



## Form 5

Submission 19

Submission on a notified proposal for  
policy statement or plan, change or variation

*Clause 6 of Schedule 1, Resource Management Act 1991*

### Submitter details

*(please note that any fields with an asterisk (\*) are required fields and must be completed)*

Name of submitter\*

**B & N Lowe and Others: Please see Attachment A for full Details of All Submitters**

Contact person for communications\*

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Please tick your preferred method of contact

*(please select only one)\**

Email

Postal

Submitter

Agent

Both

Correspondence to\*

## Submission on application

### This is a submission on a private plan change

Please complete this form if you wish to make a submission to a current plan change that is open for submissions

Plan change number: **PPC82**

Plan change name: **Moonlight Heights**

The purpose of the private plan change is to:

- Rezone 39.2 hectares of land at Awakino Road, Dargaville from Rural Zone to Residential Zone, including consequential amendments to the Kaipara District Plan Maps.
- Any necessary consequential amendments to the Kaipara District Plan provisions.

Trade competition and adverse effects (*select one of the following options*)\*

I could  I could not

gain an advantage in trade competition through this submission.

If you ticked “I could” above, please answer this question by selecting one option below:

I am  I am not

directly affected by an effect of the subject matter of the submission that:

- (a) adversely affects the environment; and
- (b) does not relate to trade competition or the effects of trade competition.

**Note:**

If you are a person who could gain an advantage in trade competition through making a submission on PPC82 you may only make a submission if you are directly affected by an effect of PPC82 that adversely affects the environment; and does not relate to trade competition of the effects of trade completion: Clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991.

Would you like to present your submission in person at a hearing?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
If others make a similar submission, will you consider presenting a joint case with them at the hearing? This submissions has been prepared on the basis of a joint submission on behalf of the parties outlined in Attachment A	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No

**Please complete a line for every submission point, adding as many additional lines as you need.**

**NOTE:** This form is intended for brief submission only, if you wish to provide us with more in-depth content, please do this on a separate page and attach it to this form when returning it to us.

<b>The specific provisions of the proposal that my submission relates to (e.g. provision number, map)</b>	<b>Do you:</b> <ul style="list-style-type: none"> <li>• Support?</li> <li>• Oppose?</li> </ul>	<b>What decision are you seeking from Council?</b>  <b>Select which action you would like:</b> <ul style="list-style-type: none"> <li>• Retain</li> <li>• Amend</li> <li>• Add</li> <li>• Delete</li> </ul>	<b>Reasons</b>
<i>Example: Zoning</i>	<i>Example Support</i>	<i>Example Retain zoning for proposal</i>	<i>Example Supports the growth of Dargaville</i>
<i>Please see attachment B for a synopsis of submissions</i>			

Please return this submission form and any attachments **no later than 5pm on Thursday 09 March 2023 to:**

- Kaipara District Council, Private Bag 1001, Dargaville 0340, or
- Email: [planchanges@kaipara.govt.nz](mailto:planchanges@kaipara.govt.nz) or
- Hand-deliver to Kaipara District Council at 32 Hokianga Road, Dargaville or 6 Molesworth Drive, Mangawhai

**Signed:** .....

**Date:** .....

(A signature is not required if you make your submission by electronic means)

**PRIVACY ACT NOTE:** Please note that all information provided in your submission is considered public under the Local Government Official Information and Meetings Act 1987 and may be published to progress the process for the private plan change and may be made publicly available.

**IN THE KAIPARA DISTRICT COUNCIL**

**In the Matter of Private Plan Change Number 82**

**Between**

**Moonlight Heights Limited**

**Applicant**

**B J and N A Lowe & Others**

**Submitters in Opposition**

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**Form 5, Submission on a Notified Proposal for Private Plan Change 82**

**Attachment A**

**Full Details of All Parties to the Submissions Presented on Behalf of B & N Lowe and Others**

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**IN THE KAIPARA DISTRICT COUNCIL**

**In the Matter of Private Plan Change Number 82**

**Between**

**Moonlight Heights Limited**

**Applicant**

**B J and N A Lowe & Others**

**Submitters in Opposition**

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**Form 5, Submission on a Notified Proposal for Private Plan Change 82**

**Attachment B**

**Synopsis of Submissions Presented on Behalf of B & N Lowe and Others**

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Solicitor: Emma L Smith

Documents for service may be sent by email or post.



**MAY IT PLEASE THE COMMISSIONERS:**

1. These submissions are filed on behalf of private property owners directly affected by Private Plan Change 82: Rezoning of Awakino Road Precinct.
2. The submitters have made a joint submission in an effort to rationalize the submissions and to assist the process of submissions.
3. To the extent that the submissions are presented, they are presented on behalf of each of the parties notified in attachment A to Form 5 which accompanies this synopsis.
4. The submitters confirm that they wish to be heard on the submissions outlined in this synopsis. Counsel has been instructed to attend and present those submissions on behalf of all submitters detailed in attachment A.

**Introduction**

5. Private Plan Change 82: Moonlight Heights Application to Rezone the area described in the application as the Awakino Road Precinct, was publicly notified in January 2023. Prior to public notification no information had been provided by the applicant regarding the proposed plan change to the private property owners directly affected by the proposed re-zoning.
6. No formal consultative process was adopted by the applicant with those landowners within the proposed precinct prior to submission of the application to Council. Whilst it is accepted that Mr & Mrs Williamson made nominal informal efforts to informally discuss the matter with some neighbouring properties, no formal process of consultation was adopted or progressed by the applicant.
7. The proposed plan change has caused significant concerns to the submitters on the basis that the proposed plan change has anticipated significant adverse effects on the social, economic, and cultural well-being and the health and safety of a significant proportion of the community of Dargaville. Those significant adverse effects stem from:
  - 7.1. Lack of sufficient due diligence and notification of measures (including details of financial commitment) to sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and **19.1**

- 7.2. Risks arising due to lack of sufficient infrastructure (and lack of evidence of available and sufficient financial capacity to provide necessary and sufficient infrastructure) to safeguard the life-supporting capacity of air, water, soil, and ecosystems for the surrounding and directly affected community; and 19.2
- 7.3. Lack of sufficient and appropriate measures avoiding, remedying, or mitigating any adverse effects of activities on the environment, particular with respect to impact upon Council’s three waters infrastructure and the known effects of extreme weather events. 19.3
- 7.4. Potential (and it is submitted probable) financial risk to the community arising from actions that will be required to sufficiently and appropriately remedy or mitigate those adverse effects (with ratepayers and Dargaville residents still very alive to the financial impact of the Mangawhai Wastewater scheme which some reasonably describe as a fiasco). 19.4
8. With respect to the documents provided as part of the application, there are persistent and concerning assumptions adopted which are not supported by Council’s own notified position in relation to matters pertaining to infrastructure, financial planning and strategic direction and local and regional planning policies. This creates real concerns as to the presumptive nature and scope of the application. 19.5
9. Of greater concern is the persistent suggestion of growth and demand for urban development of the nature and scope detailed within the application which is not supported by data and evidence provided by Council. The application’s proposition of urban capacity demand of sufficient nature to justify a rezoning of the area, to enable urban development in nature outlined in the proposed plan change, is speculative at best. 19.6

**Concerns Arising as to the Purpose and Reasons for Plan Change**

10. At section 5.2 of the Plan Change Assessment of Effects and Section 32 Evaluation Report<sup>1</sup> (the “Assessment Report”), the purpose and reasons for the plan change are outlined and may be summarised as follows:

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<sup>1</sup> Private Plan Change Request Assessment of Effects and Section 32 Evaluation Report prepared for Moonlight Heights Limited by B&A dated 8 June 2022

- 10.1. The purpose is to deliver viable and sustainable residential rezoning, applying a precinct to the plan change area to provide for future residential intensification.
- 10.2. The reason for the change is to cater for the intentions of the applicant to develop the area in a manner consistent with the proposed land use pattern.
- 10.3. The noted intention is to provide for consistency with the Kaipara District Council Operative District Plan and National Planning Standards.
11. These three pillars for the proposition that the plan change both appropriately and effectively delivers for sustainable residential housing requirements for Dargaville’s long term benefit are unfortunately misconceived as: 19.7
- 11.1. they fail to apply relevant contextual realities applicable to the Dargaville community and environment as outlined within Council’s own records; and
- 11.2. it fails to apply sufficient certainty by adopting a measured approach to development in a community and environment that has experienced persistent and prolonged under-investment in infrastructure; and
- 11.3. fails to provide adequate consideration to the geographical considerations of the area expressly recorded by Regional Planning policy as a drainage area, in circumstances where it is predicted the area will increasingly be exposed to and experience extreme weather events as a result of climate change; and
- 11.4. It does not accord with Council’s information regarding predicted growth and demand and the notified investment strategy intended to support existing community commitments and requirements.
12. Section 5.3 of the Assessment Report states that considerable technical analysis has been undertaken to inform the plan change and that it is consistent with the principle of sustainable management and sound resource management practice.
13. However, on analysis of the assessment report and its supporting “technical reports”, it is apparent that the analysis is a desk top analysis which is inconsistent with:

- 13.1. Council’s own assessments and provisions for infrastructural development in Dargaville in the period from 2021 – 2031 (as provided by the Council’s Long Term Plan); and 19.8
- 13.2. Council’s current position in relation to the applicability of national policies including the National Policy Statement – Urban Development; and
- 13.3. Council’s assessment of growth and demand projections for Dargaville in the next 30 years.
14. The assessment report speaks, obviously, to the potential merits of the proposed change. However, planning decisions of this nature are nuanced, requiring a balanced consideration of timing, substance and implications of outcomes for Dargaville.

#### **Application of National Policy Framework**

15. In considering the Private Plan Change, Council is required to give effect to multiple higher level planning documents. The Resource Management Act 1991 (the “RMA”) requires that lower-level planning documents must “give effect” to higher-level planning documents. So, for example, regional policy statements must “give effect” to national policy statements, and district plans must “give effect” to national policy statements and regional policy statements<sup>2</sup>.
16. This means that specific, directive policy statements in higher level planning documents can effectively prevent activities being undertaken that might otherwise appear to be able to be possible under lower-level planning instruments<sup>3</sup>.
17. It is noted the Assessment Report adopts a broad-brush approach to reporting on the applications of these principles or the relevant effects of each. Indeed it is apparent the report effectively cherry picks the provisions of national policy framework that are supportive of the proposed plan change. It is therefore important that we reflect upon the less supportive elements.

19.9

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<sup>2</sup> Resource Management Act 1991, ss 62(3) and 75(3)

<sup>3</sup> Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC 38, [2014] 1 NZLR 593

***Application of the Resource Management Act 1991***

18. The purpose of the RMA is to promote the “sustainable management of natural and physical resources”<sup>4</sup>. This concept is referenced by the Assessment Report. However, “sustainable management” is defined in s 5(2) and means:

*“... managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*

*(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

*(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*

*(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

19. This overriding purpose is the “lodestar” of the Act, and all activities covered by the Act and all planning undertaken under it must conform to the purpose<sup>5</sup>.

20. Section 5(2) emphasises that the primary focus of the Act is on the effects arising from activities, regardless of their nature or category. In particular it is important to note:

20.1. Where activities would have definite measurable significant adverse effects on biophysical matters under s 5(2)(b), for example reducing water quality, air quality and so on, they will be unlikely to fulfil the purpose of the Act and will require redesigning to remove or remedy those effects before being allowed to proceed.

19.10

20.2. The “environment” referred to in s 5(2)(c) is broadly defined in s 2(1); it includes not just non-human biophysical matters such as ecosystems, but also people and communities, and amenity values. The latter are “those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”<sup>6</sup>.

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<sup>4</sup> s5(1) RMA1991).

<sup>5</sup> Lee v Auckland City Council [1995] NZRMA 241 (PT) at 248; Independent News Auckland Ltd v Manukau City Council (2003) 10 ELRNZ 16 (EnvC) at [23]. These cases were cited with approval in Dart River Safaris Ltd v Kemp [2001] NZRMA 433 (HC) and Gargiulo v Christchurch City Council HC Christchurch AP32/00, 6 March 2001

<sup>6</sup> Resource Management Act 1991, s 2(1), definition of “amenity values”.

21. In addition to the primary focus of s5(2), s7 contains a list of matters that decision-makers must “have particular regard to”. These include:

21.1. Kaitiakitanga (the exercise of guardianship by Māori over resources) and stewardship (the non-Māori equivalent).

21.2. The maintenance and enhancement of amenity values.

21.3. The intrinsic values of ecosystems, the maintenance and enhancement of the quality of the environment, and any finite characteristics of natural and physical resources.

21.4. The efficient use and development of natural and physical resources.

21.5. Energy efficiency matters and adaption to climate change.

19.10 cont

22. It is submitted that there arises real risk of detrimental effects to the community from the proposed development outlined by the proposed plan change due to insufficient capacity, resource availability or prospect of sufficiently viable and reasonably affordable processes and strategy to meet those areas emphasised in s7 RMA.

***Pending Changes to Resource Management Legislative Framework***

23. The implications of sections 5(2) and 7 must be considered when weighing the application for Private Plan Change 82. However, there are currently pending Central Government directed wholesale changes which will fundamentally change the Resource Management Legislative Framework. In that climate of change, when legislative change is not only anticipated but proximate, it must be questioned whether determination of a private plan change is appropriate and in pursuit of the interests of the community. The impact of those changes upon both the decision makers and policies to be adopted going forward are proximate and therefore relevant.

19.11

24. The RMA is to be repealed and the introduction of Spatial Planning Act, Natural and Built Environments Act and Climate Change Act will all have relevant implications for the proposed district plan and any proposed developments.

25. Specifically, those changes will introduce a national framework for resource management and planning protocols to which Local Authorities, such as Council, are mandated to give effect to. In circumstances of an application for change in planning strategy as fundamental to the future of the town as appropriate zones for medium density housing and urban development, it is submitted that should be deferred until the provisions of Governments over-haul of resource management are capable of consideration and application.

19.11 cont

***Implications of Central Government Overhaul of Three Waters***

26. In addition to the known centrally driven adjustments to the resource management regime, there is the pending and yet inherently uncertain implications of the Three Waters legislated changes.

27. These pending changes are all acknowledged within the asset management plans for each of Council's three-water infrastructures. However, it is not yet known what effects and implications will be in terms of the management, development and growth of each of the infrastructural systems. There is real risk that communities such as Dargaville will become lost in the schematics of the large Three Water infrastructure and community three water infrastructure cannot be presumptively relied upon to enable development at this time.

19.12

28. In a community where it is acknowledged and accepted that there has been persistent and prolonged under investment in the management, maintenance and development of the three waters infrastructure, it is entirely inappropriate to adopt a plan change presented with the express reason of allowing a private development to proceed which so inherently relies upon the access to and use of community three water systems.

29. If, as it outlined in the technical reports provided in support of the application, it is intended that the development is to rely on development of and connection to the community three water systems, it is appropriate to defer the rezoning pending the outcome of Central Government's mandated adjustments to control, management and financial resourcing of the three water systems.

30. It is entirely outside the scope of knowledge or predictability as to what and how Dargaville's three waters infrastructure will be able to meet (if able to meet at all) the infrastructural demands of any proposed development change.

19.12 cont

***Referral to National Policy Statement on Urban Development***

31. The Assessment Report relies to a significant degree upon the scope and direction of the National Policy Statement on Urban Development (NPS UD). In particular it is observed that the Private Plan Change relies upon NPS-UD Objective 6(c), Policy 8 and Part 3, subpart 2 – Responsive planning.
32. Private Plan Change 82 directly references the NPS UD at Section 6 of its application as being relevant to the application. It states<sup>7</sup> "*Parts of Kaipara District fall within the definition of urban environment (Mangawhai2) however it is not considered that Dargaville falls within this definition due to its current and projected populations*".
33. Indeed it is quite apparent that PPC 82 is relying upon the Responsive Planning Provisions of NPS UD. It is apparent they are referencing the flexibility and focus on intensification that is supported by that Policy and more specifically the requirement under Policy 8 that local authorities must be responsive to plan-change proposals if they add significantly to development capacity and contribute to well-functioning urban environments. Part 3, subpart 2 provides more detail of what “responsiveness” means in this context. Under clause 3.8(2), local authorities must have “particular regard to” the development capacity enabled through these plan changes.
34. However, as at 1 March 2023 Kaipara District Council had not yet decided if the NPS UD is applicable and if Kaipara District has an Urban Environment in terms of the definition in the NPS UD.

19.13

35. In Council Briefing delivered on 8 February 2023 Council is currently grappling with the definition of “urban environment” as defined in the NPS UD and whether the Kaipara District Council is a Tier 3 local authority or not. It was noted that the definition for “urban environment” is set out as follows:

*urban environment means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:*

*(a) is, or is intended to be, predominantly urban in character; and*

*(b) is, or is intended to be, part of a housing and labour market of at least 10,000 people.*

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<sup>7</sup> Assessment Report, page 16



36. As reported to Council while the interpretation of both clauses (a) or (b) of the definition on face value seem relatively straight forward, there are a number of complexities that require consideration before Council can answer this question, including whether:

36.1. any of Kaipara's towns and villages can be deemed to be "predominantly urban in character", which would suggest high density living environments and intensification; and

36.2. the population is taken for the short, medium or long term (i.e. 10 years, 20 years or 30 years); and

36.3. the population will in fact reach the requirement of 10,000 people when other factors, such as holiday homes and the availability/capacity of public reticulation for water and wastewater to "urban" areas are taken into account.

37. On 8 February 2023 Council was presented with an economic opinion of the "urban environment", as it is defined in the National Policy Statement on Urban Development prepared by Derek Foy, Director of Formative. The opinion is dated 1 March 2022 but its delivery to Council on 8 February 2023 as part of the district plan review process is noted.

19.13 cont

38. Mr Foy concludes that he does not consider Dargaville, (with a population of 4,940 people and using high population growth scenario assumptions Statistics NZ project that will increase to around 5,920 by 2038), from an economic and demographic perspective should be classified as an urban environment under the NPSUD definition.

39. It is entirely inappropriate for Council to be considering proposed rezoning reliant upon the provisions outlined in NPS-UD when it is itself still "grappling" with the application of that National Policy as it applies to Kaipara District and more specifically to planning considerations directly relating to Dargaville.

19.13 cont

40. Indeed it smacks of a Council scrambling to pull together the strings of its planning strategy but allowing private development aspirations to intermeddle in that process. Consistency cannot be achieved in such circumstances.

## **Implications of Regional Policy and Plans**

### **Northern Regional Council**

41. As has been expressly recorded by Northern Regional Council (“NRC”) the Northern Wairoa River catchment extends over one third of Northland and NRC’s Northland River Management Policy includes land in all three Districts. A detailed contour survey of the catchment is prescribed by NRC and a flow model showing the relationship between the main river and its various tributaries and the impact of the tide on the river system.
- 19.14
42. The relevance of the catchment extends to the question of necessary infrastructure required to support the community and to be incorporated in any future development. The impact of climate change on the catchment and known potential flooding zones formed part of the discussion with Council on 1 March 2023.
43. It is noted that the applicants have referenced land that is privately owned that sits to the southeast of the proposed rezone area. However that is part of the Northern Wairoa River catchment area – the risks arising from that were recently painfully illustrated by the encroachment of river flooding because of Cyclone Gabrielle<sup>8</sup>.
44. Kaipara District Council also manages 42 drainage districts and as is well understood one of those is within the area surrounding the Awakino River which directly surrounds the relevant areas of community infrastructure and most specifically the community’s wastewater treatment plant. Additionally, it is the area that has been identified within the technical documents supporting the application as possible sites to locate alternative infrastructure, including wastewater treatment.
45. The risks associated with that, for an area within a catchment and draining area where it has been acknowledged there is real risk of exposure to increasing extreme weather events, must be considered carefully and as to whether that will comply with Regional Planning considerations.

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<sup>8</sup> Video evidence of those effects will be presented during the course of submissions.

46. From a pragmatic and practical perspective, while Regional Council has all the powers it needs to promote, design, build and maintain river management works, because of its environmental management responsibilities under the RMA, it is not actively involved in designing, building and maintaining works. More specifically however it falls to District Council or community groups to undertake the “design, build and maintain” stages of river schemes. In light of recent events in Cyclone Gabrielle, Council’s resources in protecting the community and its existing infrastructure from the potential impacts of climate change should be prioritised over the allocation of resources to assist private development aspirations<sup>9</sup>.

19.14 cont

***Kaipara District Council District Plan***

47. The application applies the principles and policies of the Operative District Plan. The application acknowledges (as section 5.1.1) that the Council is preparing to release its Draft District Plan but that plan has no legal weight and there is no guarantee of adoption.

48. Unfortunately this is contextually misleading as the applicants (or their advisers) are aware:

19.15

48.1. The Act requires all councils to review their district plans at least every ten years. Given the recent growth pressures facing the district, coupled with the uncertainty of the upcoming Resource Management Reforms, Council has been undertaking an accelerated District Plan Review process for the past two years. This has focused on “updating” the existing District Plan to ensure appropriate growth and development can be readily enabled through a permissive planning framework and to respond to current issues facing the district.

48.2. Council reports it is currently significantly progressed through its District Plan review process. As outlined in Council’s District Plan Review Update, delivered to Council on 8 February 2023, the District Plan Review project has been in progress for several years, with the last 1 – 1.5 years bringing together the Draft Kaipara District Plan. The next phase of the project is to prepare the **Proposed District Plan by July 2023**.

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<sup>9</sup> It is of course acknowledged the developer contributions can be required BUT the very real example of the Mangawhai Wastewater Scheme, the financial risk experienced by Council in that instance and the prolonged legal effects and implications arising from that cannot be ignored. Indeed lessons have hopefully been learned by Council from that experience that suggested availability of developer contributions is not the golden ticket safeguard that it may otherwise be suggested to be.

- 48.3. The Proposed District Plan is the official notified version on which submissions are received. The objectives and policies have immediate legal effect from the time of notification.
- 48.4. As is known by the applicant's advisers and has been acknowledged by Council a Private Plan Change cannot be considered in the first 2 years after a District Plan becomes operative.
49. Consideration of the proposed updates and planning provisions outlined in draft district plan, it is apparent that it is strategically intended to provide for appropriate zoning of the identified land under the anticipated proposed district plan. Appropriate rezoning (it is submitted is the Rural Lifestyle zone, rather than strictly Residential) can be progressed as part of the DP Review process which makes PPC both unnecessary but also inappropriate. **19.15 cont**
50. Presentation of a private plan changes to council and acceptance at a time when Council is in the process of completing district plan review smacks of seeking to achieve private development motivations by stealth. The release of the Proposed District Plan and the legal effect of that is sufficiently proximate to this process for it to be considered relevant to the processes to be adopted.
51. Council's own review and amendment stage is currently proposing sufficient scope and appropriate strategic direction to allow development which meets the needs of the community and the conservative growth and demand that is anticipated for the town.

***Kaipara District Council Spatial Plan***

52. It is acknowledged that the proposed Awakino Precinct outlined within the application falls within Council's spatial plan for anticipated residential extension. However, significant weight has been placed on this plan which is, essentially, merely a useful tool in terms of Council's planning ideology. It does not provide directive weight. **19.16**
53. As a non-statutory document it provides a 30-year plan for growth and development but it is not a strategic direction in the same manner as Council's District Plan and Long-Term Plan.

***Kaipara District Council's Long-Term Plan***

54. Every three years Council is mandated to develop a Long-Term Plan (LTP) in consultation with the community. This sets Council's budgets and work plans for the following 10 years. The LTP 2021-2031 was finalised in June 2021, following substantial community input.
55. Analysis of the LTP confirms that there is no provision for development or extension of the necessary infrastructure within Dargaville necessary for Council to say it is infrastructure ready and capacity development enabled to meet the demands of the proposed development underpinning the proposed plan change. 19.17
56. Such extension has not been identified in the LTP nor the Asset Management Plans for the period 2021 – 2031<sup>10</sup>. Accordingly it is submitted that residential extension cannot be advanced until Dargaville's wastewater, stormwater and water supply systems are all sufficiently developed to meet the increased demand.
57. Accordingly rezoning of the proposed Awakino precinct, to whatever relevant zone is determined to be appropriate, should not be adopted until such time as Council is able to state that it has sufficient capacity to support proposed development, meaning it is:
- 57.1. infrastructure-ready; and 19.17 cont
- 57.2. feasible and reasonably expected to be realised.

**Evidence Based Decision Making is Required for Sustainable Management**

58. The Assessment Report speaks on several occasions of meeting a known demand for housing in Dargaville and that the proposed rezoning and intended development would meet that known demand.
59. When asked to provide the evidence-based assessment completed by Council on the demand for development capacity required by s3.11 NPS UD (including the relevant Housing and Business Development Capacity Assessment required by subpart 5 of Part 3), Council confirmed it had not yet done the studies that are identified in the NPS UD although population and economic studies are undertaken by Infometrics. 19.18

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<sup>10</sup> Strategic Activity Management Plan 2021-2031 for each of Wastewater, Stormwater and Community Supplied Water

60. This begs the question, in the absence of evidence-based assessment for development capacity, how can the application be said to meet “known” demand.
61. On 1 March 2023 Infometrics Report on Kaipara District Council Population Projections were presented to Council. This was accompanied by Council Report “Kaipara, Place, People and Key Trends, Kaipara District Environmental Scan 2023”.
62. Infometrics Report confirmed that whilst growth is projected to be strongest in the Mangawhai (including the three Mangawhai SA2) over the medium and long term, with moderate growth across the rest of the district, it is projected that there will be only slow growth in Dargaville.
63. The following table summarises the projected increase in number of households in Dargaville over a 30-year period, on a low, medium and high rate of increase basis:

Period	Low	Medium	High
2023	2,142	2,142	2,142
2033	2,173	2,272	2,346
2043	2,202	2,392	2,572
2054	2,213	2,499	2,777
<b>Total Increase in Households over 30-year period</b>	<b>70</b>	<b>357</b>	<b>635</b>

NB: Infometrics has allowed for some of the increase in households to be captured by the proposed Dargaville Race Course Plan Change and Residential Development

64. On the basis of the above assessments and evidential basis for projected demand, the suggestion of demand sufficient to require the rezoning of the proposed precinct seems erroneous. On a slow growth basis, (and incorporating the relevant developments proposed by Plan Change 81) it is arguable that the proposed development for the proposed Awakino precinct is neither feasible nor can it be said to be capable of reasonably being realised.
65. The proposition of requiring sufficient housing to meet demand is a fair one. However, this is a very different proposition to the suggestion of exponential growth requiring medium to dense housing development. Consideration to how that growth is generated and promulgated is vitally important. Consideration of the evidence presented by Infometrics as to the anticipated demographic, age profile and needs of the community of Dargaville are all relevant.

19.18 cont

**Planning and Delivering Infrastructure for Future Growth Must Be Considered and Consistent**

66. As indicated above, there are multiple concerns as to issues regarding infrastructure and community well-being arising from the proposed plan.

***Current Infrastructure and Council Commitments do not Support Proposed Plan Change 82 (PPC 82). There is not "Sufficient Certainty" That Dargaville's Infrastructure is Ready for a Development Plan of this Nature***

19.19

67. Recent Environmental Court time has been expended on the proposed plan changes and infrastructural developments committed to by Council in Mangawhai. Such commitment is understandable in the fastest growing and consistently developing urban centre in the district but it also known that there are failures arising with the Mangawhai Wastewater Scheme that requires Council's ongoing commitment (and financial resources).

68. However, the prolonged and persistent failure to invest in the maintenance, management and development of Dargaville's infrastructure means that there needs to sufficient certainty in relation to the necessary infrastructure being available for a development, when consent is granted. However it is submitted that in the circumstances where a private plan change is submitted for the purpose of enabling such a development, those considerations are relevant and appropriate at the time of consideration of that proposed plan change.

69. The situation in Dargaville is not merely a matter of Council having sufficient infrastructure to remain ahead of demand. It requires ongoing commitment and funding to the development of the infrastructure in the coming years to overcome the shortcomings and failings in meeting its current requirements and then additionally looking to how that may be extended and developed.

19.19 cont

70. Council has made significant commitments in terms of timescale and financial investment to the Mangawhai Upgrades. Similarly commitment is not contained in the LTP in relation to Dargaville's infrastructure. PPC 82 places sufficient emphasis upon being able to rely upon community infrastructure but fails to give measured consideration to the lack of planned provision for development of that infrastructure sufficiently to meet those requirements. Rather it simply assumes time and allocation of funds (neither of which have been planned for) will overcome those shortcomings.

71. The proposed plan change speaks to a rate of development of the precinct that would fall within a short to medium term time frame (i.e. between 1 to 3 years and 3 to 10 years). This will require there to be adequate existing development infrastructure in place to support the development of the land (which there is not) OR sufficient funding for adequate infrastructure to support development of the land identified in the LTP (again, which there is not).

19.19 cont

***Current Infrastructure is Not Sufficient to Meet Demands of Development Envisaged By the Plan Change***

72. Council's LTP does not make provision, in terms of planning or financial resourcing for the development of infrastructure that aligns with the proposed development illustrated by PPC 82.
73. In addition to this, Council's Asset Management Plans do not make provision for development or extension of infrastructural capacity to meet the demands of the two competing proposed plan changes currently before Council (PPC 81 does form part of relevant considerations in Dargaville's proposed residential growth as identified by Infometrics but PPC 82 does not and is submitted as being purely speculative at best).

**Infrastructural Concern 1: Wastewater**

74. Council's Wastewater Strategic Activity Management Plan 2021-2031 identifies the following concerns in relation to the Dargaville Wastewater system:

- 74.1. sets out the key issues with the management of Council's provided wastewater systems and includes concerns as to system capacity including but not limited to<sup>11</sup>:

19.20

74.1.1. Unknown capacity for growth to occur and difficulty approving extensions when impact on downstream system is unknown.

74.1.2. With the extent of renewals increasing it is critical to ensure that correct capacity is provided for future growth through that process.

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<sup>11</sup> Table 8, Section 3, Pages 10 – 12



74.1.3. Extent to which infiltration and inflow is present, what issues are associated with excessive Inflow and Infiltration and how growth can be accommodated if it is reduced.

74.1.4. Pump station capacity relative to demand, ability to manage peak flows and what, if any, emergency capacity would optimally be required.

74.1.5. Capacity constraints within reticulation system, particularly pipes that are serving an arterial role.

74.1.6. Treatment capability relative to consent requirements and growth capacity. This also highlights fundamental limitations of the simple pond systems relative to likely future consent requirements, and

74.1.7. Ability to charge development contributions when balance of current and growth capacity not known.

74.2. *“Recent studies in the Dargaville wastewater network have identified issues with infiltration from the stormwater network. This increased loading on the wastewater system could potentially create overloading at wastewater treatment facilities and increased discharges to the receiving environment.”*<sup>12</sup>

19.20 cont

74.3. *“Significantly the WaterNZ National Performance Review for 2015/2016 identified that the Dargaville wastewater system was the worst of the 44 councils in New Zealand who contributed data. Wet weather overflows were reported at approximately nine events per 1,000 properties with the median for ‘small’ councils being around three.”*<sup>13</sup>

### **PPC 82 Wastewater Assessment: Flawed or Flippant**

75. Section 8.2.2 Land Development Report produced by Chester on behalf of the Applicant<sup>14</sup> (the “Development Report”) states:

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<sup>12</sup> Section 4.6, page 15

<sup>13</sup> Section 4.6, page 16

<sup>14</sup> Appendix 3 to the Assessment Report

*In our opinion because the land area does not appear to be a constraint, there is likely to be viable solutions to increase WWTP capacity as required, and the general acceptance is that the existing WWTP will need to be upgraded to accommodate the future growth being planned for in Dargaville. Simply put, there are two potential constraints to servicing the PPC Area with reticulated wastewater: 1. Capacity constraints in the councils existing pipe network and wastewater pump stations 2. Capacity limitations at the Dargaville WWTP. Neither of these constraints in our opinion prevent the re-zoning of the land as the remedies in general terms are timing and funding. Both these can be co-ordinated with planned development to utilise the funding available from more connections.*

76. Unfortunately that statement and opinion fails to apply the provisions regarding the availability of infrastructure and/or the identification of funding within the LTP to provide certainty as to the availability of such infrastructure.

77. It is quite clear from the LTP that no such funding is available prior to 2028 (at which point in time an upgrade of \$2m may be sufficient to meet only current demand and not the demand of two competing land developments). The LTP does not identify funding which can be co-ordinated with the planned development as expressed in the application. Such a proposition is purely speculative.

78. That approach does not align with the Environmental Court position that *there needs to be sufficient certainty in relation to wastewater being available for a development when that subdivision consent and development consent are granted*. As we have stated above, a plan change, in circumstance when it is proposed to enable a subdivision and development process, must give consideration to these matters at the time of the proposed plan change. A plan change should not be entertained when the proposed development is speculative at best.

#### ***Development Report Section 8.4***

79. At section 8.4 it is conceded on behalf of the applicants:

*It is acknowledged that the PPC inadvertently creates an expectation that wastewater infrastructure will be provided to enable residential development. As indicated in the sections above there is limited information available regarding both the reticulation network and the WWTP capability in Dargaville. It is anticipated that this information will be available by the end of July 2022, however; this could identify bulk and local*

*infrastructure constraints. This begs the question is it appropriate to zone this land residential if there are capacity constraints in the existing wastewater network, and the wider question of what comes first; the known demand (the development) or the residual capacity (completed capital works to enable future development).*

80. With respect, in the absence of known demand, it must be residual capacity that must come first. The risk to the environment, public health, community wellbeing and council infrastructure and financial well-being is too uncertain due to the gaps in knowledge and commitment as to Council's available infrastructure. The disaster that was the Mangawhai Wastewater Project should be fair warning that it is not appropriate to put the cart before the horse.

### **Infrastructural Concern 2: Water Supply**

81. Council has acknowledged during development of its Asset Management Plan for Water Supply that *"the security of water supply for Dargaville is challenging during dry years"*.

19.21

82. Council's Water Supply Strategic Activity Management Plan 2021-2031 and LTP do not identify any commitment to increasing capacity of Dargaville's water supply and has no real solution to enable its ability to function effectively during dry periods (which according to data is a regular occurrence over the course of the past 20 years with a series of confirmed droughts in recent years).

83. Section 6.1.2 of the Development Plan it is acknowledged:

*From our investigation we conclude that there are no known treatment or distribution constraints within the existing water supply network that could not be overcome with typical infrastructure upgrades as part of a subdivision process. However, the raw water supply is constrained and although there are viable solutions, and general acceptance that these will be implemented, there is not a definite commitment in the councils' long-term plan to implement these within the next 10-year horizon.*

19.21 cont

### **Development Report Section 6.4**

84. At Section 6.4 of the Development Report it is conceded on behalf of the applicant:

*It is acknowledged that the PPC inadvertently creates an expectation that water supply infrastructure will be provided to enable residential development. As indicated in the*

*sections above there are constraints with respect to the raw water supply and there is currently no documented commitment from the council to improve the raw water supply capacity. This begs the question is it appropriate to zone this land residential when there is a lack of resilience in the existing raw water supply, and the wider question of what comes first; the known demand (the development) or the residual capacity (completed capital works to enable future development).*

85. We repeat paragraph 80 as the same applies here. More specifically however, the suggestion by the applicants of inadvertence is disingenuous – proposed rezoning that allows for 348 to 450 sites ranging between 450m<sup>2</sup> and 600m<sup>2</sup> triggers a requirement for connection to reticulated systems under the current District Plan conditions. This is deliberate planning strategy advanced to enable the development aspirations of the applicants and there is nothing inadvertent about it.
86. The risk to the environment, public health, community wellbeing and council infrastructure and financial well-being is too uncertain due to the gaps in knowledge and commitment as to Council’s available infrastructure.
87. It is also noted that the water and wastewater assessment accompanying the application records concerns as to the ability of Dargaville’s infrastructure capacity to support the proposed development.

19.21 cont

**Infrastructural Concern 3: Stormwater**

88. The events Cyclone Gabrielle and the Anniversary Weekend Storm have served as an illuminating example of outcomes when the impacts of climate change meet stormwater planning that is under-resourced, insufficiently managed and inadequate to meet demand<sup>15</sup>.
89. The impacts of climate change are colliding with the outcomes of prolonged and persistent lack of investment by Council in the management, maintenance and development of the stormwater infrastructure in Dargaville cannot be denied. As experienced in the week commencing 13 February 2023 the outcomes can be catastrophic.

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<sup>15</sup> Video Footage of the Direct Impact of Stormwater resulting from the Proposed Precinct Area will be presented at the hearing.

90. Council's Stormwater Strategic Activity Management Plan 2021-2031 identifies concerns regarding stormwater management and development<sup>16</sup>.

19.22

90.1. *The spatial plans have identified the likely growth areas in Kaipara. Fast growth without good infrastructure planning has in some cases such as Mangawhai left deficit in funding and LoS provision.....Because five schemes have targeted stormwater rates, funding for works beyond these schemes is currently very small and an overall funding model should be agreed on to engage community growth.*

90.2. Studies of the stormwater network in Dargaville and Mangawhai have found stormwater leaking into the wastewater system<sup>17</sup>. ... . *Increased loading on the wastewater system has the negative effect of overloading wastewater treatment facilities, which in turn can result in increased discharges to the receiving environment. Not only does this reduce the efficiency of the treatment facility, it can also increase pathogens and other contaminant levels within the receiving environment. Aging infrastructure, particularly in Dargaville, is due to long term under investment. The problem has been identified as originating from both the public and private stormwater systems. A robust renewals programme is planned.*

91. The Stormwater Strategic Activity Management Plan 2021-2031 outlines<sup>18</sup> that "*Regulation of connections to the public system to promote long term stability*" could include "*where development lies outside of the prescribed growth zones, or where substantial increases in growth are identified, Council may consider the option to force developers to treat and attenuate stormwater runoff from the development within their site boundaries or to fund the upgrades to the network required to connect them.*"

19.22 cont

92. Council's Long-Term Plan identifies funds for \$500,000 for Dargaville Stormwater growth projected for between 2026 and 2031.

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<sup>16</sup> At Page 12

<sup>17</sup> In the event of Cyclone Gabrielle, the Wastewater Infrastructure was not simply overloaded by stormwater but rather completely overwhelmed.

<sup>18</sup> At page 15

93. Stormwater planning is identified in the Cultural Impact Assessment as a major consideration and concern for Te Roroa and local iwi who consider this site to be a sacred and important part of their connection to the land.

94. It is submitted that it is insufficient for this proposed plan change to simply suggest it will defer the storm water solution to other property within the applicants ownership when that private land sits in zones directly affected by potential flooding, river catchment and drainage district considerations. To compound the management of those areas with the application of stormwater from the catchment of the proposed precinct is contrary to sustainable management of the environmental effects.

19.22 cont

#### **Infrastructural Concern 4: Roading and Accessibility Planning**

95. It has been acknowledged by Council (see Briefing to Council 8 February 2023) that there is no/limited access to public transportation in any of Kaipara's towns and villages. Progressive and strategic planning should, if possible, incorporate planning whereby people should not need to rely solely on private vehicles to travel within the proposed development, to and/or from other urban areas, or to access essential services like employment, and health or community services.

19.23

96. In order to be able to be able to fairly and appropriate determine if the proposed plan change enables well-functioning urban environment it is essential to understand the demographic and scope of the community it is projected it will be providing for. It is only with that knowledge that the importance of the location of a proposed development in relation to other areas and amenities, relative accessibility and transport infrastructure and/or options can be appropriately considered.

97. Infometrics identified that the largest demographic for growth in Dargaville will be in the retiree age groups. The area of the proposed precinct is a considerable walk from essential services contained in the central township. Indeed in the absence of transport options (both within Dargaville but also to other centres including Whangarei and Auckland) it opens the proposed development up to the possibility of households impacted by isolation from those essential services.

19.23 cont

### Precinct Roading Plan – Precinct Map

98. In the absence of any form of public transportation there will be a directly attributable effect on the traffic and roading requirements for the proposed Awakino Precinct.

99. PPC 82 proposes amendment to rule 13 of the current District Plan (specifically proposed rule 13.13A, Awakino Precinct Subdivision<sup>19</sup>) which states at paragraphs 10 and 11, in relation Road Layout Rules:

19.24

*Road Layout Rules:*

*10. Any subdivision within the Awakino Precinct shall construct and establish a loop road, (to vest as public road) located in general accordance with the indicative loop road shown on the Awakino Precinct Map 1; or*

*11. Where the full extent of the indicative loop road shown on the Awakino Precinct Map 1 is not provided, any subdivision within the Awakino Precinct shall: a) Construct and establish any part of the indicative loop road within the site boundary in general accordance with the indicative loop road shown on the Awakino Precinct Map 1; and Provide a minimum of two public road intersections with Awakino Road where those intersections are connected internally within the Awakino Precinct via a public road.*

100. The indicative loop road shown on the Awakino Precinct Map traverses over private property outside the ownership of applicant (see Certificate of Title Lot 2 Deposited Plan 380979). That land is not within the control of the applicant and no right of way or similar consent has been granted to enable the development or otherwise of the required loop road. Similarly the neighbouring property (see Certificate of Title Lot 2 Deposited Plan 517950), which could provide the immediate best alternative is not within the control of the applicant.

101. It is understood that the intention of the map is to provide a form of consistency for future planning decisions. However the application provides proposed solutions to planning objective in the circumstances where there is a complete absence of control of the required land assets in order to meet the prescriptive rules proposed to be incorporated by the District Plan. Rather than provide certainty, it creates inherent conflict between the interests of neighbouring landowners and potential future economic harm to the private land owners.

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<sup>19</sup> see page 10 of appendix 8 to Assessment Report

102. It is understood that the applicant has no intention to extend development into the areas contained within the proposed precinct that are outside of their ownership (and indeed would be unable to do so in the absence of express agreement). It therefore begs the question why the precinct has been proposed with potential use of such lands included within the analysis.

19.24 cont

103. It is submitted that the inclusion of provision of inherent and necessary infrastructure in support of the proposed plan change which incorporates the use and benefit of land outside the ownership of the applicant is fundamentally flawed.

#### **Can the Concerns of the Submitters Be Overcome By Redesign or Amendment**

104. It is submitted that proposed rezoning is so inherently uncertain and flawed in terms of the infrastructure necessary to support it and the reliance upon both Council infrastructure and privately owned land outside of the applicant's ownership. In accordance with the principles of s5(2)RMA the applicants should be required to redesign their proposal to remove or remedy those flaws and to provide for effects before being allowed to proceed.

19.25

105. The Proposed Rezoning affects directly the proposed use and costs associated with the ownership of each of the properties within the proposed precinct. While the applicants can elect to shoulder the burden of rezoning as a consequence of their application (on the basis of the projected financial benefit from their development activities), to seek to impose those burdens on other private landowners without their prior knowledge may be considered contrary to resource management principles.

106. The PPC provides for no consideration to the direct impact on the private landowners within the precinct who are not party to this application. Financial implications on those private landowners are disproportionate, including:

19.26

106.1. Increased rates (for the larger landowners this increase could cause significant financial hardship and distress over the passage of time); and

106.2. Loss of commercial use of farmland, including viable grazing land, currently zoned rural with activities permitted by right (the right being fundamentally changed from



one of permitted right, to the requirement of the individuals to prove established use rights, representing a fundamental change in the burden of proof); and

106.3. Eventual constraint by change in environment of currently permitted activities (including keeping and trading of livestock, horses, poultry etc); and

106.4. Loss of economic opportunity to develop their properties in accordance with rural activities; and

106.5. As yet undetermined indirect consequences on financial commitments to lenders, insurers and property values.

19.26 cont

107. In addition loss of amenity and impact on lifestyle are disproportionate when there is insufficient evidence to support projected growth in Dargaville requiring the projected scope of urban density development. It is also observed that the previous motivation of Central Government in support of urban density housing has been moderated by recent climate events<sup>20</sup>.

108. It is submitted that a fair and reasonable subdivision could be undertaken by the Applicant providing for high quality residential living under the rural lifestyle zone outlined in the Draft District Plan which is anticipated to be the proposed district plan with legal effect in just a matter of months. This will include providing for appropriate site sizes, self-contained water supply, waste water and stormwater solutions which would not place undue pressure on the Council systems and could meet the demand for sophisticated quality residential developments for retirees, families and professionals such as doctors, dentists, opticians, special needs teachers and other desperately required professional support in Dargaville<sup>21</sup>. This would be of greater benefit to the community, would ensure quality development and growth.

19.27

109. It is also submitted that this proposed plan change and anticipated development must be considered in balance with PPC 81 for the Dargaville Racecourse in the interest of balancing all relevant considerations for the local community, environment, socio-economic, cultural

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<sup>20</sup> On Friday 3 March 2023 Auckland Council unanimously voted to seek a delay to Central Government's housing intensification requirement to allow council experts to complete work on both the short-term effects from the summer's extreme storms and a longer-term analysis of the city's policies and planning settings in light of housing and infrastructure destruction

<sup>21</sup> These shortcomings are supported by the findings of Infometrics.

and infrastructure. Similarly the constraints on Councils ability to support such aspirational developments must be balanced against Council's commitments in other areas of the Kaipara.

19.28

**Submissions to be Heard by Commissioners by way of Hearing**

110. The submitters confirm they wish to have their submissions presented and to be heard by the Commissioners at a hearing of this matter. It is anticipated that hearing may require a half day hearing.



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**Emma L Smith**

Counsel to the Submitters