

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

IN THE MATTER OF an appeal under clause 14 of Schedule 1
of the Resource Management Act 1991

BETWEEN

BOONHAM

(ENV-2021-AKL-000061)

MANGAWHAI MATTERS

INCORPORATED & OTHERS

(ENV-2021-AKL-000062)

Appellants

AND

KAIPARA DISTRICT COUNCIL

Respondent

**MINUTE OF COMMISSIONER HODGES RELATING TO TIMING OF
MEDIATION**

(20 SEPTEMBER 2021)

Introduction

[1] The Presiding Judge has advised that any delays in completing the mediation after about mid-October could delay a hearing until late 2022 and possibly beyond.¹ I understand this is because of their heavy case load next year. As restrictions on face-to-face mediations² appear unlikely to be lifted before mid-October, the purpose of this minute is to explore with the parties what options might exist to progress matters

¹This followed an enquiry from Ms Tateoka, our mediation manager, about whether the current reporting date of 1 October could be put back.
²The generally preferred option.



as expeditiously as possible.

[2] As there are only three weeks left before that date, I set out below some ideas for initial consideration by the parties. They are provided within the confidentiality of the mediation process and on a “without prejudice” basis. I stress that they are not intended to guide or restrict the parties in how they should proceed but, rather, they are ideas to stimulate discussion.

[3] The two most obvious choices are to forego mediation or the use of audio-visual links (AVL). Another possibility could be to reduce time requirements between mediation and the start of the hearing by proceeding with expert conferencing before the preparation of evidence in chief. That would require careful consideration to determine if it would reduce significantly the overall time required to hearing and would need the approval of the Presiding Judge.

[4] All parties have indicated they are agreeable to Court-assisted mediation.³ Section 5.1 of the Environment Court Practice Note 2014 (Practice Note) includes the following paragraphs of relevance in relation to mediation and alternative dispute resolution processes generally:

- (c) Mediation and other forms of ADR are particularly well-suited to resolve many environmental disputes. ADR techniques are often highly cost-effective compared to proceeding to a full hearing before the Court, and outcomes may also be reached beyond the jurisdiction of the Court in a hearing by way of side agreements that will not be part of an Order made by the Court. ... To have reasonable prospects of success, sound preparation and input are important. ...
- (d) ...It is widely recognised that ADR processes offer the most value when they are constructively embraced, as they offer flexibility, an interests-based approach, ownership of resolution of the dispute, and are often more conducive to the preservation of inter-party relationships.

³ Email dated 22 July 2021 from Mr Grace.

- (f) ... Even in cases where ADR processes might not produce a complete settlement, they may be used as a means to narrow and settle issues.

[5] It will be for the parties to decide if they wish to continue with mediation. However, the rest of this minute considers a possible process by which mediation could proceed.

Issues in dispute

[6] Based on my reading of the Court files, I understand that Mr Boonham's appeal relates to the whole plan change. For other parties, I understand the main issues in dispute to be broadly as follows:

- (a) The number of household/retirement units and minimum section size
- (b) The adequacy of water supply
- (c) The availability of wastewater services
- (d) Traffic impacts
- (e) Stormwater management, including potential effects on wetlands, the Tara Stream and the Mangawhai Estuary
- (f) Effects on the New Zealand Fairy Tern
- (g) Staging and funding of developments, coordination with infrastructure and financial contributions for community amenities.

[7] I anticipate the parties will advise if they consider there are other issues that cannot be encompassed within the above list. In addition, it would be of assistance if Mr Boonham could provide guidance on the way he anticipates mediation might assist in addressing his appeal.

Numbers attending mediation

[8] Before making any decisions on the process from here, we will need to understand how many people will be attending. All parties to the appeal are requested to provide the following information by **5 p.m. on Friday 24 September 2021**:

- (a) Do they have the ability to participate in mediation by AVL?
- (b) Will they be participating in the mediation or, if not, have they read and understood the implications of not doing so as set out in the Practice Note?
- (c) Who will be attending the mediation and what are their roles, where are they located (for example Mangawhai, Auckland or somewhere else) and would it be possible for some experts to be available to parties by telephone if required, rather than personal attendance to reduce numbers? This should only be considered if it would not compromise a party's ability to participate fully in the mediation.
- (d) How long do parties anticipate the mediation will take, and could it be broken down into separate topics or groups of topics that could be addressed in separate sessions?

Other information

[9] As the circumstances we must address are unusual and of considerable importance to all parties to the appeals, my preference is that we work collaboratively and expeditiously to agree the most appropriate way forward. To achieve that outcome, I request that all parties provide the following information no later than **5 p.m. on Friday 24 September 2021**:

- (a) Do you wish to continue with mediation or to request the Presiding Judge that the matter proceed straight to hearing? In the latter case, it would remove the opportunity to reach an agreement on at least some

matters of appeal, which would reduce the number of matters to be resolved at hearing.

- (b) If you wish to continue, are there any other issues not listed in paragraph [6] that you wish to have addressed at mediation?
- (c) Could Mr Boonham please provide guidance on the way he anticipates mediation might assist in addressing his appeal?
- (d) The information listed in paragraph [8] (a) to (d).
- (e) Do you see any benefit in considering the option of proceeding with expert conferencing before the preparation of evidence in chief?
- (f) Do you have any other suggestions that could assist the process?

Jim Hodges

Commissioner J Hodges
Environment Commissioner

