

Private Plan Change 82 Moonlight Heights – Council decision on provisions and matters raised in submissions.

Meeting: Kaipara District Council
Date of meeting: 28 February 2024
Reporting officer: Taiawhio Wati-Kaipo - Graduate Planner
Michael Day - GM Engagement & Transformation

Purpose | Ngā whāinga

To make a decision on the recommendations provided by the Hearing Panel on Private Plan Change 82 Moonlight Heights Limited (PPC82).

Executive summary | Whakarāpopototanga

PPC82 Moonlight Heights is a private plan change application being processed by Council. This plan change proposes to change 39.2 hectares of land from Rural zone to Residential zone at Awakino Road, Dargaville. The application has followed the prescribed process under Schedule 1 of the Resource Management Act 1991 (RMA).

Council delegated functions, duties and powers to a Hearing Panel to hear and recommend on PPC82. A hearing was held in August 2023 and the appointed Hearing Panel has produced a recommendation report, which is to **approve** PPC 82.

This report recommends that Council accept the Hearings Panel recommendations and adopt these as the Council's Decisions, pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991 (RMA).

Recommendation | Ngā tūtohunga

That the Kaipara District Council:

- a) Approves PPC82 and adopts the recommendation of the Hearing Panel in **Attachment A** as the Council's decisions on provisions and matters raised in submission, pursuant to Schedule One, Clause 10, RMA.
- b) Approves the amended Chapter 13 and Maps for the Awakino Precinct Area as recommended by the Hearing Panel in **Attachment B** and **Attachment C**.
- c) Approves the public notification of Council's decision (pursuant to Schedule One, Clause 10(4)(b), RMA) and that public notification be on or before 12th March 2024.
- d) Delegates to the Mayor and Chief Executive, the authority to make any necessary minor formatting, typographical and administrative changes to Chapter 13 and the Maps within the Operative Kaipara District Plan as set out in **Attachment B** and **Attachment C** of this report.

Context | Horopaki

The RMA allows anyone to seek changes to the district plan through a private plan change request. These requests allow proposals to be tested through the RMA process and allow applicants to initiate change without waiting for a plan review.

Council accepted to process PPC 82 on 14 December 2022. The Plan Change proposes to change 39.2 hectares of land from Rural zone to Residential zone at Awakino Road, Dargaville.

This land-use change may enable up to 384 dwellings to be provided for within the plan change area. Council is processing this application in accordance with Part 2, Schedule One, RMA. See **Attachment D** for key procedural information.

Council delegated functions, duties, and powers to a Hearing Panel to hear submissions and make recommendations on PPC82. This delegation means the Hearing Panel would make a recommendation to Council on provisions and matters raised in submission, but Council will make the final decision.

The Hearing Panel was made up of two independent Commissioners and one Internal Commissioner. The independent Commissioners were Dr Lee Beattie (Chair) and Melean Absolum. The internal Commissioner was Deputy Mayor, Jonathan Larsen. A hearing was held in August 2023.

The Hearing Panel considered the request, the submissions received, and the section 42A report prepared by officers for the hearing. The Hearing Panel also considered legal submissions and the evidence presented during the hearing and the Applicant's closing legal submissions. Full information including the section 42A report and all evidence was made available on Council's website.

The Hearing Panel have now provided their recommendation report to staff. Council must consider the recommendation report and either approve or reject the recommendations.

Discussion | Ngā kōrerorero

The Hearing Panel recommends Council approves PPC82 and the recommended Awakino Precinct provisions (at **Attachment B**) and maps (at **Attachment C**).

The Hearing Panel found that this private plan change will meet the social and economic needs of the community by providing for the long-term needs for residential land. The PPC will also create a sustainable built environment that effectively integrates infrastructure, ecological issues, sense of place, and transport choices. It was also noted that the PPC area has been signalled for future urban growth in Council's Spatial Plan.

The Hearing Panel accepted, accepted in part or refused submissions on PPC82 and found all matters have been appropriately addressed as set in the s42A report or through the amended precinct provisions.

As stated by the Hearing Panel, the overall reasons for the decision are that PPC 82:

- is supported by necessary evaluation in accordance with s32 and s32AA;
- is not inconsistent with the NPS-FM;
- gives effect to the Northland Regional Policy Statement; and
- satisfies Part 2 of the RMA.

Council must make the final decision on PPC82, having received the recommendations from the Hearing Panel.

PPC82 was publicly notified on 17 January 2023. A local authority must give a decision no later than two years after this date.

Options

The options analysis below relates to whether Council should adopt the Hearing Panel's recommendations as the Council's decisions.

Option 1 - Adopt the Hearing Panel's recommendation as Council's decision.

This is the **recommended option**.

Advantages

- Council has followed due process in accordance with statutory requirements and the Council's Hearing Commissioner Policy, to ensure recommendations are made by experienced, skilled and professional Commissioners.

- Council has delegated the Hearing Panel the authority to objectively hear all matters, including matters raised in submissions and to make recommendations to Council.
- This option avoids any actual and possible perceived Council predetermination or bias and will help protect Council and ratepayers from any potential judicial review of the process followed.
- Council has invested time and resources into processing PPC 82 and organising the hearing. The applicant and submitters have also invested significant time, cost and resources into the process.
- Significant engagement on PPC82 Moonlight Heights have occurred through robust and transparent Council processes.

Disadvantages

- No disadvantages apparent.

Option 2 - Reject the Hearing Panel's recommendation and re-hear the application.

This **is not** the recommended option.

Advantages

- No advantages apparent.

Disadvantages

- There is a risk of reputational damage to Council should it reject recommendations provided by experienced, professional RMA Hearing Commissioners.
- Rejecting the recommendations from a Hearing Panel would be extremely unusual, especially as Elected Members have not been actively involved in the process.
- Issues of natural justice and fairness may arise if Council were to revisit the Hearing Panel's conclusions. Council would need to provide robust reasons for any decision in contrary to the Hearing Panel's recommendations.
- Council would also need to re-hear submissions and evidence. This would cause additional costs to the applicant, submitters and Council.
- Re-hearing submissions and evidence would cause a significant delay the process and Council may not meet its statutory obligation to make a decision on submissions within two years of notifying the private plan change.

Policy and planning implications

PPC82 Moonlight Heights is a private plan change request to the Operative Kaipara District Plan. Once approved, the provisions will be included in the Operative District Plan.

Financial implications

If Council adopts the Hearing Panel's recommendations, submitters may lodge appeals with the Environment Court. Council is required to fund any appeal costs associated with 'defending' Council's decision.

The PPC82 development may contribute to the economic and financial strength of Dargaville, through the collection of development contributions and the increase of rateable properties.

Risks and mitigations

If the Hearing Panel's recommendations are rejected, Council would need to re-hear the submissions and evidence already considered by the Hearing Panel. This would cause additional costs to ratepayers and carries a risk of reputational damage for Council. This option may also cause Council to not meet its statutory obligation to make a decision on submissions for PPC82 by 17 January 2025.

Impacts on Māori

The private plan change area is within the area of interest local iwi, Te Iwi o Te Roroa. The applicant submitted a Cultural Values Assessment from Te Iwi o Te Roroa and matters raised have been given regard to.

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. 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.

PPC82 has followed all statutory processes under the RMA including public notification of the application and a public hearing and there have been multiple opportunities for members of the community to become involved in the process.

Next steps | E whaiake nei

Should Council adopt the Hearing Panel's recommendations as the Council decisions, the next step will be to publicly notify the decision. Once notified, parties will then have 30 working days to lodge appeals (if they consider it necessary) with the Environment Court.

Attachments | Ngā tapiritanga

	Title
A	Attachment A Hearing Panel's Recommendation Report
B	Attachment B Awakino Precinct Recommended Provisions
C	Attachment C Awakino Precinct Maps – Noise Plan – Street Cross Section
D	Attachment D PPC82 – Key Procedural Information