

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

IN THE MATTER of the Resource Management Act 1991

AND of an appeal under clause 14 of the First
Schedule of the Act

BETWEEN KĀINGA ORA – HOMES AND
COMMUNITIES
(ENV-2020-AKL-000133)
Appellant

AND WHANGAREI DISTRICT COUNCIL
Respondent

Environment Judge J A Smith sitting alone under section 279 of the Act

In Chambers at AUCKLAND

CONSENT ORDER

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

- (1) the appeal is allowed in part subject to the agreed amendments to the Plan Change set out in Annexure 1;
- (2) The appeal points in relation to objective DGD-05 (Incompatible Activities and Reverse Sensitivity), policy DGD-P2 (Incompatible Land Uses and Reverse Sensitivity), and policy DGD-P6 (Urban Expansion) are confirmed as withdrawn;
- (3) The Strategic Policy – Growth and Urban Form topic is resolved; and



(4) The appeal remains extant.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This appeal relates to the appeal by Kāinga Ora – Homes and Communities (**Kāinga Ora**) against the decision of Whangarei District Council on Plan Change 148 to the Operative Whangarei District Plan.

[2] Part of the appeal relates to issues, objectives and policies in the District Growth and Development (**DGD**) chapter and the Urban Form and Development (**UFD**) chapter.

[3] Kāinga Ora made submissions in relation to Plan Change 148, and subsequently appealed the Council Decision.

[4] Kāinga Ora's appeal seeks to give effect to the National Policy Statement on Urban Development, provide consistency between provisions, and provide for an appropriate set of provisions which enable urban intensification.

[5] Section 75(3) of the Act requires that a district plan must give effect to any national policy statement and any regional policy statement. The National Policy Statement on Urban Development came into force on 20 August 2020 and sets out eight objectives and eleven policies with respect to urban development. The Northland Regional Policy Statement (**RPS**) became part operative in May 2016, and fully operative in June 2018. The RPS contains objectives and policies relevant to the DGD and UFD chapters.

[6] Transpower New Zealand Ltd and the New Zealand Transport Agency have given notice of intention to become a party under section 274 of the Act and have signed the joint memorandum in support of the consent order.



Agreement reached

[7] Following Court-assisted mediation, the parties have reached agreement on a proposal to resolve the aspects of this appeal which are within the Growth and Urban Form topic.

[8] The parties have agreed as follows.

- (a) Kāinga Ora will not pursue its relief on objective DGD-05 (Incompatible Activities and Reverse Sensitivity), policy DGD-P2 (Incompatible Land Uses and Reverse Sensitivity), and policy DGD-P6 (Urban Expansion);
- (b) DGD Issues, objectives DGD-03 and DGD-04, and policies DGD-P3, DGD-P4 and DGD-P5 are to be amended to give effect to the National Policy Statement on Urban Development and the operative Regional Policy Statement and to achieve greater clarity and consistency between the provisions; and
- (c) UFD Issues, objective UFD-03 and policy UFD-P3 are to be amended, and a new policy UFD-04 (Urban Amenity) inserted to give effect to the National Policy Statement on Urban Development and to achieve greater clarity and consistency between provisions (including between the District Growth and Development chapter and the Urban Form and Development chapter).

Consideration

[9] In making this order the Court has read and considered the appeal and the memorandum of parties dated 21 December 2020.

[10] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order; and
- (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.



Orders

[11] Therefore the Court order, by consent, that Plan Change 148 to the Operative Whangarei District Plan is amended in accordance with **Annexure 1**. The appeal points in relation to these provisions are otherwise dismissed.

[12] The appeal points in relation to objective DGD-05, policy DGD-P2 and policy DGD-P6 are confirmed as withdrawn.

[13] The Strategic Policy – Growth and Urban Form topic is resolved.

[14] The appeal remains extant.

[15] There is no order as to costs.

DATED at Auckland this 18th day of *January* 2021





J A Smith
Environment Judge

Annexure 1

(insertions marked as underlined, deletions as ~~striketrough~~)



Annexure 1

DISTRICT GROWTH AND DEVELOPMENT CHAPTER (DGD)	
Issues	
<p>This chapter contains overarching objectives and policies in relation to growth and development in the District. The Urban Form and Development (UFD) chapter contains more detailed objectives and policies in relation to growth and development in Urban Areas. The objectives and policies seek to address significant resource management issues for the Whangārei District including the following:</p> <ul style="list-style-type: none"> • Managing <u>residential</u> growth and development • <u>Managing commercial, industrial and open space</u> growth and development. • Managing existing and future development in areas subject to natural hazards and environmental risks. • Protection of natural heritage (landscapes, biodiversity and natural features). • Issues of significance to mana whenua. • Protection of built and cultural heritage. • Fragmentation of the rural environment. • The protection of and efficient development, operation and maintenance of infrastructure. • The protection of strategic business and industry. • The provision of land for open space and recreation. <p>The objectives and policies of this chapter guide decision making at the strategic level and apply in addition to the objectives and policies in other parts of the District Plan.</p>	
Objectives	
DGD-03 – Growth	<p>Accommodate-future growth by through:</p> <ol style="list-style-type: none"> 1. <u>Enabling</u> urban consolidation and intensification of Whangārei City, Marsden Primary Centre, existing Local Centres and Rural Village Zones; <u>while</u> 2. Avoiding urban development sprawling into productive rural areas.
DGD-04: Historic Heritage and Sense of Place	<ol style="list-style-type: none"> 1. Identify and protect <u>historic heritage resources</u> buildings, major structures, sites, features and areas. 2. <u>Maintain and enhance other characteristics, qualities and features that are</u> valued by the community and contribute to the District’s unique identity and sense of place.



Policies	
DGD-P3 – Natural Hazards	<p>To avoid increasing <u>manage</u> the risk of natural hazards on to people and property by:</p> <ol style="list-style-type: none"> 1. Assessing the risk of coastal and flood hazards on subdivision, use and development over a 100-year timeframe. 2. Ensuring new subdivision, use and development does not increase the risk from coastal and flood hazards. 3. Ensuring measures to mitigate and adapt to the effects of climate change are provided for in development, growth and transport planning. 4. Avoiding the zoning of land for more intensive development within identified hazard prone areas. <u>Ensuring that the risk of natural hazards is assessed when zoning new areas of land for more intensive development.</u> 5. Avoiding locating regionally significant and critical infrastructure within identified hazard zones unless there is a functional or operational need for its location.
DGD-P4 – Amenity	<p>To ensure that the scale and nature of new land use activities are complementary to <u>commensurate with</u> the anticipated level of amenity and the stated issues and objectives overview for the relevant zone.</p>
DGD-P5 – Sustainable Infrastructure	<p>To avoid, <u>remedy or mitigate</u> adverse effects on the sustainable provision of infrastructure by ensuring that all subdivision and land use is served by infrastructure and services that are appropriately designed, located and constructed.</p>



URBAN FORM AND DEVELOPMENT CHAPTER (UFD)	
Issues	
<p>Urban form refers to the physical layout and design of the city. The way in which a district or city grows and its resulting urban form, can have significant impacts both positive and adverse, on its environment, the quality of life for its residents and the economic well-being of business.</p> <p>The location and form in which urban development occurs in the District affects how efficiently services can be provided and amounts of energy consumed. Inefficient design in terms of lay-out and density can lead to an environment that is less sustainable in physical and social terms. Energy efficiency and conservation measures can be implemented by residential, commercial and industrial activities, and will slow the depletion of non-renewable energy resources.</p> <p>This chapter contains the policy direction for the Urban Areas of Whangārei District. The District Growth and Development Chapter contains policy direction for Regionally Significant Infrastructure, including the hospital and airport.</p> <p>Objectives and policies have been included to assist in the management of urban growth that will enable a range of lifestyle options and types of buildings while recognising the constraints to development in the District. One of the overarching objectives aim of this chapter is <u>to:</u></p> <ul style="list-style-type: none"> • to pProvide strategic direction on the appropriate location, shape and form of future urban development in the Whangārei District. • pProvideing for a range of lifestyle choices and types of buildings whilst managing the impact of urban development on existing activities and valued resources. • <u>Enable appropriate residential growth and development that is consolidated, compact, feasible and well designed.</u> • <u>Recognise the importance of liveability, connectivity and affordability.</u> <p>The objectives and policies in this chapter guide decision making at the strategic level.</p>	
Objectives	
<u>UFD-03 – Urban Amenity Range of Zones</u>	Maintain the range of amenity values and characteristics of <u>Provide a range of zones in the Urban Area while enabling appropriate use and development.</u>
<u>[New] UFD-04 – Urban Amenity</u>	<u>Recognise that the planned urban built form may result in changes to the amenity values and characteristics of the Urban Area over time.</u>
Policies	
<u>UFD-P3 – Urban Design Amenity</u>	To maintain and enhance <u>manage change to urban character and amenity values by applying high quality urban design that demonstrates how the development will contribute to a compact, connected, distinctive, diverse, attractive, appropriate, sustainable and safe urban form.</u>

