

BEFORE THE KAIPARA DISTRICT COUNCIL PC78 HEARING PANEL

UNDER The Resource Management Act 1991

IN THE MATTER OF Private Plan Change 78 (**PC78**) to the
Operative Kaipara District Plan

**SUMMARY STATEMENT BY S42A REPORTING PLANNERS DAVID ERIC BADHAM
AND EVELYN ALISA NEAL**

ON BEHALF OF KAIPARA DISTRICT COUNCIL

29 JANUARY 2021

1. INTRODUCTION

- 1.1 This is a joint summary statement prepared by David Eric Badham and Evelyn Alisa Neal, commonly referred to as Alisa Neal.¹
- 1.2 We have been engaged by Kaipara District Council (“**the Council**”) as reporting planners and authors of the Section 42A Report (“**s42A**”) for Private Plan Change 78 (“**PC78**”) which was made publicly available on 30 October 2020. A full statement of our qualifications and experience is contained in Attachment 1 of the s42A.
- 1.3 Since the notification of the s42A we have attended the hearing for PC78 from 23-25 November 2020. Prior to the hearing we reviewed all pre-circulated expert evidence and statements from the Applicant and submitters. During the hearing we heard all presentations and questioning by the Hearings Panel of the Applicant’s representatives and submitters.
- 1.4 The hearing was adjourned on 25 November 2020. Two separate directions were released by the Hearing Panel on 27 November 2020 which:
- (a) Gave leave for the Applicant to file supplementary evidence relating to water supply, engineering, urban design and planning; and
 - (b) Requested information from Council officers in relation to wastewater and water supply infrastructure planning and funding decisions.
- 1.5 Since these directions were released, we confirm that we have received and reviewed the following additional information:
- (a) Statement by James Alexander Sephton in Response to Directions from the Hearing Panel dated 16 December 2020;
 - (b) Statements of Supplementary Evidence, all dated 18 December 2020 by:
 - (i) Ian Colin Munro (Urban Design);
 - (ii) James Stuart Dufty (Engineering – Water Supply);

¹ For the remainder of the document “we” and “our” is used in reference to the authors’ collective opinion on matters.

- (iii) Jon Williamson (Water Supply);
- (iv) Mark Tollemache (Planning); and
- (c) Second Statement of Supplementary Evidence of Jon Williamson (Water Supply) dated 28 January 2021.

1.6 In addition to the above we note that we have received and reviewed the following Summary Statements from Council Consultants, including:

- (a) Mathew Ross Colins (Transport) dated 25 January 2021;
- (b) Matthew James Riley (Urban Design) dated 22 January 2021;
- (c) Philip Osborne (Economics) dated 28 January 2021;
- (d) Steve Brent Rankin (Engineering) dated 22 January 2021; and
- (e) Mark Delaney (Ecology) dated 25 January 2021.

1.7 The above statements highlight that there are no fundamental issues between the Applicant's experts and Council's consultants and their positions on PC78 remain unchanged.

1.8 The purpose of this statement is to update the Hearings Panel on our view of the relevant planning matters following our attendance of the November 2020 hearing and having reviewed the additional statements outlined above. This statement is not an exhaustive revisiting of all issues raised in the s42A, pre-circulated evidence and hearing. Rather we have identified the key issues that we consider to still be in contention and provide our view on them. These are:

- (a) The application of the National Policy Statement for Urban Development ("**NPS:UD**") and implications if it does apply;
- (b) The provision of wastewater infrastructure;
- (c) The provision of adequate water supply; and
- (d) Whether additional amendments are required to the Chapter 16 provisions.

2. NPS:UD

2.1 Various parties presented evidence and opinions on the application of the NPS:UD during the hearing. Some, including Mr Tollemache, Mr Gordon and Dr Cayford,

for various reasons, argue that the NPS:UD does apply. Others, including Dr McDermott, argue that it does not apply.

- 2.2 We are not completely swayed by either side of the argument.
- 2.3 As outlined in the s42A² and the Addendum to the s42A Report dated 18 November 2020 (“**s42A Addendum**”), the key matter in contention when determining whether the NPS:UD applies, is the definition of “urban environment”. Part of this definition requires consideration of whether an area of land (regardless of size, and irrespective of local authority or statistical boundaries) “is, or is intended to be, part of a housing and labour market of at least 10,000 people.”
- 2.4 We consider that there are two key sets of population projections currently available to the Hearings Panel. One is within the Draft Mangawhai Spatial Plan³ and the other within the report prepared by Infometrics: Population Projections 2018-2051 dated October 2020.⁴
- 2.5 Our s42A Addendum outlines the differences in these projections and the uncertainties associated with the geographical areas that they apply to. The evidence provided by the Applicant and submitter experts during the hearing have not changed our conclusion reached in the s42A Addendum. We cannot confirm with a sufficient degree of confidence that Mangawhai is considered an “urban environment” for the purposes of the NPS:UD and continue to recommend that the Hearings Panel commission a further specialist report to assess population projections with specific regard to the definition within the NPS:UD.
- 2.6 We agree with Mr Tollemache⁵, that the NPS:UD is not determinative of whether PC78 should be approved, and rather provides additional policy support if Mangawhai is confirmed as an “urban environment”. If the Hearings Panel determine that Mangawhai is not an “urban environment” and the NPS:UD does not apply, we still maintain our overall recommendation to approve PC78 with

² See paragraphs 40-47 of the s42A.

³ See paragraph 43 of the s42A and Attachment 1 of the Addendum to the s42A report.

⁴ see Attachment 2 of the Addendum to the s42A report.

⁵ See paragraph 37 of Summary and Rebuttal Statement of Evidence of Mark Tollemache dated 23 November 2020.

modifications. Nonetheless, we consider that the application of the NPS:UD requires careful consideration because:

- (a) The NPS:UD only recently came into force on 20 August 2020 and we are unaware of any case law as to the correct interpretation and application of the definition of “urban environment”.
- (b) We understand that PC78 is the first application and hearing where this matter is being considered for Mangawhai and the wider Kaipara District. In the absence of any case law or further guidance from the Ministry for the Environment, it is likely that the Hearings Panel’s decision on PC78 will be used as the basis of the assessment of the applicability of the NPS:UD in future resource consent applications, plan changes and more generally the review of the Kaipara District Plan which is currently scheduled for notification in 2023.
- (c) There are consequences beyond PC78 if it is concluded that Mangawhai is an “urban environment.” One which was discussed during the hearing, is the requirement to change a district plan to remove minimum car parking requirements as per 3.38 of the NPS:UD.

3. WASTEWATER

- 3.1 We consider that the statement from Mr Sephton on behalf of Council has provided further clarity regarding infrastructure and funding for wastewater in Mangawhai.
- 3.2 Mr Rankin⁶ has reviewed Mr Sephton’s statement and further statements made by Mr Dufty prior to and at the hearing. He has agreed with the conclusions reached.
- 3.3 We rely on the statement from Mr Sephton and the expert opinions of Messrs Dufty and Rankin. On this basis, our conclusion reached in the s42A with regard to wastewater is unchanged and no further modifications to the PC78 provisions are necessary in our opinion.

4. WATER SUPPLY

- 4.1 In our opinion, the supplementary statements from Messrs Dufty and Williamson have provided more clarity and certainty regarding the ability to provide an

⁶ See Mr Rankin’s Summary Statement dated 22 January 2021.

adequate water supply for future development within the PC78 site. In particular, greater detail is provided regarding the provision of a reticulated water supply for development within the Residential 3A subzone. Further, we acknowledge the second supplementary statement of Mr Williamson which confirms that the Applicant has recently obtained resource consents to take water from two unnamed tributaries of the Mangawhai Harbour within the PC78 site.

4.2 Mr Rankin⁷ has reviewed the supplementary statements of Messrs Dufty and Williamson. He has agreed with the conclusions reached.

4.3 We rely on the expert opinions of Messrs Dufty, Williamson and Rankin and therefore conclude that there is sufficient information available to determine that adequate and sustainable water supply can be provided and demonstrated at the time of subdivision and development.

4.4 In our opinion, the key issue from a planning perspective, is whether there are suitable planning provisions within Chapter 16 to ensure that adequate water supply is confirmed at resource consent stage. We consider that further amendments to the planning provisions are required to ensure this, and discuss these further below.

5. AMENDMENTS TO THE PC78 PROVISIONS

5.1 Mr Tollemache has attached an amended set of planning provisions to Attachment 1 of his supplementary statement. We confirm that we discussed a number of amendments with Mr Tollemache prior to the issuing of his supplementary statement on 18 December 2020.

5.2 We support the majority of these amendments and agree with Mr Tollemache's justification for making them.

5.3 However, at the time of discussing amendments with Mr Tollemache prior to Christmas 2020, we did not have the benefit of reviewing the additional supplementary statements of Messrs Williamson, Dufty and Munro or the latest version of the provisions attached to Mr Tollemache's summary statement. Based

⁷ See Mr Rankin's Summary Statement dated 22 January 2021

on the review of these statements, we have outlined further amendments that we consider are necessary – see **Attachment 1**.⁸

- 5.4 We discuss these further amendments below. We also confirm that we have had the opportunity to discuss these amendments with Mr Tollemache prior to the issuing of this statement. We have also provided Ms O'Connor the chance to review the revised provisions in **Attachment 1** and discuss her comments below.

Groundwater

- 5.5 Ms O'Connor has disagreed with the changes to delete references to “groundwater” in Objective 16.3.1 and Policy 16.3.1.1. The deletion of these terms are addressed by Mr Tollemache.⁹ We agree with Mr Tollemache’s reasoning on this matter and do not consider that the term “groundwater” should be included in this objective and policy.

Water Supply

Policy 16.3.9.1 6)

- 5.6 This policy references the requirement of subdivision and development in the Residential Sub Zone 3A to be supported by adequate reticulated water supply solutions. We recommend that the term “medium to higher density” is removed from the policy as this term could lead to problems in interpreting what this would constitute.
- 5.7 As a replacement, we have added “(except lower density lots capable of providing adequate onsite water supply).” While the Sub-Zone Description states that the intention of the Residential Sub Zone 3A is to “accommodate the highest densities for residential development on the site” it also acknowledges that the “location affords opportunities for a variety of housing typologies and densities, along with retirement facility development.”¹⁰ We consider that it is important to acknowledge

⁸ To distinguish the changes that we have recommended, these additional amendments are **highlighted** in **Attachment 1**.

⁹ See paragraph 11.2 – 11.6 of Mr Tollemache’s Primary Statement of Evidence dated 6 November 2020.

¹⁰ See 16.6.3.1

in the policy that lower density lots (e.g. 600m² or over) that may seek to be established in the Residential Sub Zone 3A, which could realistically be supplied by on-site water supply rather than a reticulated water supply solution.

- 5.8 We have recommended the addition of “visitor accommodation”. We consider that “visitor accommodation” should be added to the list of activities that requires reticulated water supply in this policy given the higher likelihood of higher density for such an activity and due to visitors potentially being less conscious of the need to conserve water during times of drought.
- 5.9 We have also recommended the replacement of the word “supported” with “serviced” following feedback from Ms O’Connor. While the direction of this policy is “ensuring that”, we agree that the word “supporting” is not clear enough in terms of the intention to require that the activities listed in this policy are serviced by adequate reticulated water supply solutions.

16.7.4 Assessment Criteria for Restricted Discretionary Activities

- 5.10 We have recommended the addition of the term “including rainwater harvesting” in matter of discretion ee. The statements of Messrs Dufty and Williamson have given some weight to the inclusion of supplementary rainwater harvesting tanks in order to reduce daily water demand.¹¹ In our opinion, this change allows the consideration of rainwater harvesting at the time of land use consent, similar to the equivalent matter of discretion that is already provided for during subdivision consent in 16.10.8.1 d).

16.7.4-1 Restricted Discretionary Activities

- 5.11 We have recommended adding matter of discretion ee to the list of particular matters to be considered for resource consents for “visitor accommodation”. This subsequent change required due to our inclusion of “visitor accommodation” in policy 16.3.9.1 6) outlined above.

16.7.4.1 e) iii. & 16.10.8.2 n)

- 5.12 We have recommended broadening of assessment criterion in 16.7.4.1 e) iii. which applies to activities requiring land use resource consent and similar additional wording in 16.10.8.2 n) for activities requiring subdivision consent. In our view, the

¹¹ See for instance paragraph 2.10 of Mr Dufty’s summary statement.

wording of both these assessment criteria are important to ensure that an appropriate level of detail is provided and considered and the time of resource consent for subdivision and development. The changes we have recommended link directly to the requirements of policy 16.3.9.1 and require the consideration of the provision and design of reticulated water supply (including storage, reticulation and ongoing management) and details for rainwater harvesting and appropriate water demand management, including legal mechanisms for their implementation. Legal mechanisms for water demand management (savings) and rainwater harvesting are particularly important in our view to ensure that they are implemented on an ongoing basis. These are likely to include the implementation of covenants or consent notices on titles.

- 5.13 We have also included “visitor accommodation” to 16.7.4.1 e) iii. in accordance with our changes outlined previously.
- 5.14 Ms O’Connor has also suggested that 16.10.8.2 n) should refer to the “viability and long-term sustainability” of the reticulated supply. We consider that the assessment of this matter is already implicit in the criteria. We also note that the Applicant has obtained two water take consents from Northland Regional Council for a 35-year period, which is the maximum provided for by the Resource Management Act 1991.

Consideration of Appendix 25A

- 5.15 Based upon Mr Munro’s supplementary statement, Mr Tollemache recommended two additions to 16.10.8.2 a) and the introductory paragraph in 16.1. Both changes are intended to ensure that the Mangawhai Design Guidelines in Appendix 25A of the District Plan are also considered alongside the Estuary Estates Design and Environmental Guidelines in Appendix 16.1. We found the recommended language in both sections confusing, and have sought to reword both provisions in a manner that we consider make it clear that both Appendix 25A and the guidelines in 16.1 require assessment.
- 5.16 In her review of the latest version of the recommended provisions, Ms O’Connor reiterated comments made in her primary statement of evidence relating to policy 16.3.2.1 2) and how the “provisions deliver architectural forms compatible with the coastal, small town character of Mangawhai.”¹² In response to this, and given that

¹² See paragraph 54 d) of Ms O’Connor’s Primary Statement of Evidence dated 13 November 2020.

Mr Munro and Mr Tollemache have recommended that the Appendix 25A Mangawhai Design Guidelines require assessment, we have recommended a further change to policy 16.3.2.1 2) to reference Appendix 25A. We consider that this change, along with the rules, assessment criteria and additional matters in Appendix 16.1 provide a clear and direct assessment framework for the consideration of subdivision and development.

Other Matters

- 5.17 With regard to the added sentence “Enhancement includes weed and pest control, and indigenous revegetation (where appropriate)” in 16.6.8.1 Natural Environment Sub-Zone Description, Ms O’Connor has stated that more directive policy is required. We are satisfied that policies 16.3.1.1 2) and 6) are directive enough in this regard and do not consider any further changes are necessary.
- 5.18 Ms O’Connor has identified a grammatical error in the second sentence of 16.6.8.1 which we have recommended be fixed.

6. CONCLUSION

- 6.1 Overall, after carefully considering the relevant statutory documents, the submissions and further submissions received and evidence provided by the Applicant and submitters, we continue to recommend that the plan change be approved, subject to the recommended modifications in **Attachment 1**.



Evelyn Alisa Neal



David Eric Badham

**ATTACHMENT 1: RECOMMENDED AMENDMENTS TO PC78 PROVISIONS 29
JANUARY 2021**