB Shaw of Wildland Consultants Ltd, addressing ecological issues
 - Mr Adam Thompson of Property Economics, addressing economic issues
 - Mr Stephen Brown of Stephen Brown Environments Ltd, addressing urban design issues.
81. These peer review reports made a number of recommendations regarding amendments that could be made to the proposed change to address issues that were able to be overcome with such amendments. The Commissioners agree with most of those recommendations of the specialists in amendments that they see as being needed to be made to the proposed change following the Commissioners' consideration of it and the submissions to it. The economic issues report contested information included with the application did not include such recommendations.
82. In similar fashion Ms Perwick highlighted concerns in relation to the proposed change as part of her report upon it and recommended a number of amendments to it. These included, for example, the removal of short term residential and tourist centre activities from the Service 7 zone. It also included there being provision for only limited office and retail activities associated with core businesses located in that zone, with a floor area limit in either absolute or percentage terms on these activities. The reasons were to avoid introducing potentially incompatible uses to the zone and to also limit what activities occur within it, to ensure the zoned land is available for service activities. A reduction in the maximum height of buildings in zones 1, 2 and 4 from 12m to 10m was recommended on the grounds that the proposed height would affect local amenity values. However the Commissioners are satisfied with the maximum heights included in the proposed change on the basis of the supporting information and evidence and not having received similar in relation to such a reduction.
83. The Commissioners do not agree, based on the evidence, that the proposed change should not be approved, that being the overall recommendation of the reporting planner. However, the Commissioners do find agreement with

most of the amendments to the proposed change that were recommended by Ms Perwick and the peer reviewers. This will be reflected in the proposed change as amended as a consequence of the Commissioners' consideration of the proposed change.

84. It is important to state that the amendments largely improve the workability of the proposed change by removing some inconsistencies within it, making provisions clearer and generally refining the provisions of the proposed change. The amendments do not alter the overall thrust of the proposed change but rather amend details of it. This is important in the context of the Commissioners' recommending an Interim Decision on the proposed change whilst these amendments are considered in detail with the applicant. That is, the recommendation is that the proposed change be approved with the details of the amendments resolved before the Final Decision is released.

Other Issues

85. There were a number of other issues raised through submissions, which included for example waste management, lighting/noise and heritage. These, and other matters of concern, are all able to be satisfactorily addressed in terms of the information and evidence submitted in support of the application and otherwise at the time development proceeds.

STATUTORY CONTEXT

86. Section 74 of the RMA sets out the matters to be considered by a territorial authority in preparing or changing its district plan. These include doing so in accordance with its functions under Section 31, the provisions of Part 2 and its duty under Section 32 and further, having regard to other documents to the extent that their content has a bearing on resource management issues of the district.
87. Section 75 of the RMA, in addressing the contents of district plans, requires that the district plan must give effect to any regional policy statement and must not be inconsistent with a regional plan.
88. Section 31 addresses the functions of territorial authorities under the RMA and includes:
- “
- (a) *the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district;*
 - (b) *the control of any actual or potential effects of the use, development, or protection of land,...*”
89. Section 32 RMA provides for the consideration of alternatives, benefits, and costs and requires that an evaluation must be carried out and that an evaluation must examine:

“

- (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
- (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.”*

- 90. For the purposes of this examination, an evaluation must take into account the benefits and costs of policies, rules, or other methods.
- 91. Part 2 of the RMA, being the purpose and principles of the statute, is the overarching part of the RMA. Regard is to be given to all matters within it.
- 92. All of these relevant considerations were addressed in the extensive planning evidence presented for the applicant by Mr Barry Kaye. In relation to Section 75 of the RMA he highlighted the Northland Regional Policy Statement, the Northland Coastal Plan and the Northland Regional Water and Soil Plan along with the Northland Conservation Management Strategy. These matters had been addressed in the application details and in the Council planner's report and the proposal was generally consistent with those statutory documents said Mr Kaye. The Commissioners find these matters are satisfactorily addressed in terms of the proposed change provisions. The Commissioners note too there were no relevant management plans under any other Acts and no iwi planning documents identified.
- 93. The Kaipara District Plan sets out the strategic resource management directions for the District. As stated earlier it is under review. Mr Kaye pointed out its provisions were dated in respect of the growth that had occurred in the District and that the provisions relating to growth management for Mangawhai clearly needed re-evaluation. He detailed what he regarded as key deficiencies in the district plan which under-pinned the need for the proposed change. The Commissioners find that the further commercial and residential zonings sought by the proposed change can be provided satisfactorily in the context of the district plan.
- 94. In the above respects the Commissioners find, having had regard to the relevant regional and district planning documents, that the proposed change is not inconsistent with them.
- 95. The Section 31 RMA functions require the control of any actual or potential effects of the use, development, or protection of land. The range of actual or potential effects arising from the proposed rezonings is addressed in the documentation for the proposed change, in the evidence for the applicant at the hearing and also in the Council's planning report upon the proposed change. Effects are also highlighted in the submissions to the plan change. The Commissioners are satisfied that all actual and potential effects associated with the proposals in the proposed change have been taken into account in preparing the provisions for it. Some of the details in the

proposed change are able to be complemented by the addition of further controls as part of the decisions on submissions. The Commissioners are satisfied that the control of any actual or potential effects associated with the proposed change is sufficiently addressed in the planning provisions relating to it.

96. The proposed change documentation includes a comprehensive Section 32 RMA evaluation, which addresses the relevant matters. Mr Michael Savage highlighted the detailed provisions of the RMA in relation to Section 32 and referred to the decision of *Eldamos Investments Ltd and Gisborne District Council*⁶ as providing the test to be applied to the assessment required of proposed private plan changes to an operative district plan. That case sets out the test as follows:

"An objective in a district plan is to be evaluated by the extent to which it:

- 1. Is the most appropriate way to achieve the purpose of the Act (section 32(3)(a));*
- 2. assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (section 72); and*
- 3. is in accordance with the provisions of Part 2 of the Act (section 74(1)).*

A policy, rule or other method in a district plan is to be evaluated by whether it:

- 1. Is the most appropriate way to achieve the objectives of the plan (section 32(3)(b); and*
- 2. assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (section 72); and*
- 3. is in accordance with the provisions of Part 2 of the Act (section 74(1)); and*
- 4. (if a rule) it achieves the objectives and policies of the plan (section 76(1)(b))."*

97. On that basis Mr Savage submitted that the role the Commissioners have is to determine:

- Whether the proposed change is the most appropriate way of achieving the objectives of the Act and the purpose of the Act.
- Whether the proposed change assists the Council in terms of carrying out its functions – being the integrated management of, and control of, the use, development or protection of land – in order to achieve the purpose of the Act.
- Whether the rules included in the proposed change achieve the objectives and policies of the district plan.

⁶ W047/05 Environment Court, 22/05/2005

98. These matters were all addressed in the evidence of the applicant's experts and particularly by Mr Kaye. He discussed the details with the application and also the further work carried out in addressing a number of matters raised by the reporting planner following a review of the application details. Mr Kaye's evidence included an appendix⁷ which was a further assessment of the proposed change in terms of Section 32 of the RMA. This assessment had particular regard to the purpose of the RMA and the district plan and commented on deficiencies in the district plan that provided support to the need for the proposed change for Mangawhai. He was of the view those details provided the necessary assessment and information in relation to Section 32 RMA considerations.
99. Mr Savage submitted that the proposed change satisfied the relevant criteria and that it would provide an optimal planning solution for achieving the purpose of the Act in the context of this land at Mangawhai. He stated it addressed the specific growth pressures facing Mangawhai.
100. The Commissioners have had regard to all the evaluation material provided in the context of Section 32 of the RMA and the case law quoted to them. They consider the material presented with the application and at the hearing satisfies this section of the RMA. The proposed change is considered to be necessary and effective in that it will provide certainty, maintain environmental standards and ensure a resource management framework is put in place for the use of the land in the context of both Mangawhai and the district plan.
101. As regards Part 2 of the RMA, being its purpose and principles, the Commissioners find that the proposed change is in accordance with its sustainable management purpose. It will enable people and communities to provide for their social wellbeing and for their health and safety whilst sustaining the potential of the land and property resource to meet the reasonably foreseeable needs for future generations and will avoid, remedy, or mitigate any adverse effects of related activities on the environment. The Part 2 matters were also comprehensively addressed in the evidence of Mr Kaye and supported by the other expert evidence for the applicant.
102. Section 6 matters of national importance are addressed through the green network assisting with the preservation of the coastal environment and providing for public access to and along the coastal marine area. The Section 7 RMA matters of relevance relate to the efficient use and development of natural and physical resources and to the maintenance and enhancement of amenity values and the quality of the environment. The proposed change is found by the Commissioners to be consistent with these section 7 principles and also with the principle relating to a consideration of any finite characteristics of natural and physical resources. The proposed change includes, in these respects, the green network; protection of the estuary; the stormwater management provisions and the utilisation of the design and environmental guidelines. Further, in terms of Sections 7 and 8,

⁷ Evidence of Mr Barry Kaye, Appendix 6

the Commissioners note that there were no issues raised as being of particular concern to Maori from the information that was presented.

103. The commercial and residential zoned land is intended to enable the community to provide for its social and cultural wellbeing by providing efficiently located commercial and residential land for the future development of Mangawhai. The provisions of the proposed change will ensure that the land resource is efficiently utilised for commercial and residential purposes and the structure plan provisions include controls that will see any potential adverse effects suitably avoided or mitigated. In all the circumstances the proposal is consistent with the purpose and principles of the RMA.

CONCLUSION

104. The Commissioners have considered the relevant statutory matters in the assessment of this proposed change and find, from the comprehensive work carried out by the applicant in relation to it, and the other information provided through submissions and the Council's reporting, that it is consistent with the various statutory planning documents and with the purpose and principles of the Resource Management Act 1991.
105. The Commissioners have carefully considered each of the submissions. They acknowledge the approval of the proposed change goes against a number of them. Nonetheless, a number of the concerns expressed by submitters were satisfactorily addressed by the applicant at the hearing and further, some related modifications are made to the provisions of the proposed change as part of the approval to it.
106. The Commissioners find, from all the information presented, that the land is suitable for the commercial and residential zonings and subsequent development and that the proposed change is appropriate for the growth and development of Mangawhai. The proposed change is constructive and is an essential response to the population changes and associated pressures at Mangawhai.

OVERALL RECOMMENDATION

107. The overall recommendation of the Commissioners is as follows:
- Having had regard to the provisions of the Resource Management Act 1991 and in particular to Section 74, Section 75, Section 31 and Section 32; and
 - Having considered the actual and potential effects on the environment of the proposed plan change and the management of those effects; and
 - Having considered the evidence of the applicant, the submissions, the further submissions, and the evidence in support of those submissions

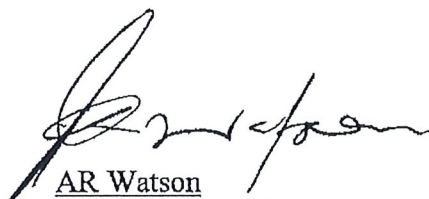
and further submissions at the hearing of the proposed plan change and submissions; and

- Having considered the evidence of the persons reporting on the proposed plan change for the Council; and
- Acting under a delegation from the Kaipara District Council to hear and make recommendations on the proposed plan change and the submissions and further submissions; and
- For the reasons set out in the text of this recommendations report, as above and as below, in relation to the issues involved,

108. **The Commissioners recommend that pursuant to Clauses 29 and 10 of the First Schedule of the Resource Management Act 1991:**

- **The Proposed Plan Change 22 to the Kaipara District Plan is approved with modifications; and**
- **Those submissions and further submissions which support the Proposed Plan Change are accepted to the extent that the plan change is approved with modifications; and**
- **Those submissions and further submissions which seek further changes to the Proposed Plan Change are accepted to the extent that the plan change is approved with modifications; and**
- **Except to the extent provided above, all other submissions and further submissions are rejected.**

109. **The recommendations for each submission, and the further submissions, follows with the consequential alterations to the text of Proposed Plan Change 22 that are required to be completed.**



AR Watson
Chair, Hearings Commissioners

28 September 2007

Attachment A

SCALE 1:2500 (Approx.)

