

# **Private Plan Change 82 Moonlight Heights: Decision to adopt, accept or reject the plan change or determine it as a resource consent**

**Meeting:** Kaipara District Council  
**Date of meeting:** 14 December 2022  
**Reporting officer:** Paul Waanders, District Planner

## **Purpose | Ngā whāinga**

To decide whether the application for a Private Plan Change by Moonlight Heights Limited is adopted, accepted, rejected, or be determined as if it was a resource consent application.

## **Executive summary | Whakarāpopototanga**

Private Plan Change 82 requests to rezone 39.2 hectares of land at Awakino Road, Dargaville to a residential precinct to protect ecological features, promote high quality urban design and to provide open space and connectivity.

Council is required to make a decision on this application in accordance with Clause 25 of Part 2 of Schedule 1 to the RMA.

Clause 25 directs Council to either;

1. **Adopt** the request in whole or in part as if it were a proposed plan made by the Council, which must then be processed in accordance with the provisions of Part 1 of Schedule 1 Clause 25(2)(a); or
2. **Accept** the Private Plan Change request, in whole or in part, which then triggers a requirement to notify the request, or part of the request under Clause 25(2)(b); or
3. **Reject** the Private Plan Change request in whole or in part, in reliance on one of the limited grounds set out in Clause 25(4); or
4. **Determine** the request as if it were an application for a resource consent under Clause 25(3).

Staff have followed all due RMA processes to get to this stage and are now seeking a Council decision on the application within the parameters of Clause 25. It is important to note that neither 'adopt' or 'accept' implies that the plan change is or will be 'approved' by Council. The process of consultation through notification and hearings must be undertaken before the matter is submitted to Council for a decision.

## **Recommendation | Ngā tūtohunga**

That Kaipara District Council:

- a) Accepts in whole, the private plan change request (Private Plan Change 82 – Moonlight Heights), in accordance with Clause 25(2)(b) of the Resource Management Act 1991.
- b) Requests the Chief Executive publicly notifies the Private Plan Change and that public notification commences on 17 January 2023
- c) Notes that public consultation will occur for one month, ending 17 February 2023.

## Context | Horopaki

Clause 21 of Schedule 1 of the RMA provides that “any person” may request a change to the District Plan.

The Private Plan Change was lodged by the Moonlight Heights Limited, proposing to rezone land at Awakino Road, Dargaville from “Rural” to a “Development Area” providing for “Residential development” (see **Attachment A**).

The RMA prescribes the process the Council must follow for dealing with these requests to change the Operative District Plan which includes:

- An assessment of the submitted documentation following by a request for additional information to better understand the potential effects on the environment, the ways in which any adverse effects may be mitigated, and the nature of any consultation undertaken or required to be undertaken. (Clause 23 Schedule 1 RMA);
- In terms of Clause 25 Schedule 1, and after Council is satisfied with the additional information requested, Council needs to decide if it will “accept”, “adopt” or “reject” the requested Plan Change in whole or in part;
- Council then needs to notify the Plan Change with or without amendments.
- After notification and the receipt of submissions, a hearing is conducted; and then
- Council will consider the recommendations and make a decision to “approve” or “decline” the plan change.

This report only deals with the decision the Council must make under Clause 25 – to ‘accept’, ‘adopt’ or ‘reject’ the plan change request or treat it as a resource consent application.

## Discussion | Ngā kōrerorero

Private Plan Change 82 Moonlight Heights is a request to rezone 39.2 hectares of land at Awakino Road, Dargaville to Residential Zoning.

The plan change seeks to rezone the Operative District Plan to a Residential Zone and apply a bespoke Awakino Precinct and adapt the Residential Chapter in respect of rules that affect the plan change area.

Based on an assessment of environmental effects and specialist assessments, it is concluded that the proposed Plan Change will have positive effects on the environment in terms of the social and economic well-being of the community.

Clause 21 of Schedule 1 of the RMA provides that “any person” may lodge a private plan change request with the Council. The Council is then required to make a decision under Clause 25, with requires Council to choose between 1 of the 4 following options:

1. **‘Adopt’** the request, or part of the request, which means the request then becomes a Council or public plan change;
2. **‘Accept’** the request, or part of the request, in which case it remains a Private Plan Change;
3. **‘Reject’** the request, or part of the request on one of the limited grounds set out in Clause 25(4) of Schedule 1, RMA;
4. **‘Change’** the plan change request into a resource consent application.

The options to either ‘adopt’ or ‘accept’ does not imply that Council has approved (i.e granted) the plan change. Consultation through notification and hearings is still required to be undertaken before the matter is submitted to Council for a decision on the plan change.

The matter of ‘adopting’ or ‘accepting’ the application **‘in part’** needs to be assessed. It is technically possible for Council to make different decisions on the different elements of the application.

However, the application was submitted comprehensively, and it would be expected that the whole application be considered as a 'complete package' from the outset. It is best practice to keep the application intact, whilst deciding an application in part is technically an option, it is very rare or never happens. It would lead to public confusion as well as the council/community 'picking up the costs' for part of the application and the applicant paying for the remainder of the plan change.

Assessing the application for 'adopting' or 'accepting' 'in part' is not recommended.

The decision now required from Council is to enable the process to continue (to public notification for submissions on the plan change followed by a hearing) or be terminated (rejected).

Any decision of Council including one on considering the application 'wholly' or 'in part' can be appealed by the applicant to the Environment Court<sup>1</sup>. Therefore, the four options must be considered and analysed against information received from the applicant and the legal requirements of the RMA.

### Option 1

**'Adopt'** the request, or part of the request, as if it were a proposed plan change made by the Council itself - under Clause 25(2)(a) of Schedule 1 of the RMA.

The Council can decide to adopt the request, and process it, as though it were a Council initiated plan change. A decision to adopt triggers the process set out in Part 1 of Schedule 1, which would then require the Council to consult as required in clauses 3 to 3C of Part 1. Following consultation, the Council would then need to notify the proposed plan change for submissions and conduct a hearing into submissions.

It is also relevant to note that the applicant has not requested that the Council adopts the Private Plan Change. It is also important to note that this option results in the Council (and therefore the wider community) paying for the full cost of the plan change request. It is difficult to provide an estimate of costs at this stage of the process because there are many variables that dictate costs, but the estimate would be in the 'hundreds of thousands' of dollars.

For the above reasons, it is not recommended that the Council adopts the private plan change.

### Option 2

**'Accept'** the Private Plan Change request under Clause 25(2)(b) of Schedule 1 of the RMA and proceed to notify the request under Clause 26.

If the Council accepts the request, it must then proceed to publicly notify the request for submissions. After the submission period closes, Council needs to hold a hearing to consider any submissions, and a decision would then be made by the Council in relation to the request in accordance with Schedule 1 of the RMA. Importantly, all costs associated with the request (including notification and any hearing) would rest with the applicant (and therefore not the wider community).

**This is the recommended option** and is the option sought by the applicant.

### Option 3

**'Reject'** the Private Plan Change request - clause 25(4), Schedule 1, RMA.

The Council has the power to reject a Private Plan Change request, in reliance on one of the limited grounds set out in Clause 25(4) the RMA. If the Private Plan Change request is rejected by the Council, the applicant can appeal that decision to the Environment Court.

The grounds for rejection under Clause 25(4) are as follows:

- a) the request or part of the request is frivolous or vexatious; or

- b) within the last two years, the substance of the request or part of the request has been considered and given effect to, or rejected by, the local authority or the Environment Court; or has been given effect to by regulations made under Section 360A; or
- c) the request or part of the request is not in accordance with sound resource management practice; or
- d) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or
- e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than two years.

The Private Plan Change request contains a comprehensive section 32 evaluation report (**Attachment B**), including an assessment of the objectives and policies, and a sufficiently detailed assessment of environmental effects. The request is also accompanied by a range of specialist assessments in relation to the key matters considered to be material to the request, including transport, three waters, economic, ecology, geotechnical, urban design, and landscape.

The request enables the nature of the plan change and its effects to be reasonably understood. It is therefore considered that the Council cannot reject the Private Plan Change request on the basis that it is frivolous or vexatious.

This private plan change has not been considered within the last two years and therefore it is considered that the Council can not reject the request on this basis.

The substance of the Private Plan Change or part of the request, being rezoning land does not relate to section 360A of the RMA which refers to regulations for amending regional coastal plans pertaining to aquaculture activities. It is therefore recommended that the Council not reject the request on the basis of this matter.

"Sound resource management practice" is a frequently used term but is not defined in the RMA. Case law indicates that "sound resource management practice" relates to scale of effects and alignment of any Private Plan Change to Part 2 of the RMA, i.e. - the purpose and principles. The applicant has considered the zoning options for the site and concluded that the proposed rezoning along with the introduction of new provisions including an overlay will result in a mixed- use development. That is anticipated to positively contribute to the existing business and residential zones under the operative District Plan, while maintaining character and amenity of the area, and appropriately managing effects associated with servicing future development of the application area.

A number of specialist reports support the Private Plan Change and while parts of the Private Plan Change need to be tested through the submission and hearings process, the scope and extent of the changes sought do not, in themselves, threaten the purpose and principles of the RMA. Having reviewed the applicant's planning and specialist reports and taken the purpose and principles of RMA into account, the Private Plan Change is considered to be in accordance with sound resource management practice. It is therefore recommended that the Council not reject the Private Plan Change on the basis that it is contrary to sound resource management practice.

The Private Plan Change request will not make the operative District Plan inconsistent with Part 5 of the RMA, which sets out the role and purpose of planning documents created under the RMA including that these must assist a local authority in giving effect to sustainable management purposes of the RMA. It is therefore recommended that the Council not reject the Private Plan Change on the basis that the substance of the request would make the Operative District Plan inconsistent with Part 5 of the RMA. The Operative District Plan provisions relevant to the PPC were made Operative in 2013. The provisions have therefore been operative for more than two years, and it is recommended that the Council not reject the Private

Plan Change request on this basis.

With all this considered, it is not recommended to reject the private plan change request.

#### **Option 4**

Decide to deal with the request as if it were an application for a resource consent under clause 25(3) of Schedule 1 of the RMA. The Council can decide to deal with a Private Plan Change as if it were an application for resource consent. However, in this case, the Private Plan Change seeks to rezone the whole area to achieve an integrated development. It is considered that the most appropriate process for achieving rezoning for this development of the site is through a plan change process. Additionally, the applicants have specifically applied for a private plan change (as opposed to a resource consent/subdivision process).

It is therefore not recommended that the Council deals with the request as if it were an application for resource consent.

The recommended option is Option 2 – Accept the Private Plan Change under Clause 25(2)(b) of Schedule 1 of the RMA.

#### **Policy and planning implications**

‘Accepting’ the Private Plan Change will release the application for notification and processing of the application in accordance with the prescribed RMA process.

All factors (including public submissions and further submissions) will be considered by a Hearings Panel before Council makes its decision on the application.

#### **Financial implications**

Private Plan Changes that are ‘accepted’ by Council’s are processed with the ability to recover all costs from the applicant up to the Council’s final decision.

#### **Risks and mitigations**

If Council chose to either reject the private plan change or to treat it as a resource consent application, the applicant may appeal this decision to the Environment Court. This could lead to reputation risk for Council as well as financial costs.

#### **Impacts on Māori**

The applicant has submitted a cultural assessment which has been compiled by Te Roroa as a full Cultural Impact Assessment (CIA). This includes recommendations such as ongoing consultation with mana whenua. The CIA will form part of the notification material when the private plan change is released for public notification.

### **Significance and engagement | Hirahira me ngā whakapāpā**

The decisions or matters of this report are considered to have a low degree of significance in accordance with Council’s Significance and Engagement Policy. The RMA does not provide for public consultation in the clause 25 Schedule 1 decision (as this is a Council only decision). No feedback is required, and the public will be informed of Council’s decision via the agenda and minutes publication of this meeting, on the website and through other channels if appropriate.

Formal public consultation will be required after the Council has made this Clause 25 decision and public will have the ability to provide submissions on this proposal.

### **Next steps | E whaiake nei**

Statutorily, the Private Plan Change must be notified within four months of being accepted under clause 25 of Schedule 1 of the RMA (it is recommended to commence notification from 17 January 2023).

The Private Plan Change will then work its way through the process, which will

include opportunities for the public to lodge submissions and will also include public hearings.

## Attachments | Ngā tapiritanga

	Title
A	Locality and zoning maps
B	Private Plan Change 82 Moonlight Heights – s32 Evaluation Report