

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

**AND**

**IN THE MATTER** of Private Plan Change 78 -Estuary Estates - by Mangawhai Central Limited (MCL) to the Operative Kaipara District Plan 2013.

**MEMORANDUM - HEARING PANEL'S REPLY TO MR BOONHAM'S MEMO DATED 15 JANUARY 2021**

1. The Hearing Panel has received a Memorandum from Mr Boonham, a submitter to Private Plan Change 78 (PC78) -dated 15 January 2021.
2. Mr Boonham sets out at paragraphs 1 and 2 of his Memorandum the following:

*I wish to question whether the Hearing Panel's direction of 27 November 2020 requesting officers of the Kaipara District Council (KDC) to provide further information in a written report on the KDC's wastewater infrastructure and water supply is compliant with clause 41C of the RMA.*

*There are two concerns:*

- *Does section 41C of the RMA authorise such a request of the KDC?*
- *Is the information requested "further information" that relates directly to submissions made by the applicant in the request for the plan change, or is it new evidence? If it is new evidence then it should be disallowed.*

3. At paragraph 33 Mr Boonham states:

*All information provided by KDC pursuant to the Panel's request should be disregarded.*

4. In terms of Mr Boonham's request, we respectfully disagree. Our response is as follows.
5. Section 41(4) of the RMA (Provisions relating to hearings) enables a Hearing Panel to request and receive the any information or advice that it considers relevant and reasonably necessary to determine the application. That section states:

*At every hearing conducted in relation to a matter described in section 39(1), the authority may request and receive, from any person who makes a report under section 42A or who is heard by the authority or who is represented at the hearing, any information or advice that is relevant and reasonably necessary to determine the application.*

6. Furthermore, section 41C(4) of the RMA (Directions and requests before and at hearings) enables Hearing Panel's to require further information. That section states:

*At the hearing, the authority may commission a consultant or any other person employed for the purpose to prepare a report on any matter on which the authority requires further information, if all the following apply:*

- (a) the activity that is the subject of the hearing may, in the authority's opinion, have a significant adverse environmental effect; and*
- (b) the applicant is notified before the authority commissions the report; and*
- (c) the applicant does not refuse to agree to the commissioning of the report.*

7. The Hearing Panel considers both of the sections set out above apply, and enables the Hearing Panel to obtain the information it has sought.
8. The issue of infrastructure capacity (in particular wastewater and water supply) is a significant issue before the Hearing Panel in relation to PC 78. It is a particular concern to a number of submitters. Also, the National Policy Statement on Urban Development (NPSUD) took effect in August 2020, after the notification of PC 78<sup>1</sup>. PC 78 must give effect to the NPSUD. Objective 6 of the NPSUD states:

*Local authority decisions on urban development that affect urban environments are:*

- a) integrated with infrastructure planning and funding decisions; and*
- b) strategic over the medium term and long term; and*
- c) responsive, particularly in relation to proposals that would supply significant development capacity.*

9. Accordingly, as signaled at the hearing, we requested some specific written information from the Council officers relating to infrastructure planning and funding decisions for wastewater and water supply for Mangawhai, and in relation to PC 78.
10. Due to the provisions of the NPSUD and the concern raised in a number of submissions, it was our view that the information we sought was relevant and reasonably necessary to make a recommendation to the council on PC 78.
11. While this is the Hearing Panel's view, the Hearing Panel invites the view of the Council, the Applicant and Mangawhai Matters via their legal counsel. This can be provided in writing prior to the reconvened hearing on the 3 February 2021, and/or time will be allocated at the beginning of the hearing to hear from legal counsel on this matter.

Any enquiries regarding this Memorandum should be directed to the Council's Planning Technical Support Officer, by email at [ppc78@kaipara.govt.nz](mailto:ppc78@kaipara.govt.nz).



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<sup>1</sup> Hearing Panel is yet to determine if the National Policy Statement on Urban Development 2020 applies to PC78 or not.

Greg Hill Chairperson  
19 January 2021