

BEFORE THE ENVIRONMENT COURT

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

AND

IN THE MATTER of appeals under Clause 14 of the
First Schedule to the Act

BETWEEN T MASTERS
(ENV-2016-AKL-000097)

NGĀTI MARU RŪNANGA TRUST
(ENV-2016-AKL-000120)

KOPU LANDOWNERS AND
OCCUPIERS ASSOCIATION
AND KOPU LAND DRAINAGE
COMMITTEE
(ENV-2016-AKL-000132)

Appellants

AND THAMES-COROMANDEL
DISTRICT COUNCIL

Respondent

Environment Judge D A Kirkpatrick sitting alone under section 279 of the Act
In Chambers at Auckland.

CONSENT ORDER

[A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment
Court, by consent, orders that:



- (1) the appeals by Trevor Masters, Ngāti Maru Rūnanga Trust (**Ngāti Maru**) and the Kopu Landowners and Occupiers Association and Kopu Land Drainage Committee (**KLOA**) on Kaiwhenua matters in the Structure Plans Topic are allowed subject to the agreed amendments to the proposed Thames-Coromandel District Plan set out in Annexure A to this order;
- (2) the appeals are otherwise dismissed, with the exception that Ngāti Maru's appeal interests in other topics remain extant.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

- [1] These appeals relate to the Kaiwhenua aspect of the Structure Plans Topic of the proposed Thames-Coromandel District Plan (**proposed Plan**). The appeals by:
- (a) Mr Masters sought a number of amendments to the Kaiwhenua provisions in Section 27.2 of the proposed Plan around making the area an attractive gateway entry point for the district.
 - (b) Ngāti Maru sought amendments to the provisions so that they were more enabling of their Treaty aspirations, and accounted for Part 2 matters in ss 6-8 of the RMA.
 - (c) KLOA sought amendments to provide for the Kaiwhenua area as an ecological corridor. Related to this, were amendments on landscape and specific amendments to Objective 1 and Policies 1a and 1b of Section 27.2.
- [2] The parties to the Kaiwhenua aspects of the Structure Plans Topic have now all reached an agreement that will resolve the relief sought by the appellants on Section 27.2 of the proposed Plan in their entirety.



- [3] In making this order, the Court has read and considered the appeal and the memorandum of the parties dated 24 May 2017.
- [4] Peter Schuler, the Waikato Regional Council (**WRC**), and Greg and Lyn Trethowen are s 274 parties to KLOA's appeal. Mr Schuler and Mr and Mrs Trethowen are also s 274 parties to Mr Masters' appeal. The New Zealand Transport Agency (**Transport Agency**) and the WRC have s 274 interests in the Kaiwhenua aspects of Ngāti Maru's appeal. All of these parties agree with the order sought.
- [5] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:
- (a) All parties to the proceedings have executed the memorandum requesting this order.
 - (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act, including in particular Part 2.

Order

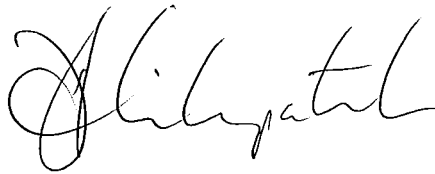
- [6] Therefore the Court orders, by consent, that the appeals by Mr Masters, Ngati Maru and KLOA to the Kaiwhenua provisions in Section 27.2 of the proposed Thames-Coromandel District Plan are allowed to the extent that the Thames-Coromandel District Council is directed to amend that section as shown in tracked text in Annexure "A" (additions are underlined / deletions are in ~~strikethrough~~).
- [7] This Order resolves the appeals by Mr Masters and KLOA in their entirety. This Order also completely resolves the s 274 interests of Mr Schuler, Mr and Mrs Trethowen, and the WRC in those appeals.



[8] This Order also resolves the Kaiwhenua aspects of Ngāti Maru's appeal, and the s 274 interests of the Transport Agency and the WRC in those aspects. The remainder of Ngāti Maru's appeal is extant.

[9] There is no order as to costs in relation to this order.

DATED at Auckland this 1st day of June 2017



D A Kirkpatrick
Environment Judge



"A"

Amendments to Section 27.2 of the Proposed Thames-Coromandel District Plan

27.2 Kopu to Thames Structure Plan

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27.2.4 OBJECTIVES AND POLICIES

Objective 1

Kaiwhenua is ~~visually an attractive and memorable with area containing~~ visitor service activities and small-scale commercial activities, with public facilities providing historic heritage, cultural and landscape information about the District.

Policy 1a

Kaiwhenua shall be enhanced to provide a positive and ~~memorable~~ first impression of the District after crossing the Waihou River.

Policy 1b

~~A comprehensive development plan for Development of Kaiwhenua shall be developed to~~ achieve the following:

- a) Area A: a ~~highly landscaped area designed as a local and visitor amenity and ecological feature that creates a District gateway, which may incorporate stormwater infrastructure, that creates a District gateway; and~~
- b) Area B: a mix of small-scale commercial activities, ~~light industrial cultural and community activities, orientated toward Kopu Road, with landscaped stormwater infrastructure and boundary planting located towards the southern boundary; and~~
- c) Area C: a mix of small-scale commercial activities, cultural and community activities orientated towards Kopu Road, ~~and landscaped stormwater infrastructure and boundary planting located towards the southern boundary; and~~

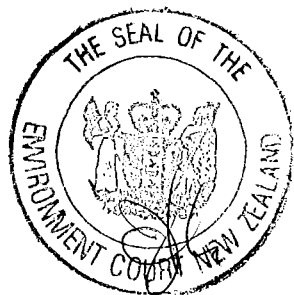
Policy 1c

~~A comprehensive development plan(s) for Development of Areas A, B or C (separately or together) shall achieve the following:~~

- d) ~~a)~~ An efficient and safe road network; and
- e) ~~b)~~ Building setbacks from the ~~rail corridor and state highway; and~~
- f) ~~c)~~ Coordinated water, wastewater, solid waste, telecommunications and electricity infrastructure on-site and with surrounding sites; and
- g) ~~d)~~ Comprehensive management of stormwater collection from the wider Kopu area, treatment and disposal to achieve hydraulic neutrality; and
- e) Comprehensive design to achieve Objective 1 and Policy 1a; and
- h) ~~f)~~ An acceptable level of flood hazard risk (see Section 10 Natural Hazard Background); and
- i) ~~g)~~ A cultural assessment that identifies the history and value of the site to tangata whenua.

NOTE

1. 'Hydraulic neutrality' means that stormwater runoff is appropriately managed so that the



post-development peak flows do not exceed pre-development peak flows from the site.

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27.2.5 ACTIVITY TABLE AND USER INFORMATION

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| ACTIVITY TABLE | |
|----------------------------------------------------------------------------------------------------------------------|--------|
| STAGE ONE (EXCLUDING KAIWHENUA) | |
| ... | |
| KAIWHENUA | |
| Commercial activity within Kaiwhenua <u>General commercial, Restaurant, Service station</u> | R 5 |
| Community activity within Kaiwhenua <u>'Community' activities listed in Section 1.8 Activity Summary Table</u> | R 6 |
| Comprehensive development plan for Kaiwhenua | R 7 |
| Dwelling within Kaiwhenua | R 8 |
| Industrial activity within Kaiwhenua | R 5 |
| Subdivision within Kaiwhenua | R 9 7 |
| Water supply infrastructure, <u>W</u> wastewater infrastructure, <u>S</u> stormwater infrastructure within Kaiwhenua | R 10 8 |
| Any other activity | R 9 |
| KOPU MARINE PRECINCT | |
| ... | |

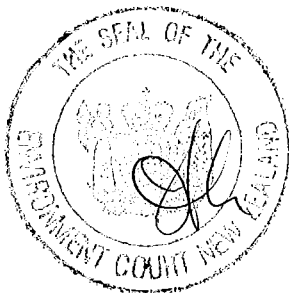
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27.2.7 KAIWHENUA RULES

RULE 5 ~~Commercial activity within Kaiwhenua~~
~~Industrial activity within Kaiwhenua~~
General commercial
Restaurant
Service station

1. An activity listed in Rule 5 is a **restricted discretionary activity**, provided:
 - a) No building is erected in Area A; and
 - b) Any building or structure in Area B or C has a maximum height of 10 m.

2. The Council restricts its discretion to:
 - a) matters 1, 2, 6, 7, and 8 in Table 2 below; and
 - b) matters 2, 7, 10 and 11 in Table 5 in Section 46.



to the extent that those matters of discretion are relevant to 27.2.4 Objective 1 and its policies.

- 2.3. An activity that is not a restricted discretionary activity under Rule 5.1 is a **non-complying activity**.

NOTE

1. ~~For the list of commercial and industrial activities in this Plan, refer to the Activity Summary Table in Section 1 Background and How to Use the Plan.~~

RULE 6 'Community' activities within Kaiwhenua listed in Section 1.8 Activity Summary Table

1. An community activity within Kaiwhenua in Rule 6 is a **permitted activity**, provided:
 - a) No building (excluding sculptures) is erected under this Rule; and
 - b) It is not a Residential care facility.
2. An community activity within Kaiwhenua in Rule 6 that is not permitted under Rule 6.1 a) is a **restricted discretionary activity**, provided:
 - a) It is consistent with a comprehensive development plan that has a resource consent under Rule 7; and
 - b) Any new building has a maximum gross floor area of 150 m².
 - a) Any building or structure has a maximum height of 10 m; and
 - b) It is not a Residential care facility.
3. The Council restricts its discretion to matters 1, 2 and 6 – 8:
 - a) matters 1, 2, 6, 7, and 8 in Table 2 below; and
 - b) matters 2, 7, 10 and 11 in Table 5 in Section 46,
to the extent that those matters of discretion are relevant to 27.2.4 Objective 1 and its policies.
4. An community activity within Kaiwhenua in Rule 6 that is not a restricted discretionary activity under Rule 6.2 is a **discretionary activity**.
5. A Residential care facility is a non-complying activity.

NOTE

1. ~~For the list of community activities in this Plan, refer to the Activity Summary Table in Section 1 Background and How to Use the Plan. Section 1 Background and How to Use the Plan, '1.8 Activity Summary Table' list of 'Community' activities:~~

| <u>COMMUNITY</u> |
|------------------------------------------------------|
| <u>Community facility</u> |
| <u>Emergency service training, military training</u> |
| <u>Festival, event</u> |
| <u>Formal recreation</u> |
| <u>Informal recreation</u> |
| <u>Public amenity</u> |
| <u>Residential care facility</u> |
| <u>Scientific equipment, navigational aid</u> |

2. 'Community' activities may include open space areas or landscaped areas with plantings and sculptures.



RULE 7 — Comprehensive development plan for Kaiwhenua

1. A comprehensive development plan for Kaiwhenua is a **discretionary activity**.

NOTE

1. ~~The comprehensive development plan will need to show how development will give effect to the objectives and policies of the Plan, particularly Objective 1 and Policies 1a) and 1b) in this Section.~~
2. ~~A comprehensive development plan may be developed separately for Areas A, B, and C (refer Diagram 3).~~

RULE 8 — Dwelling within Kaiwhenua

1. A dwelling within Kaiwhenua is a **non-complying activity**.

RULE 9 7 Subdivision within Kaiwhenua

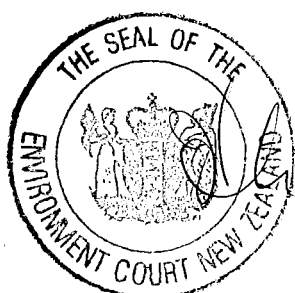
1. Subdivision within Kaiwhenua is a **controlled restricted discretionary activity** provided: it is in accordance with a comprehensive development plan for the site for which the Council has granted resource consent under Rule 7.
 - a) The minimum net lot area is 700 m²; and
 - b) The minimum shape circle diameter is 25 m; and
 - c) It meets the standards for subdivision in Table 3 at the end of Section 38.
2. ~~The Council reserves its control to implementation of the comprehensive development plan in Rule 7 through the subdivision consent, restricts its discretion to matters 1 – 10 in Table 5 at the end of Section 38.~~
3. ~~Subdivision within Kaiwhenua that is not a controlled restricted discretionary activity under Rule 9.1 7.1 is a non-complying activity.~~

RULE 10 8 Water supply infrastructure, Wwastewater infrastructure, Sstormwater infrastructure within Kaiwhenua

1. ~~Water, wastewater or stormwater infrastructure within Kaiwhenua An activity in Rule 8 is a permitted restricted discretionary activity, provided it is in accordance with a comprehensive development plan for the site for which the Council has granted resource consent under Rule 7.~~
2. ~~The Council restricts its discretion to:~~
 - a) matters 1, 2, 6, 7, and 8 in Table 2 below; and
 - b) matters 2, 7, 10 and 11 in Table 5 in Section 46,~~to the extent that those matters of discretion are relevant to 27.2.4 Objective 1 and its policies.~~
- 2.3. ~~Water, wastewater or stormwater infrastructure within Kaiwhenua An activity in Rule 8 that that is not permitted a restricted discretionary activity under Rule 10.1 8.1 is a discretionary activity.~~

NOTE

1. *Stormwater Management Plans may use information in the following documents:*
 - a) *Kopu to Thames Structure Plan August 2010, Council ECM reference - Doc Set No. 1575689*
 - b) *Technical Report 'Stormwater Management Plan' April 2009, Council ECM reference - Doc Set No. 1141461*



RULE 9 Any other activity

1. An activity in Rule 9 is a **discretionary activity**, provided that any building or structure has a maximum height of 10 m.

2. An activity in Rule 9 that is not a discretionary activity under Rule 9.1 is a **non-complying activity**.

27.2.9 ASSESSMENT MATTERS AND CRITERIA

| Matter | | Assessment Criteria | |
|---------------|-------------------------------------------------------------------------------------|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Consistency with the Kopu to Thames Structure Plan report and its Appendices | a) | The extent to which the land-use pattern and features proposed in the Structure Plan will be achieved. |
| | | b) | The extent to which the proposed and future development of the entire Stage One Industrial Area is given regard to. |
| | | c) | The extent to which transportation and infrastructure is to be provided to enable the efficient, safe, effective, functional and sustainable delivery of transport and infrastructure. This must take into account the development site and integration with surrounding sites and the wider Kopu to Thames Structure Plan area. |
| | | d) | Whether provision has been made for the suitable location and design of proposed areas of open space, ecological links and natural features which are to be retained and/or enhanced, including the areas to be developed for stormwater purposes. |
| 2. | Transport network and connectivity | a) | Whether the subdivision or development is consistent with the indicative collector roads and roundabouts. |
| | | b) | Whether the continuation of the transport network onto adjacent land is provided for. |
| | | c) | The extent to which the development makes provision for transport networks and infrastructure services of an urban standard. |
| | | d) | Whether interim access arrangements pending completion of the planned transport network shown on Diagram 1 are available and adequate. |
| | | e) | Whether pedestrian links are provided within the subdivision to connect with existing vehicle access and walkways. |
| | | f) | Whether roads are drained to swales and stormwater ponds. |
| | | g) | The extent to which pedestrians, cyclists and passenger transport are provided for. |
| | | h) | The extent to which car parking, site access and manoeuvring space, including opportunities for shared car parking, is provided for. |
| | | i) | The extent to which there is safe separation of access points and sight visibility distances from intersections and other access points. |
| | | j) | The extent to which the capacity and performance of the transport network remains safe and efficient. |



| Table 2 – Restricted Discretionary Activity Matters | |
|-------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Matter | Assessment Criteria |
| 6. Stormwater management | a) The extent to which the subdivision or development reasonably contributes towards the stormwater management upgrades identified in Table 1, as they are staged with development. |
| | b) The extent to which the subdivision, use or development is consistent with the Kopu to Thames Structure Plan Stormwater Catchment Management Plan. |
| | c) The extent to which stormwater discharge off-site is not increased, or the adverse effects of such a discharge increase are remedied. |
| 7. Water, wastewater and solid waste infrastructure and servicing | a) The extent to which the subdivision or development reasonably contributes towards the staging, location and capacity of network utilities and integration with existing and planned network utilities upgrades identified in Table 1, as they are staged with development. |
| 8. The location and design of buildings | a) The extent to which the building location does not compromise subsequent urban subdivision and development. |
| | b) The extent to which the proposed building design is consistent with any relevant design guidance in the Kopu to Thames Structure Plan Background Technical Report ' <i>Landscape and Visual Assessment and Design Guidelines</i> '. |
| | c) <u>Within Kaiwhenua, the extent to which the buildings meet Objective 1 and its policies.</u> |

