



Proposed Private Plan Change 82 – to the Kaipara District Plan

Decision following the hearing of a Private Plan Change under the Resource Management Act 1991

Proposal - in summary.

Proposed Private Plan Change 82 (PPC 82) by Moonlight Heights Limited to rezone 39.2 Ha site from Rural under Kaipara District Plan (District Plan) to Residential, with a bespoke Awakino precinct provisions and plan.

This private plan change is **RECOMMENDED with minor modifications** as notified. The reasons are set out below. An Executive Summary and the full reasons for **RECOMMENDING** the plan change are set out below.

Private Plan Change number:	82
Site address:	115, 117, 123, 135, 145, 145A, 145B, 147, 151, 153, 159, 161 and 163 Awakino Road, Dargaville
Applicant:	Moonlight Heights Limited
Hearing:	9 and 10 August 2023
Hearing panel:	Dr Lee Beattie (Chairperson) Ms Melean Absolum Cr Jonathan Larsen

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<p>Parties and People involved:</p>	<p><u>Applicant</u> <i>Moonlight Heights Limited is represented by:</i> Mr Jeremy Brabant, Legal Counsel; Mr and Mrs Craig and Rachael Williamson; Corporate/landowners; Mr Jonathan Paul-David, Archaeology and Historic; Mr Jack Warden, Ecology; Mr Ian Hanmore, Highly Productive Land; Ms Heather Windsor, Contaminated Land Assessment; Mr Justin Kelly, Transportation; Mr Frank Peirard, Urban Design; Nathaniel Jull, Civil Engineering; and Ms Melissa McGrath, Planning.</p> <p><u>Submitters:</u> Ms Rose Smart; Ms Nola Smart for Fire and Emergency NZ; and Ms Emma Smith for B & H Lowe and others, including Mr Franicevich</p> <p><u>For The Council:</u> Mr Warren Bangma, Legal Counsel; Mr David Usmar, Infrastructure; Mr Nick Marshall (North Transport Alliance); and Ms Emily Buckingham (Planning).</p> <p><i>Hearing Administrator</i> Mrs Meagan Walters, Senior Hearings Advisor; and Mrs Taiawhio Wati-Kaipō, Graduate Planner</p>
<p>Tabled Statement of evidence:</p>	<p>NZ Transport Agency/Waka Kotahi (Tessa Robins)</p>

EXECUTIVE SUMMARY

We have set out at a ‘high level’ our key findings in the Executive Summary to provide ‘context’ when reading the substantive part of the decision. Other matters are also addressed that are not included in the Executive Summary.

- We have recommended the approval of the plan change as proposed, with minor amendments as notified.
- PPC82 will give effect to the sustainable management purpose of the Resource Management Act 1991 (“**RMA**”), and the NRPS (and proposed) and it will not be inconsistent with the NPS IB and NPS FM. Note that we don’t believe the NPS:HPL or the NUP: UD are relevant to this plan change application.

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- PPC82 will result in zone change which will provide a planning framework (including the bespoke planning provisions and precinct plan) for the plan change area that will meet the social and economic needs of the community by providing for long term needs for residential land in this part of the District and will create a sustainable built environment that effectively integrates infrastructure, ecological issues, sense of place and transport choices achieving the purpose of the RMA.
- While we understand a number of the submitters concerns, including that of the Lowe’s and others, we note that the rezoning of their land does not impact on their existing activities and provides for a logical plan change area to address the long term future growth needs in this particular part of the District. We also note that this area has been signaled for future urban growth in the Council's Spatial Plan.
- Finally, we find that the potential adverse environmental effects on the area of the plan change have been appropriately addressed through the use of the bespoke Awakino District Plan Provisions and its supporting precinct plan, which will form part of the District Plan, subject to the changes we have recommended.

INTRODUCTION

1. The private plan change request was made under Clause 21 of Schedule 1 to the RMA and was accepted by the Council, under Clause 25(2)(b) of Schedule 1 to the RMA on 14 December 2022.
2. A report in accordance with Sections 32 and 32AA (in relation to the changes sought) of the RMA was prepared¹ in support of the proposed plan change for the purpose of considering the appropriateness of the proposed provisions.
3. This recommendation is made on behalf of the Kaipara District Council (“**the Council**”) by Independent Hearing Commissioners Dr Lee Beattie (Chair), Ms Melean Absolum, and Cr Jonathan Larsen, appointed and acting under delegated authority under Sections 34 and 34A of the RMA.

¹ Private Plan Change Request Rezone Awakino Road, Residential Zone – S32A Assessment Report – Melissa McGrath B&A Urban Environment, 8 June 2022 (Plan Change Request 2022)

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4. The Commissioners have been delegated the authority by the Council to make a recommendation on Private Plan Change 82 (“**PPC 82**”) to the Kaipara District Council’s District Plan (“**District Plan**”). In making our decision we have considered:
- The application and supporting information;
 - All of the submissions;
 - The Section 32 and 32AA evaluations;
 - The Section 42A report prepared by Ms Emily Buckingham;
 - The applicant’s legal submissions;
 - The Council’s legal submissions;
 - The evidence and legal submissions presented during the hearing of submissions; and
 - Responses to our questions; and
 - Closing submissions and attachments.

SUMMARY OF PLAN CHANGE AS NOTIFIED

5. The proposed Plan Change is described in detail in the Moonlight Heights Limited (“**applicant**”) Plan Change Request²:

“The Plan Change proposal seeks to rezone the plan change area residential zone and introduce a precinct that will apply across the plan change area.”

6. The Council’s Section 42A hearing report³ provided the following overview:

“is a private plan change ... which seeks to rezone 39.2 hectares of land located at Awakino Road, Dargaville from Rural to Residential. The request also seeks to introduce a new Awakino Precinct, including a precinct plan to shape future development of the site, and suite of objectives, policies, rules, and information requirements. Approximately 384 dwellings may be provided for within the plan change area.”

7. The applicant’s Plan Change Request⁴ sets out the purpose of the plan change, being:

“The purpose of the plan change is to deliver viable and sustainable residential zoning. The plan change also seeks to apply a precinct to the plan change area to provide for future residential intensification.

The reason for this plan change is that the Applicant, who is a major landowner of the plan change area, intends to develop the area in a manner consistent with the

² Plan Change Request at [5.1]

³ Section 42A at Section 1

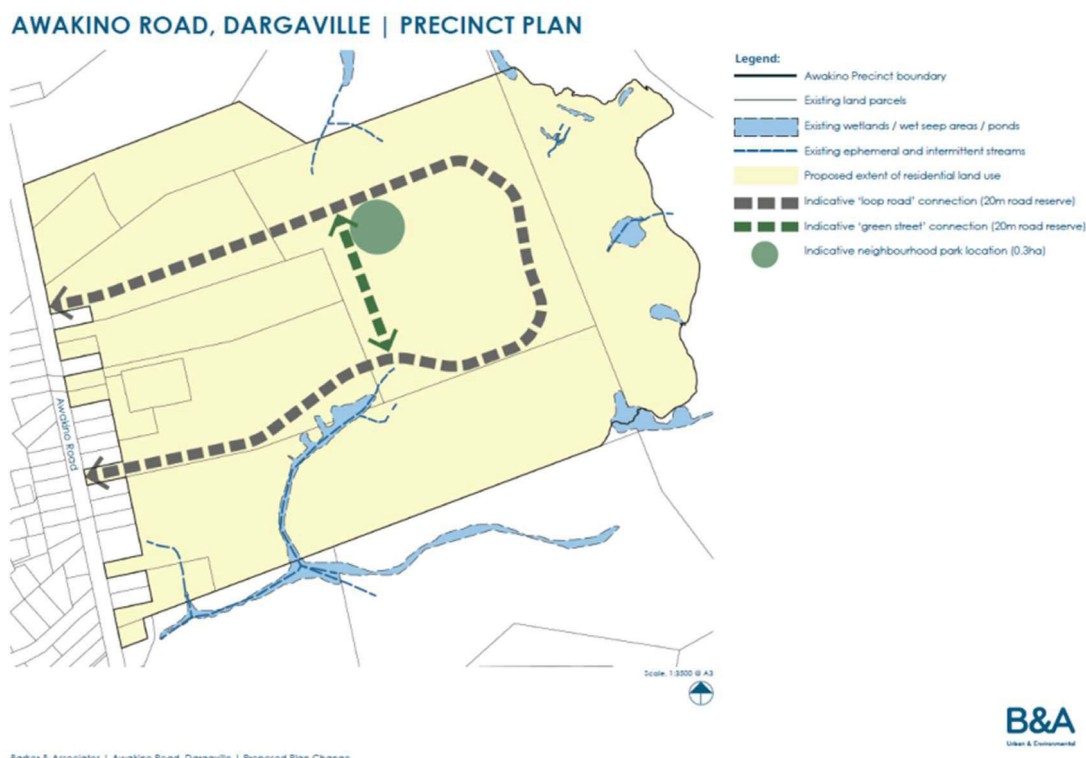
⁴ Plan Change Request at [5.2]

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proposed land use pattern. Technical assessments, have demonstrated that the current rural zoning is not the most appropriate zoning for the area.”

8. Mr Brabant in his opening legal submissions also noted⁵:

“The Awakino precinct plan contains bespoke provisions to protect ecological features, promote high quality urban design, and to provide open space and connectivity for future development outcomes” (set out below)



9. As Ms Buckingham noted, the Awakino precinct plan included:⁶

- *“A primary 20m wide ‘loop road’ that responds to the existing site’s topography and creates a foundation for future development patterns, i.e. North-south local road connections.*
- *An indicative central ‘neighbourhood park’ of 0.3ha.*
- *An indicative north-south ‘green street’ to create an ecological corridor between open space areas to the north and south of the plan change area.*
- *Mapped locations of existing wetlands and streams.”*

10. We note that the applicant owns the majority of the land subject to the plan change request and seeks to carry out a comprehensive redevelopment of the site in a manner consistent with the proposed zoning framework supported by bespoke Awakino Precinct plan provisions. The applicant holds the view the current Rural zone is no longer appropriate for the area of the plan change in land use policy and RMA terms.

⁵ Paragraph 2 of Mr Brabant’s legal submissions dated 7 August 2023

⁶ Paragraph 37 of Ms Buckingham Section 42A Report dated 11 July 2023

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We note for completeness at this stage that a number of the submitters in opposition were also landowners over parts of the proposed plan change area.

11. We would also like to acknowledge at the outset that there was a high degree of agreement between the applicant and the Council officers over the appropriateness of the plan change, with the Council officers supporting it, subject to a number of changes. Mr Bangma his opening legal submissions for the Council summarised these for us⁷:

Overall, there is a relatively high level of agreement between the experts engaged by the Applicant and the Section 42A team (Council officers). As set out in the Section 42A report, dated 11 July 2023, Ms Buckingham supports the proposed rezoning of the land to Residential, and recommended it be approved with modifications to address four key areas:

- (a) The minimum lot size/servicing rules to ensure that large un-serviced lots are not facilitated within the precinct;*
- (b) Provide additional plan provisions to ensure downstream flooding is not exacerbated by the stormwater from the site;*
- (c) The transportation provisions to require upgrades to the transport network that are necessary to address the effects on the transport network or urbanising the site; and*
- (d) The additional of precinct specific provisions to address reverse sensitivity effects on the transfer station site.*

12. These were drawn from Ms Buckingham Section 42A addendum report dated 4 August 2023 where she sets out seven areas of ‘unresolved matters’ between the applicant and the Council team:

- *Consistent cascade of objectives, policies and rules;*
- *Minimum lot sizes/service requirements;*
- *Stormwater management/flooding effects;*
- *Transport provisions;*
- *Reverse sensitivity effects on the transfer station; and*
- *Archaeological effects*

13. Mr Brabant in his opening legal submissions agreed with this analysis and expanded further on the “*transportation provisions to require upgrades to the transport network that are necessary to address the effects on the transport network or urbanising the site*” issue raised by Mr Bangma and suggested that⁸:

“Fundamentally, the difference of opinion relates to:

⁷ Paragraph 1.3 of Mr Bangma’s legal submissions dated 4 August 2023

⁸ Paragraph 28 of Mr Brabant’s legal submissions dated 7 August 2023

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- a. *The physical extent of the upgrade of Awakino Road to urban standards;*
- b. *The nature of, and physical extent of, any new footpaths, shared paths and pedestrian crossings.”*

14. While not underplaying the legal submissions from Ms Smith for B & H Lowe and others, and the other submissions and lay evidence called (which we explore below), we agree with this very helpful overview narrowing the technical issues in disagreement before us. As a result, subject to some points we will explore further below, we shall concentrate our considerations within these areas to save time and reduce delays.

SITE DESCRIPTION AND ZONING

15. The Plan Change Request provided⁹ a detailed description of the site, with the actual lots subject to the plan change¹⁰:

“The site subject to PPC82 (hereon referred to as the site as the plan change area) is located at Awakino Road, Dargaville and is outlined in red on Figure 1 below. The site encompasses a total area of 39.2ha and is located approximately 2km north-east of the Dargaville CBD. The plan change area comprises sixteen allotments, listed below in Figure 2 (noting three of these are only partially within the plan change area). On its western side, it is bounded by Awakino Road and wraps around the existing smaller residential allotments along the eastern side of Awakino Road. To the north and south, the plan change area mostly follows property boundaries. The eastern boundary of the proposed plan change area has been defined by natural hazards, being located along the bottom of a steep bank that forms the edge of the floodplain of the Awakino River.



Figure One Location of Plan Change area

⁹ Plan Change Request at 3.1

¹⁰ Paragraphs 19 to 21 of Ms Buckingham Section 42A Report dated 11 July 2023 building in part the applicant’s site description.

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The majority of the plan change area has a rural character and mainly flat topography, dropping steeply along its southern and eastern edges. Existing residential dwellings are located within the smaller allotments proposed to be rezoned along Awakino Road. Larger allotments within the plan change area contain existing dwellings and ancillary sheds, with the remainder of the land used for rural production activities. The site also contains a number of natural and ecological features such as wetlands, ephemeral streams, intermittent streams, artificial drains, and a mix of both exotic and native vegetation.

Awakino Road is classified as an access road in the vicinity of the plan change area (it changes to a Secondary Collector Road south of the Dargaville Hospital access and intersects with SH12 in the town centre). In the vicinity of the plan change area, it is sealed, 7m wide, and one lane in each direction, with no on-street parking restrictions and a 50km/h speed limit. There is an existing footpath on the western side of Awakino Road for some of the length of the plan change area. There are partially open, partially culverted stormwater drains on either side of the road.

16. This site description accords with our observations during our site visit on 6 August 2023 and there was no disagreement between any of the parties over this. As a result, it is adopted for our decision.
17. There was agreement between all the parties that the plan change area was currently located within the District Plan’s Rural Zone. In doing so, Ms Buckingham, in paragraph 28 of her Section 42A report also highlighted to us the other relevant District Plan provisions for the plan change:
 - That there was a Reserve Management Unit (RMU 13) for Awakino Road Reserve¹¹ adjoining the site and Awakino Road, which appears to have been designed to provide road access to the area subject to the plan change (a point we consider below),
 - A small portion of the site in the ‘lower’ and eastern area of the site was subject to flood susceptibility;
 - The 50kV Electricity Transmission Line crosses on the southeast corner of the site; and
 - The State Highway 12 intersection with Awakino Road (about 1.1km from the site) forms part of the State Highway network.
18. We understand that the site is not subject to any other District Plan/RPS provisions that could affect our consideration of the plan change. However, this area is shown as an Indicative Growth Area for Dargaville in Appendix A to the District Plan and shown for residential development in the Kaipara District Spatial Plan – Nga Wawata 2050 (“**Spatial Plan**”).

We have considered these matters (District Plan’s Appendix A and the Spatial Plan) in our decision, and, in our view, they highlight the Council’s ongoing consultation process with the community signaling that the area of plan change has been identified for future urban growth, such as proposed by this plan change.

¹¹Paragraphs 29 of Ms Buckingham Section 42A Report dated 11 July 2023

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SURROUNDING AREA & LOCAL CONTEXT

19. The Section 42A report provides¹² a detailed description of the surrounding areas and surrounding and local context in paragraphs 23 to 27.

“The surrounding sites to the north and east as well as immediately to the south are predominantly larger rural holdings used for pastoral grazing or cropping. The Awakino River runs close to the eastern boundary of the site, and its modelled floodplain (as per Northland Regional Council Natural Hazard mapping) extends to the plan change areas eastern boundary.

The Council's Dargaville Resource and Recovery Park (currently used as a transfer station, and also containing a closed landfill) is located at the northern boundary of the plan change area and features a mature landscape buffer along its interface with the plan change area.

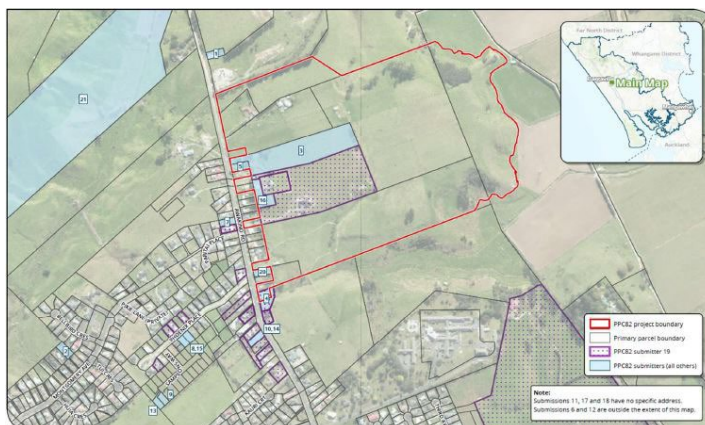
Sites immediately to the west and further south of the site are predominantly residential in nature and also include Dargaville Hospital around 400m to the south down Awakino Road.

Dargaville CBD is 2km away, with the town center located on the banks of the Northern Wairoa River to the south and at the intersection of SH14 and SH12. Selwyn Park Primary School is located approximately 1.4km walking distance southeast of the plan change area, while Dargaville High School is a 1.2km walk to the southwest.

20. We agree with this description of the site and the local and wider environment, and it is adopted by us for our decision.

NOTIFICATION PROCESS AND SUBMISSIONS

21. PPC 82 was publicly notified for submissions on 17 January 2023; on the closing date, 9 March 2023, 21 primary submissions had been received, with 83 submission points¹³. One submission (#19) was a group submission, with 23 listed parties. The location of submissions is shown on the map below.



¹² Paragraphs 23 to 27 of Ms Buckingham Section 42A Report dated 11 July 2023

¹³ Paragraph 228 of Ms Buckingham Section 42A Report dated 11 July 2023

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22. A summary of submissions was publicly notified on 16 April 2023 and further submissions were sought between 16 April and 9 May 2023. On the closing date, one further submission was received¹⁴. The Section 42A Report provided comprehensive tabulations¹⁵ of the issues raised by the submitters, in their submissions and further submissions; and the relief sought.

SECTION 42A –OFFICER’S RECOMMENDATION

23. In preparing the Section 42A report Ms Buckingham was assisted by ‘technical inputs¹⁶’ from some experts namely:

- Ms Vaishali Sander– *Private Plan Change 82: Moonlight Heights Limited: Transport* 6 July 2023, Northland Transportation Alliance; and
- Mr David Usmar - *Private Plan Change 82: Moonlight Heights Limited* in respect to Three Waters Infrastructure, 6 July 2023, Council.

24. Ms Buckingham’s Section 42A addendum Report recommended approval of the Plan Change. She noted¹⁷:

“I continue to consider that the rezoning of the PPC82 land to Residential with precinct-specific provisions is consistent with the relevant statutory considerations in Sections 74 and 75 of the RMA. I continue to recommend that PPC82 be approved with modification”.

25. As we have set above in paragraph 12 these included:

- *Consistent cascade of objectives, policies and rules;*
- *Minimum lot sizes/service requirements;*
- *Stormwater management/flooding effects;*
- *Transport provisions;*
- *Reverse sensitivity effects on the transfer station; and*
- *Archaeological effects:*

THE HEARING

26. The hearing for PPC 82 commenced on Wednesday 9 August 2023 in the Dargaville Lighthouse Function Centre at 9.00am. At the hearing, the Applicant provided a revised set of proposed provisions and a revised Precinct Plan. The hearing was

¹⁴ Paragraph 228 of Ms Buckingham Section 42A Report dated 11 July 2023

¹⁵ Paragraph 233 and Appendix A & B of Ms Buckingham Section 42A Report dated 11 July 2023

¹⁶ Section 42A Appendix F and G

¹⁷ Paragraph 44 of Ms Buckingham Section 42A Addendum Report

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adjourned on Thursday 10 August 2022. The hearing was closed on 25 September 2023 following the receipt of the applicant’s Closing Legal Statement, (right-of-reply), which was supported by a range of comments from the applicant’s experts, and a further set of proposed precinct provisions, and a further revised Precinct Plan.

27. We would like to thank all the parties for the professional and courteous way that the hearing was undertaken, especially with the challenges of holding this with some of the witnesses online (over MS Teams).

HEARING PROCESS

28. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements were set out in the Section 42A Report¹⁸.
29. The Applicant in their Section 32A Assessment dated 8 June 2022, provided an evaluation pursuant to Section 32¹⁹, and the additional information (*Clause 23*) supplied on 17 November 2022 requested by the Council.
30. We do not need to repeat the contents of the applicant’s Plan Change Request and Section 32 Assessment Report in any detail, as we accept the appropriate requirements for the formulation of a plan change have been comprehensively addressed in the material before us.
31. We accept the Section 32 Assessment Report clarifies that analysis of the efficiency and effectiveness of the plan change is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. Having considered the application and the evidence, we are satisfied that PPC 82 has been developed in accordance with the relevant statutory requirements.
32. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must also include a further evaluation, in accordance with Section 32AA of the RMA, of any proposed changes to the Plan Change. This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.
33. The Plan Change application and its supporting technical reports, the Section 32 evaluation, submissions, further submissions the Section 42A report, expert evidence from the applicant, and lay evidence was pre-circulated and read before the hearing. A full set of all the information for this plan change, including the right of reply is available at the Council’s website (<https://www.kaipara.govt.nz/services/district-plans/plan-changes/private-plan-change-82-moonlight-heights>).

¹⁸ Section 42A at Section 4

¹⁹ Plan Change Request at Section 9

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RELEVANT STATUTORY PROVISIONS CONSIDERED

34. Ms McGrath in her planning evidence for the applicant opined that there was substantial agreement between her evidence²⁰ and Ms Buckingham’s Section 42A Report’s analysis²¹ of the relevant statutory framework and the applying planning provisions. Given the level of agreement, we have not provided a detailed analysis other than to note the relevant documents that were considered and that Ms Buckingham and Ms McGrath were of the view PPC 82 is consistent with the relevant applying provisions.
35. The following documents were considered:
- Resource Management Act 1991 (Sections 31, 32, 32AA, 74 and 75):
 - New Zealand Coastal Policy Statement 2010;
 - National Policy Statement on Urban Development 2020: Updated 2022 (“**NPS-UD**”);
 - National Policy Statement on Freshwater Management 2022 (“**NPS-FM**”)
 - National Policy Statement on Highly Productive Land 2022 (“**NPS-HPL**”)
 - National Policy Statement on Indigenous Biodiversity 2022 (“**NPS-IB**”)
 - The Northland Regional Policy Statement;
 - The District Plan;
 - Te Roroa Iwi Environmental Policy Document;
 - Te Uri o Hau Environmental Management Plan;
 - Emissions Reduction Plan and National Adaptation Plan;
 - Spatial Plan; and
 - The Long Term Plan 2021-2031.

FINDINGS AND REASONS FOR APPROVING THE PLAN CHANGE.

36. The following section addresses our overall findings on PPC 82, having heard and considered all the material and evidence before us.
37. As noted in paragraph 27 the applicant offered us an amended set of provisions which we had asked the applicant and the Council’s officer to provide us with at the end of the hearing, addressing the issues we had raised during the hearing. It is that version, and

²⁰Paragraph 73 of Ms McGrath Evidence-in-chief dated 21 July 2023

²¹ Section 42A Report at Section 7

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the Council officer’s comments on this that we have considered in this decision. That version of the Precinct Plan is shown below.



38. In saying this, it was clear to us by this point that a number of the issues in contention between the professional evidence at the beginning of the hearing had been resolved and while we will cover a range of issues below, we do so briefly, to concentrate on the issues still in real contention between the Council and the applicant. These appear to us to be regarding the provision of a shared path, pedestrian access, and reverse sensitivity issues.
39. We also had several submissions placed before us, supporting the plan change, or seeking either the rejection of the plan change or rejection of part(s) of the plan change. Again, these are helpfully set out in Appendix A and B of Ms Buckingham’s Section 42A report, and she, in accordance with Clause 10(2) of the RMA, has grouped these under the relevant subject headings.
40. Later in this decision we address some of the submissions’ key points, but at this stage, we believe it is appropriate to signal that we agree with Mr Brabant’s point in his right of reply where he noted “*these submissions were unsupported by expert evidence*”.²² We do favour the professional technical evidence, especially in the areas of traffic, ecology, urban design, infrastructure provision, and planning. As a result, we have not made any changes resulting from the submissions.
41. However, as we will discuss below the applicant has made some minor changes to the Precinct Plan which in part addresses some of the submissions. For example, moving the location of the southern portion of the inductive loop road away from Mr Lowe’s dwelling, could (in part), address Mr Lowe’s submission.

²²Paragraph of 35 Mr Brabant’s right of reply dated 21 September 2023

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42. With respect to further submissions, they can only support or oppose an initial submission. Our decisions, on the further submissions reflect our decisions on those initial submissions having regard, of course, to any relevant new material provided in the further submissions. For example, if a Further Submission supports a submission(s) that opposes the Plan Change and we have recommended that the initial submission(s) be rejected, then it follows that the Further Submission is also rejected.
43. As we have not adopted any changes arising from submissions, we have not been required to provide a further evaluation in accordance with Section 32AA of the RMA.

Reasons for the Plan Change Proposal

44. We accept the applicant’s rationale for seeking to change the District Plan. For the reasons that follow, it is our view that PPC 82 introduces a zone change that is more efficient and appropriate in terms of Section 32 and Section 32AA of the RMA than those currently in the District Plan and satisfies the Part 2 provisions of the RMA. We address these matters below.

Mana Whenua and Iwi Management Plans

45. The Section 42A report provided commentary on the applying Iwi Management Plans. According to Section 74(2A) of the RMA, Council must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district. At present, within Kaipara District there are two such documents:
- Te Roroa Iwi Environmental Policy Document; and
 - Te Uri o Hau Environmental Management Plan. Dargaville (and the plan change area) is not within Te Uri o Hau rohe
46. The Applicant’s Plan Change Request noted²³

“The KDP does not identify recorded sites of significance to Māori within the plan change area. The plan change area is also not located within an identified area of cultural significance and the regional plan does not identify recorded sites of significance to Māori within the area.

MHL recognises the role of Te Roroa as kaitiaki within the Dargaville area and accordingly, has had preliminary discussions with Snow Tane of Te Roroa. While these initial high-level discussions did not raise significant concern or issues, it is noted that Te Roroa have indicated that they will provide further inputs during the plan change process if deemed necessary.

It is considered that the proposal avoids any adverse effect on tangata whenua.”

²³Plan Change Request at Section 8.12

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47. The Section 42A report notes²⁴ that the applicant provided a Cultural Impact Assessment (“CIA”) prepared by Te Roroa Commercial Development Company as part of the Council’s information request before notification. As Ms Buckingham notes in paragraphs 224 and 225 of her Section 42A report.

“Section 8 of the CIA sets out specific cultural impacts of the proposed development, and Section 9 contains recommendations. Some of these impacts/recommendations are to be managed by the Applicant outside the plan change process or are appropriately placed on future resource consent applications e.g. earthworks.”

In my view, the identified matters that are particularly relevant to this plan change process relate to biodiversity, waterway and wetland health. I note that in line with ecological recommendations, precinct provisions have been proposed which seek to protect the ecological features/values present, including setbacks and riparian planting requirements. I also note that the Applicant has indicated they will engage further with Te Roroa during the development process, and that no submission was made by Te Roroa on the plan change. Upon the available evidence, it appears that the cultural effects of the plan change are mitigated (to the extent that is appropriate at this time), while further mitigations will be required at the later development stage”.

48. No submission was received from Te Roroa.
49. In turning our minds to whether PPC 82 gives effect to the RPS and Part 2 in relation to Mana Whenua interests and values we accepted the Applicant’s and Ms Buckingham’s approach that given the nature of the issues raised within the CIA these could be addressed by other means or at resource consent stage.

Reverse sensitivity effects

50. By the close of the hearing it appeared to us that the issues surrounding the reverse sensitivity effects had been narrowed between the Council and the applicant through the applicant’s amended precinct provisions requiring boundary planting, and/or fencing along the boundary with the Transfer Station (Designation D34: Dargaville Landfill) and a requirement for ‘no complaints’ covenants on the future titles. However, Ms Buckingham was of the view that these provisions did not go far enough and would not address all the reverse sensitivity effects that could be generated on the future residential activities adjacent to the existing Transfer Station.²⁵ We acknowledge that Ms McGrath was of a different view - that they were.
51. In our view, we agree with Ms McGrath's view in part, that being, we agree that the amended provisions will go a significant way in addressing the potential adverse reverse sensitivity effects. However, while supporting the provisions of no complaints covenants on the future titles which provide a clear signal to the future residential landowners of the implications of ‘buying’ next to an existing and lawfully established Transfer Station, we believe these issues should still be considered as part of the resource consent (subdivision) process,

²⁴Paragraph 222 of Ms Buckingham Section 42A Report dated 11 July 2023

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52. where the fine grain issues can be addressed in detail, on a site by site basis, as opposed to the broader approaches available to us through the change process. As a result, we have included new assessment criteria to consider the impacts of noise within Noise Areas A and B as part of any future subdivision application.
53. Finally, turning to the issue of odour effects from the Transfer Station, again there was disagreement between Ms Buckingham and Ms McGrath over this issue, with Ms McGrath suggesting this was a Regional Council function and was covered by Rule C.6.7.5 (Controlled Activity) of the Northland Regional Plan.²⁶ Again, while acknowledging the Regional Council rule in this regard, we believe this should also be considered as part of the resource consent process to ensure these issues are appropriately addressed. As a result, we have included new assessment criteria to consider the impacts of odour as well within Noise Areas A and B as part of the future subdivision application.

Stormwater Management/Flooding Effects/Three Waters

54. While we acknowledge this was an issue raised by some of the submitters, we had expert evidence from both the Council’s engineer (Mr Usmar) and the applicant’s engineer (Mr Jull) that there were appropriate ways of addressing the three waters issues, that would not prevent this plan change from proceeding. We think Ms Buckingham best sums this up:

Mr Usmar has conveyed KDC’s commitment towards delivering trunk water and wastewater infrastructure upgrades to respond to and meet future demand in Dargaville, should PPC82 be confirmed, while local upgrades can be funded by the developer. Mr Usmar describes that the staging of relevant developments is currently unclear, but that KDC monitors growth and WWTP connection numbers each year, seeking to time upgrades to ensure that there is always capacity available. KDC’s commitment to servicing the area is also represented in the Dargaville Spatial Plan and identifying the area for future residential growth. I am therefore of the view that water supply and wastewater solutions will be established in the short to medium term in response to demand, and for that reason it is acceptable to rely upon Rules 13.14.4 and 13.14.6 as a mechanism to align the development of the area with the availability of infrastructure.”

55. Mr Bangma’s opening submission also confirmed that Council had already committed \$1 million to the upgrades of the Dargaville Waste Water Treatment Plant (“WWTP”) in its 2023/2024 Annual Plan to ensure it was operating at its design capacity.²⁷ He then went on to confirm Mr Usmar’s view that the Council was committed to monitoring connections to the WWTP and upgrading it, as required, to ensure capacity is available for this plan change.²⁸

²⁵Ms Buckingham’s comments on the applicant right of reply provisions dated 11 September 2023

²⁶Paragraph 21 of Ms McGrath’s statement in reply dated 15 September 2023

²⁷ Section 5.7(a) of Mr Bangma’s opening legal submissions dated 4 August 2023

²⁸ Section 5.7(b) of Mr Bangma’s opening legal submissions dated 4 August 2023

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56. Mr Heath suggested in his economic evidence that the current demand for new housing lots within the Dargaville area would be around 12 lots per year.²⁹ This, in our view, gives the Council, as Mr Usmar suggests, the appropriate time to plan and give effect to the outcomes sought by this plan change and the wider Spatial Plan for this part of the District. We also do not believe it’s appropriate to require the applicant to provide a complete three waters solution for the whole plan change area at this point, given the likely demand for housing in this part of the District. As Mr Heath suggested, this would provide for the future housing needs until 2042.³⁰ Therefore we agree this can be staged over time.
57. As a result, we find that there are appropriate solutions available to enable the plan change to proceed.
58. Turning to the issue of potential flooding, we agree with Mr Jull’s assessment and find that the site is not subject to any significant flooding risk, which accords with our site visit. We also agree that the amended planning provisions have addressed the issue of on-site and downstream flooding risks.
59. At the close of the hearing we believe the issues associated with transportation effects had come a long way between the Council and the applicant and it appeared to us the areas in contention related to the issues of a shared path to Kauri Court, footpath upgrades along the Awakino Road and the timing of the provision of a pedestrian crossing. This, again is not to underplay the submitters’ concerns, but from our reading of the professional traffic engineering evidence and the applicant’s amendments to the precinct provisions, other issues have been resolved.
60. On this point, we agree with Mr Kelly that the *operational effects on the vehicle road network are anticipated to be generally minor*³¹ resulting from the traffic generated from the plan change area, with the inclusion of proposed precinct provisions. We support the amended location of the southern portion of the loop road and the introduction of the northern access road, which, in combination with the Green Amenity Street will provide access around the plan change area until such time that the southern portion of the loop road linking to RMU 13 is developed.
61. Turning to the issues of the shared path to Kauri Court, we understand the logic behind the desire for this connection, especially providing a shared path for school children to use for access to the school. However, based on evidence from Mr Jull we do not believe it is fair, reasonable, or appropriate to place the full cost (approximately \$1.17 million) of this upon the applicant and believe this should be funded as part of financial/development contributions framework should the Council wish to proceed with this concept, acknowledging that the applicant will be contributing to this as the lots develop.

²⁹ Paragraph 20 of Mr Tim Heath’s evidence in chief dated 21 July 2023

³⁰ Paragraph 20 of Mr Tim Heath’s evidence in chief dated 21 July 2023

³¹ Paragraph 47 of Mr Kelly’s evidence in chief dated 21 July 2023

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Transport Effects

62. With regards to the footpath, we agree that the applicant should provide this from the point of the northern access road south along the Awakino Road frontage of the plan change site when the northern access road is constructed to meet the needs of pedestrians. In this regard, we agree with Ms McGarth:

“I consider that the proposed provisions ensure upgrading of Awakino Road to appropriately mitigate potential effects associated with future development of Awakino Precinct.”³²

63. However, turning to the question of the pedestrian crossing, we agree with Ms Buckingham that this should be constructed at the 150-dwelling threshold point to ensure pedestrian safety. As a result, we have amended the final version of the precinct plan provisions to this effect.

Urban Design and Minimum lot sizes

64. PPC 82 is supported by a bespoke precinct plan and a set of planning provisions that control subdivision and development within the plan change area. This was subject to detailed discussion during the hearing process and as we have considered above, the indicative roading locations have changed in the final version of the Precinct Plan to address some of the concerns raised in submissions.³³ In doing so, the issues of block structure and lot size were considered in detail, especially as they relate to the ecological features on site and their ability to achieve a high-quality urban design outcome for the future urban form.

65. As Mr Brabant noted in his right of reply *“the amendments proposed to the precinct provisions and precinct plan have responded to areas of more sensitivity on the site”*.³⁴ This included the creation of a new Sub-Area A on the Precinct Plan for the areas that were subject to a range of environmental constraints, and the amended precinct provisions also included several policies and rules that referred to this. This, in our view, addressed the concerns we had about the lot size, location, and the appropriateness of the density proposed in these sensitive locations.

66. Turning to the issue of block structure and the future buildings' relationship with the street, we agree with Mr Pierard’s view that:

“The PPP and relevant objectives, policies, rules and assessment criteria will establish a robust framework to secure good urban design outcomes for any future residential development within the PC area.”³⁵

³² Paragraph 31 of Ms McGrath’s Right of Reply Statement dated 21 September 2023

³³ Provisions with the right of reply Right of Reply Statement dated 21 September 2023

³⁴ Paragraph 15 of Mr Brabant’s right of reply dated 21 September 2021

³⁵ Paragraph 67 of Mr Pierard's evidence in chief dated 21 July 2023

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67. We also note that the amended precinct provisions address the concerns we had with fronts and backs and their relationship with the street, especially with Awakino Road. Finally, we note Ms Buckingham was of a similar view over the suitability of the urban design provisions:

“Overall, I consider that the proposed precinct provisions effectively deliver the urban design outcomes recommended in the Urban Design Assessment, and I concur with the Applicant that good design outcomes will be promoted in the Awakino Precinct”³⁶

Landscape, Open Space, and Ecology Effects

Landscape

68. The applicant's AEE correctly noted that the site is not identified as an outstanding landscape in the ODP, but comprises flat topography, dropping steeply along the southern and eastern edges to streams and wetlands. It went on to conclude:

'It is considered that the Residential Zone bulk and location rules will manage the level of built development to avoid any adverse landscape effects.'

69. No landscape and visual assessment were provided as part of the application and no landscape review of the proposed plan change was sought by the Council. We therefore conclude that there will be no adverse landscape effects arising from the proposed plan change.

Open Space

70. The applicant's AEE included the following under Connectivity and Open Space:

'Provision of connectivity and open spaces has been a key urban design element considered by the plan change and the proposed precinct requires the establishment of:

- A central 'neighbourhood park' which is sized and designed in response to both the existing and anticipated number of residents within the local area.*
- A north-south 'green street' which will help to create an ecological corridor between open space areas to the north and south.*
- Protection and enhancement of the network of ecological features.*

The Awakino Precinct provisions described above have been indicatively identified on the Awakino Precinct Plan with subdivision rules included to require their establishment. Pedestrian walking tracks are proposed to create north south connectivity through the plan change area and to the adjacent residential development to the west.³⁷

³⁶ Paragraph 142 of Ms Buckingham Section 42A Report dated 11 July 2023

³⁷ Applicant's AEE paragraph 8.9

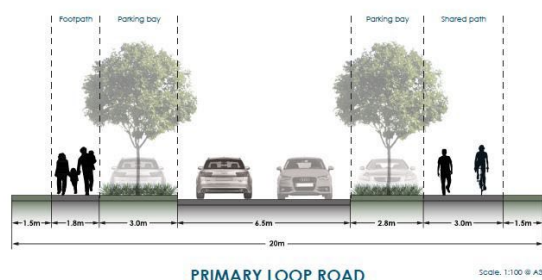
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71. In his reply to submissions, the applicant's counsel, Mr Brabant stated, in reference to the Green Street:³⁸

'As identified during the hearing and discussed further in the Reply Evidence of Ms McGrath and Mr Pierard, the original appellation chosen was perhaps unfortunate to the extent that it might be interpreted as an intention that the street fulfil an ecological function. The revised moniker for the street (Green Amenity Street) makes clear its key amenity function. Clarity in this regard is assisted by provision of proposed cross sections to ensure the outcome is understood and achieved. There will still be a degree of general ecological benefit arising from street planting, but that outcome is secondary.

72. We note the change in position of the applicant, in terms of the role of the Green Street in providing ecological connectivity between open spaces to the north and south but are satisfied that amenity values to be provided by this street are appropriate. We also note the two street cross-sections provided as part of the right-of-reply package. They illustrate both the Green Amenity Street and Primary Loop Road and are shown in figure overleaf.
73. New provisions have been included in the Right of Reply Provisions³⁹ which require that the Green Amenity Street be established in accordance with the cross-section. However, no such requirement has been included in terms of the Primary Loop Road. As this cross-section has been provided by the applicant, we have included an appropriate rule in the provisions attached to this decision, requiring that it too, be established in accordance with the cross-section.

AWAKINO ROAD, DARGAVILLE | STREET CROSS-SECTIONS



³⁸Paragraph of 19 Mr Brabant’s right of reply dated 21 September 2023

³⁹Rule 13.13A.4.3 in the Reply Provisions

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Ecology

74. Appendix 6 to the notified plan change was the *'Ecological Assessment Pertaining to a Proposed Private Plan Change'* report prepared by Rural Design 1984 Ltd, dated June 2022. It included identification of a number of natural features on the site and an assessment of future development in line with the plan change against several of the Operative District Plan provisions, including those proposed for the Awakino Precinct.
75. The notified Awakino Precinct provisions included a number of policies and rules that referred to 'natural wetland features', 'indigenous vegetation' and 'intermittent and permanent streams' and their protection and enhancement that were identified in the Ecological Assessment report.
76. The notified plan change also included a proposed Precinct Plan⁴⁰. Although the identified wetlands, wet seep areas, ponds, and ephemeral and intermittent streams on the site were identified on the map, none of the indigenous vegetation on the site was included in the notified Precinct Plan.
77. The reply version of the Proposed Precinct Plan, includes all indigenous vegetation identified in the Ecological Assessment. It also redefines all ephemeral and intermittent streams as 'rivers', in line with the ODP definition of rivers.⁴¹ In addition it identifies all the steep areas of the site, which includes all the natural features and archaeological sites, and identifies this as Sub-area A. As Mr Warden said in his reply evidence, newly proposed provisions require allotments to have an area of 450m² exclusive of Sub-area A which will ensure their protection. We accept this evidence.

Does Plan Change 82 give effect to the NPS UD?

78. Mr Bangma advised in his open submissions that:

“In my respectful submission, the evidence before the Hearings Panel establishes that Dargaville is not an urban environment under the NPS-UD. Accordingly, the NPS-UD does not apply to PPC82 and PPC82 is not required to give effect to objectives and policies of the NPS-UD relating to Tier 3 urban environments.”⁴²

79. We note Mr Brabant was on the same view as Mr Bangma, *“I agree with Councils’ opening submissions with respect to this consideration”⁴³* and both Ms Buckingham and Ms McGarth were of the same position from a planning point of view as well. We agree with these assessments and find that the NPS-UD is not a relevant consideration to evaluation of PPC 82.

⁴⁰ Included in this decision at paragraph 9 above

⁴¹ A continually or intermittently, flowing body of fresh water; and includes a stream and modified water course; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation and farm drainage canal).

⁴² Section 3.9 Mr Bangma’s Opening submissions

⁴³ Paragraph 33 of Mr Brabant open submissions dated 7 August 2023

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Does Plan Change 82 give effect to the NPS-FM

80. We note this issue was not in contention between the Council and the Applicant and we believe this issue has been appropriately addressed in Mr Warden’s evidence. We also note that Ms Buckingham was of a similar view:

“In my opinion, sufficient information has been provided and measures have been taken to demonstrate that the plan change and subsequent development will give effect to the NPS- FM.”⁴⁴

81. We note for completeness this also included the National Environmental Standard for Freshwater 2020, in the rationale set out at paragraph 74 of Ms Buckingham’s Section 42A report.

Does Plan Change 82 give effect to the NPS-HPL

We note that a few submissions did query whether there was an actual need for housing and the potential loss of farmland this plan change would cause. In considering this, we acknowledge Mr Hanmore’s assessment of the site, confirming that the plan change area did not contain any LUC Class 1, 2 or 3 soils, or productive land covered by the NPS-HPL, only class 4 and 6 soils.⁴⁵ We also note Ms Buckingham agreed with his assessment at paragraph 69 of her Section 42A report.

82. We agree with these assessments and find the plan change areas does not cover any soil covered by the NPS-HPL and its not a relevant to our consideration of this plan change request.

Does Plan Change 82 give effect to the NPS-IB

83. The NPS-IB came into force on 4 August 2023 just before the hearing. To address this issue, we were advised by Mr Warden (Ecologist) that while the area did not contain any Significant Natural Areas, the kanuka Treeland areas would qualify under the NPS- IB’s Rarity and distinctiveness criterion 6(a). In contrast, it was his view that the wetland features would not meet the SNA criteria.⁴⁶

84. He stated:

“In my view the proposed provisions for the protection and enhancement of natural features as outlined under the proposed Awakino Precinct Provisions will ensure that potential adverse effects on indigenous biodiversity from the proposal will be avoided. Appropriate consideration will have to be given to NPS-IB (2023) at the time of any future subdivision or development proposals.”⁴⁷

⁴⁴ Paragraph 63 of Ms Buckingham Section 42A Report dated 11 July 2023

⁴⁵ Paragraph 23 of Mr Hanmore’s evidence in chief dated 20 July 2023

⁴⁶ Paragraphs 20 and 21 of Mr Warden’s evidence in chief dated 20 July 2023

⁴⁷ Paragraph 22 of Mr Warden’s evidence in chief dated 20 July 2023

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85. We agree with this assessment, and we note that the Council’s officers did not raise this as a concern following the receipt of Mr Warden’s evidence. As a result, we find that plan change request is not inconsistent with the NPS-IB and there is no reason under the NPS-IB to not recommend the approval of this plan change.

Does Plan Change 82 give effect to the NRPS and the District Plan

86. An assessment of the relevant objectives and policies of the Northland Regional Policy Statement (NRPS) and Proposed NRPS was included in Appendix D of the Applicant’s request. It was the Applicant’s view, based on this assessment that the proposal is consistent with the RPS and NRPS. While we acknowledge Ms Buckingham’s concerns surrounding the reverse sensitivity issues of residential activities adjacent to the Transfer Station, we believe all other regional issues have been appropriately addressed through the final set of precinct provisions provided by the applicant in Mr Brabant’s right of reply.
87. As a result, we have concluded that PPC82 will provide for appropriate growth in a suitable location and that the proposal is consistent with the outcomes sought by Objective 3.11 Regional Form of the RPS, providing for *“sustainable built environments that effectively integrate infrastructure with subdivision, use and development, and have a sense of place, identity and a range of lifestyle, employment and transport choices”*.
88. We also find overall, that PPC82 would not be inconsistent with the outcomes sought by Objectives 3.1 to 3.15 of the NRPS. We have also concluded, based on all the planning evidence we have received, that PPC82 will not be inconsistent to the relevant Objectives and Policies of the Kaipara District Plan.

Has the Zone change been justified?

89. Yes, in our view, based on the assessment above, we find that the bespoke set of planning provisions and supporting Precinct Plan would meet the social and economic needs of the community by providing for long-term needs for residential land in this part of the District while creating a sustainable built environment that effectively integrates infrastructure, ecological issues, sense of place and transport choices achieving the purpose of the RMA.

SUBMISSIONS

90. Turning to the issue of the submissions, we have comprehensively addressed these matters set out in Ms Buckingham’s Section 42A report, in which she helpfully grouped the submission points together in our decision above. We are satisfied that, based on the professional evidence before us, the matters raised by these submissions relating to this plan change have been appropriately considered.

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91. We have accepted the PPC 82 as notified, with amendments provided by the applicant in their right of reply, and subject to minor amendments we have made. We note for completeness these changes were within the scope of the plan change as notified and no issues of scope were raised with us by any of the parties.
92. We have adopted the recommendations contained in section 8 of Ms Buckingham’s Section 42A report regarding the submissions, with the rationale for either accepting, accepting in part, or rejecting them. In saying this, we acknowledge Ms Smith’s legal submissions on behalf of the Lowes and others (Submission 19). However, as we have highlighted above, those submission points were not supported by expert evidence to enable us to find to the contrary. Again, we find that issues raised in Mr Lowe’s and other’s submissions have been appropriately addressed through the professional evidence in front of us.
93. We note the Applicant has amended the final Precinct Plan to move the indicative road away from the Lowe’s dwelling to assist in their concerns. We accept that nevertheless, the indicative road still crosses the Lowe’s property and they have told us that they have no intention of subdividing their property. However, the plan change does not require the Lowes or any of the other property owners within the plan change area to change their current practices or activities. The plan change would simply allow for future growth opportunities in the District and provide suitably zoned residential land to meet that need. The roads are indicative, and merely confirm a logical place where a road could go, should the Lowes or successive landowners choose to subdivide their property in future.
94. We also note that the final version of the Precinct Plan has the indicative road crossing the Lowe’s neighbour, Mr Franicevich’s land. He too has the option of subdividing his land, or not. It is his decision entirely. The applicant has demonstrated, however, that if neither the Lowe’s nor Mr Franicevich wish to ‘join the subdivision,’ a loop road can be formed along the green amenity street to service the applicant’s land alone, supported by the northern access road.

SECTION 32AA EVALUATION

95. Section 32AA of the RMA requires a further evaluation for any changes that are proposed to the notified plan change after the Section 32 evaluation was carried out.⁴⁸ This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.⁴⁹ As we have made very minor changes (including adding in new rules) to PPC 82 a Section 32AA analysis has not been required.

⁴⁸ RMA, Section 32AA(1)(a)

⁴⁹ RMA, Section 32AA(1)(c)

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PART 2 OF THE RMA

96. Section 5(1) RMA provides that the purpose of the Act is to promote the sustainable management of natural and physical resources. We find that Part 2 of the RMA is met by PPC 82 for the reasons we have set out above and provided in the summary below.
97. PPC 82 provides for the sustainable management of the PPC 82 land, in a manner that contributes to the social and economic needs of the community by providing for long-term needs for residential land in this part of the District, while creating a sustainable built environment that effectively integrates infrastructure, ecological issues, sense of place and transport choices.
98. We find that PPC 82 appropriately recognises and provides for the matters of national importance listed in Section 6 RMA and has regard to the other matters listed in Section 7 RMA.
99. We are satisfied that PPC 82 does not raise any issues in terms of Section 8 RMA.

OVERALL DECISION

100. That pursuant to Schedule 1, Clauses 10 and 29 of the Resource Management Act 1991, that Private Plan Change 82 to the Kaipara District Plans recommended for **approval**. We have included the recommended Awakino precinct provisions as Appendix A and the precinct plan as Appendix B.
101. We find that PPC82 will meet the social and economic needs of the community by providing for long term needs for residential land in this part of the District and will create a sustainable built environment that effectively integrates infrastructure, ecological issues, sense of place and transport choices achieving the purpose of the RMA. We also note that plan change area has been signaled for future urban growth in the Council's Spatial Plan.
102. Submissions on the plan change are accepted, accepted in part or refused in accordance with the rationale set out in Ms Buckingham’s Section 42A report as we have found, based on the professional evidence before us, these matters have been appropriately addressed as set in the Section 42A report or through the amended precinct provisions.
103. In addition to the reasons set out above, the overall reasons for the decision are that PPC 82:
 - is supported by necessary evaluation in accordance with Section 32 and Section 32AA;
 - is not inconsistent with the NPS-FM;

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- gives effect to the Northland Regional Policy Statement; and
- satisfies Part 2 of the RMA.



Dr Lee Beattie - Chairperson

For Commissioners, Ms Melean Absolum, Cr Jonathan Larsen and Dr Lee Beattie
6 Feb 2024