

BEFORE THE HEARING PANEL APPOINTED BY KAIPARA DISTRICT COUNCIL

IN THE MATTER OF the Resource Management Act 1991 (RMA)

AND

IN THE MATTER OF the hearing of submissions on Proposed Private Plan Change
82: Moonlight Heights Limited

**OPENING LEGAL SUBMISSIONS BY COUNSEL FOR KAIPARA DISTRICT
COUNCIL**

DATED 4 AUGUST 2023

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MAY IT PLEASE THE HEARING PANEL:

1. INTRODUCTION

1.1 I have been asked to present these legal submissions by Kaipara District Council (**Council**) staff, and the author of the section 42A Report for Proposed Private Plan Change 82: Moonlight Heights Limited (**PPC82**), Ms Emily Buckingham.

1.2 As the Hearing Panel will be aware, PPC82:

(a) is a plan change request seeking changes to the Operative Kaipara District Plan (**Operative District Plan**) lodged by Moonlight Heights Limited (**the Applicant**) and accepted by the Council under clause 25(2)(b) of Schedule 1 of the Resource Management Act 1991 (**RMA**); and

(b) seeks to re-zone 39.2 hectares of land at Awakino Road (**Site**), located around 2km from the Dargaville CBD, from Rural Zone to Residential Zone under the Operative Kaipara District Plan (**Operative District Plan**), and include in the Operative District Plan a Precinct for the Site.¹

1.3 PPC82 has been comprehensively assessed by Ms Buckingham in her section 42A Report, and the supporting assessments.² Overall, there is a relatively high level of agreement between the experts engaged by the Applicant, and the section 42A team. 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 matters:

1 Private Plan Change Request, page 8.

2 Transportation Assessment by Ms Vaishali Sankar and Nick Marshall from the Northern Transportation Alliance (Appendix F to the section 42A Report) and Three Waters Assessment by Mr David Usmar (Appendix G to the section 42A Report).

- (a) The minimum lot size/servicing rules to ensure that large, unserviced lots are not facilitated within the precinct;
- (b) Provide additional plan provisions to ensure downstream flooding is not exacerbated by 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 addition of precinct specific provisions to address reverse sensitivity effects on the transfer station site.

1.4 Having considered the evidence provided by the Applicant and submitters Ms Buckingham has prepared an Addendum to her section 42A Report dated 4 August 2023 (**Addendum**). As set out in the Addendum, there has been a further narrowing of issues with areas of agreement and disagreement now as follows:

- (a) There is now general agreement between Ms Buckingham and the Applicant's planner, Ms McGrath in relation to minimum lot size and servicing requirements;
- (b) As a result of further information provided by the Applicant, Mr Usmar and Ms Buckingham are now comfortable that the proposed provisions relating to stormwater management are acceptable, and there is no need for the precinct rules to include a requirement that there be no exacerbation of downstream flooding effects;
- (c) Ms Buckingham supports the Applicant's proposed identification of an indicative archaeological site on the precinct plan and associated subdivision setback rule in response to concerns raised by Heritage New Zealand;

- (d) Accordingly, as at the date of filing these submissions, the key remaining area of disagreement between the Applicant and the section 42A team relates to the effects of the plan change on the transportation network, and the integrated transportation assessments and upgrades to the transport network required to address this. These matters are addressed in more detail in a memorandum from Mr Marshall from NTA dated 4 August 2023 setting out an updated position, and in Part 6 of these legal submissions.

1.5 These submissions address the following legal issues:

- (a) The legal framework under the RMA for the Council's decision on PPC82;
- (b) The applicability of the National Policy Statement on Urban Development 2020 (**NPS-UD**) to Dargaville and to PPC82;
- (c) The applicability of the National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**);
- (d) With respect to the provision of wastewater and water infrastructure to service PPC82, the relevant legal requirements that must be satisfied; and
- (e) The transportation upgrades required for PPC82.

2. THE LEGAL FRAMEWORK FOR THE DECISION ON PPC82

2.1 I understand that the Hearing Panel has been delegated the power to make a recommendation on PPC82 to the Council, and the Council will then make a decision.³

2.2 The Council's decision-making on PPC82 sits within a comprehensive framework established under the RMA. While these provisions are no-doubt well-known to the Hearing Panel, it is useful to set them out.

The relevance of PPC82 being a plan change request

2.3 As I have already noted, PPC82:

(a) is a plan change request that was lodged with the Council by the applicant on 8 June 2022 under clause 21 of Schedule 1 of the RMA; and

(b) was "accepted" by the Council under clause 25(2)(b) of the RMA on 14 December 2022.

2.4 In terms of the requirements that apply to plan change requests that are accepted by the Council the:

(a) process for submissions and hearing is set out in clause 29 of Schedule 1 of the RMA. It is, subject to some very minor modifications, the normal process under Part 1 of Schedule 1 of the RMA; and

(b) Council is required to make a decision on PPC82 and submissions under clause 10 of Schedule 1. The statutory framework that applies to that Council's decision is the same as for any plan change under the RMA.

The statutory framework for the Panel's decision on PPC82

2.5 These submissions now address the statutory framework for the Hearing Panel's recommendation and the Council's decision on PPC82.

2.6 Under section 74(1) of the RMA, the Council must change its district plan *in accordance with*:

- (a) Its functions under section 31; and
- (b) The provisions of Part 2; and
- (c) A Ministerial direction (not applicable here); and
- (d) Its obligations to prepare a section 32 assessment and have particular regard to it;
- (e) A national policy statement, a New Zealand coastal policy statement, and a national planning standard; and
- (f) Any regulations.

2.7 When changing a district plan, the Council *must have regard to*:⁴

- (a) Any proposed regional policy statement (not applicable because the Northland Regional Policy Statement is operative); and
- (b) Any proposed regional plan (here the Proposed Northland Regional Plan); and

⁴ Section 74(2).

- (c) Any management plans and strategies prepared under other Acts; and
- (d) Any relevant entry on the New Zealand Heritage List required by the Heritage New Zealand Pouhere Taonga Act 2014; and
- (e) Any fisheries regulations to the extent that their content has a bearing on resource management issues in the district; and
- (f) The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.
- (g) Any emissions reduction plan made in accordance with section 5Z1 of the Climate Change Response Act 2002 (in this case, the Te hau marohiki anamata – Towards a productive, sustainable and inclusive economy; Aotearoa New Zealand’s First Emissions Reduction Plan, 16 May 2022).
- (h) Any national adaptation plan made in accordance with section 5Z5 of the Climate Change Response Act 2002 (in this case the National Adaptation Plan 2022).

2.8 The Council must also *take into account* any relevant planning document recognised by an Iwi authority.⁵

2.9 Finally, Council *must not have regard to* trade competition or the effects of trade competition when changing a district plan.⁶

Content of a district plan

2.10 Under section 75(3), a district plan *must give effect to*:

- (a) Any national policy statement; and

5 Section 74(2A).
6 Section 74(3).

- (b) Any New Zealand coastal policy statements; and
- (c) A national planning standard; and
- (d) Any regional policy statement.

2.11 The Supreme Court in *King Salmon*⁷ found the words "give effect to" mean "implement". On the face of it, this is a strong directive, creating a firm obligation on planning authorities.

2.12 A district plan *must not be inconsistent with*:⁸

- (a) A water conservation order; or
- (b) A regional plan for any matter specified in section 30(1).

2.13 Finally, under section 75(1), district plan policies *must* implement objectives while any rules *must* implement the policies. Section 76(1) requires rules to achieve the objectives and policies of the plan. In making a rule, Council *must have regard to* the actual or potential effect on the environment of activities, including any adverse effect.⁹

Section 32 Evaluation

2.14 PPC82 was lodged with a section 32 assessment prepared by consultants on behalf of the applicant.¹⁰

2.15 Under section 32(1), an evaluation must:

7 *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38 at [77].

8 RMA, s 75(4).

9 Section 76(3) RMA.

10 The Private Plan Change Request, pages 45-55.

- (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
- (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by:
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
 - (iii) summarising the reasons for deciding on the provisions; and
- (c) contain 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.

2.16 Each objective must be examined during the evaluation, but it is not necessary that each objective individually be the most appropriate way of achieving the purpose of the Act. The High Court has held that it may be through their interrelationship and interaction that the purpose of the Act is able to be achieved.¹¹

2.17 Under Section 32(2) an assessment of the efficiency and effectiveness of the provisions (policies, rules or other methods) under subsection (1)(b)(ii) must:

- (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from

11 *Rational Transport Society Inc v New Zealand Transport Agency* [2012] NZRMA 298 HC at [46].

the implementation of the provisions, including the opportunities for—

- (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
- (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
- (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

Section 32AA further evaluation

2.18 Under section 32AA, a further evaluation is required only for changes made after the evaluation report was completed at notification. A further evaluation must be undertaken in accordance with section 32(1) to (4) and must be undertaken at a level of detail that corresponds to the scale and significance of the changes.

Part 2

2.19 The role Part 2 plays in decision-making processes for plan changes was refined by the Supreme Court in *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*¹² (“*King Salmon*”).

2.20 The Supreme Court held that in the absence of invalidity, incomplete coverage or uncertainty of meaning in the relevant higher order statutory

12 King Salmon, above note 9.

planning documents, there is no need to refer back to Part 2 of the RMA when determining a plan change.¹³ This is because the higher order planning document is assumed to already give effect to Part 2. However, if one or more of these three caveats apply, reference to Part 2 may be justified and it may be appropriate to apply the overall balancing exercise.

14

2.21 Simply because a higher order planning instrument is operative does not remove the possibility of any of the three caveats applying.

2.22 Ms Buckingham, as the author of the section 42A Report:

(a) Does not, for her own part, have concerns that any of the three caveats identified in King Salmon (i.e. invalidity, incomplete coverage, or uncertainty of meaning) apply to the higher order policy documents she has assessed; however

(b) She has assessed PPC82 against Part 2, in any case, to assist the Panel, in the event it were to arrive at a different conclusion.¹⁵

The Council's Decision

2.23 The Council is required under clause 10 of Schedule 1 to give a decision on PPC82 and submissions, including reasons for its decisions.

2.24 When giving reasons, the Council may address submissions by grouping them according to the provisions or subject matter.¹⁶ The Council is not required to address each individual submission.¹⁷

3. THE APPLICABILITY OF THE NPS-UD TO DARGAVILLE AND PPC82

13 At [85] and [88].

14 At [88].

15 See paragraphs 121-129 of the section 42A Report.

16 Schedule 1, CI 10(2).

17 Schedule 1, CI 10(3).

- 3.1** The Hearing Panel, in its recommendation, needs to make a finding whether Dargaville comes within the definition of “urban environment” under the NPS-UD.
- 3.2** The NPS-UD came into force on 20 August 2020, and was amended in May 2022 (in response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021).
- 3.3** It applies to:
- (a) all local authorities that have all or part of an “urban environment” within their district or region; and
 - (b) “planning decisions” (includes, as here, decisions on a plan change to an operative plan) by any local authority that affect an urban environment.¹⁸
- 3.4** Certain areas of New Zealand are urban environments under the NPS-UD by virtue of being identified as tier 1 or tier 2 urban environments in the NPS-UD.¹⁹ Dargaville is not identified in the NPS-UD as a tier 1 or tier 2 urban environment. However, Dargaville would be a tier 3 urban environment if it comes within the definition of “urban environment” under the NPS-UD.
- 3.5** If the Hearing Panel finds that Dargaville is a tier 3 urban environment, then the consequence of this is that:
- (a) PPC82 must give effect to objectives and policies in the NPS-UD that apply to tier 3 urban environments; and

18 NPS-UD, clause 1.3.

19 As listed in Appendix: Tier 1 and tier 2 urban environments and local authorities.

- (b) The Kaipara District would be required to comply with obligations in the NPDS-UD on tier 3 local authorities.²⁰

3.6 “Urban environment” is defined under the NPS-UD as:

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

- a) 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.”

3.7 As explained by Ms Buckingham in the section 42A Report, the Council has received, and approved, an economic assessment from Formative which has found that Dargaville does not come within the definition of “urban environment” under the NPS-UD as:

- (a) The population of Dargaville and urban areas within 5km of Dargaville is projected to increase to 7,820 people by 2038. However, this is less than the threshold of 10,000 people to be an urban environment under the NPS-UD; and
- (b) Dargaville does not form part of a housing and labour market of at least 10,000 people with other closely located towns and villages.

3.8 Ms Buckingham has adopted the findings of Formative’s assessment,²¹ and they are also accepted by the Applicant.²²

3.9 In light of this, 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,

20 These include: meeting obligations on Tier 3 local authorities to provide sufficient development capacity (Part 3, Subpart 1); undertaking specified monitoring of land supply etc (Part 3, Subpart 3); specify “development outcomes” for zones in “urban environments” (Part 3, Subpart 7) and remove rules specifying minimum parking requirements from the District Plan (Part 3, Subpart 8).

21 Section 42A Report, paragraphs 56-59.

22 Evidence of Mr Heath, paragraph 27.

and PPC82 is not required to give effect to objectives and policies of the NPS-UD relating to Tier 3 urban environments.

4. THE APPLICABILITY OF THE NPS-HPL TO PPC82

4.1 PPC82 was lodged with the Council on 8 June 2022. The NPS-HPL came into force approximately four months later on 17 October 2022²³ with the aim of ensuring “highly productive land” is protected for use in land-based primary production, both now and for future generations.²⁴

4.2 The NPS-HPL does not contain any transitional or savings provisions that prevent it from applying to PPC82.

4.3 Under the NPS-HPL “highly productive land” is defined as:

...land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore cases to be highly productive land)

4.4 As at the time of this hearing, the Northland Regional Council has not yet notified changes to its Regional Policy Statement to give effect to the NPS-HPL. This means that the “transitional” definition of highly productive land in clause 3.5(7) applies. This provides as follows:

Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:

(a) is

23 NPSHPL, clause 1.2.

24 NPSHPL, Objective 1.

- (i) zoned general rural or rural production; and
 - (ii) LUC 1, 2 or 3 land; but
- (b) is not:
- (i) identified for future urban development; or
 - (ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

4.5 In terms of how the transitional definition of highly productive land applies to this Site:

- (a) As identified in the section 42A Report, as at 17 October 2022 the Site was zoned Rural under the Operative District Plan. The New Zealand Land Resource Inventory (**NZLRI**) identifies the Site as containing a relatively small amount of land that is Land Use Capability Class 3. The extent of this is shown on Figure 13 of the section 42A Report (page 26). Accordingly, on the face of it, the Site contains some land that comes within the transitional definition of highly productive land under the NPS-HPL.
- (b) However, the NPS-HPL allows for more detailed site specific mapping to be undertaken. In particular, LUC 1, 2 and 3 land is defined under the NPS-HPL as land identified as Land Use Capability Class 1, 2, or 3 “...as mapped by the New Zealand Land Resource Inventory or by any more detailed mapping that uses the Land Use Capability classification.” (my emphasis)

(c) As explained in the section 42A Report²⁵ and in the evidence of Mr Hanmore for the Applicant, the NZLRI is prepared at a very high scale (1:50,000), sometimes resulting in errors at an individual property level. Mr Hanmore has undertaken more detailed site specific mapping of the Site using the land use capability classification (as is provided for under the NPS-HPL). Mr Hanmore's evidence is that there is no LUC 3 land present on the Site, and the identification of this in the NZLRI is in error.²⁶

4.6 In light of the above, in my submission, there is no highly productive land, as defined under the NPS-HPL present on the Site, and the NPS-HPL does not apply to PPC82.

5. THE RELEVANT LEGAL REQUIREMENTS THAT MUST BE MET IN RELATION TO THE PROVISION OF RETICULATED WASTEWATER AND POTABLE WATER TO PPC82

5.1 With respect to the wastewater and potable water infrastructure required to service the plan change site, the Applicant proposes that:

(a) Wastewater from the site will be treated at the Council's Dargaville Wastewater Treatment Plant (**Dargaville WWTP**); and

(b) Reticulated potable water supply would be provided from the existing Dargaville Water Treatment Plant (**Dargaville WTP**). As set out in the Addendum to the section 42A Report, Ms Buckingham and Mr Usmar now agree with the Applicant that the plan provisions should not require development to connect to the public reticulated water supply. In the alternative onsite water resources could also be used.²⁷

25 Section 42A Report, paragraph 69.

26 Evidence of Mr Hanmore, paragraphs 21-26.

27 Addendum to the section 42A Report, paragraph 11.

5.2 As explained by Mr Usmar, the Council's current planning for Dargaville (without PPC81 and PPC82) is premised on predicted population growth of only 1092 people over the 33 years between 2019 and 2052.²⁸ Accordingly, as Mr Usmar explains (and is addressed in more detail later in these submissions), in relation to wastewater capacity, if both PPC82 and PPC81 are approved and fully developed and depending on what Silver Fern Farms discharges, the Dargaville WWTP would need to be upgraded to a more modern treatment process. In relation to potable water, while there is capacity in the Dargaville WTP, further investment is needed to address current seasonal raw water shortages at the Dargaville WTP, to service PPC82.

5.3 However, in my submission, it is important to acknowledge that this hearing is a hearing for the proposed re-zoning of land, in response to a private plan change request, not a resource consent application. With plan changes, and in particular (as here) a private plan change request, it is very often the case that the infrastructure necessary to service development has not been built yet. However, it does not need to be. As the Environment Court held in *Foreworld Developments Limited v Napier City Council*²⁹, the Environment Court stated that (my emphasis):

[15] It is bad resource management practice and contrary to the purpose of the Resource Management Act - to promote the sustainable management of natural and physical resources; to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it. In McIntyre v Tasman District Council (W 83/94) the Court said:

We agree with Mr Robinson that in this case the extension of services such as the sewage system and roading should be carried out in a co-ordinated progression. We hold that if developments proceed on an ad hoc basis they cannot be sustainably managed by the Council- an aspect which is not commensurate with section 5 of the Act.

28 Memorandum of Mr Usmar, page 3.
29 Decision No. W 008/2005.

There are similar comments in decisions such as Prospectus Nominees v Queenstown-Lakes District Council (C 74/97), Bell v Central Otago District Council (C 4/97) and confirmation that the approach is correct in the High Court decision of Coleman v Tasman District Council [1999] NZRMA 39.

5.4 In light of the above, in my respectful submission:

- (a) There is no requirement for the Hearing Panel to be satisfied that all of the wastewater and water infrastructure necessary to service PPC82 exists at present; however
- (b) The Hearing Panel needs to be satisfied that where the infrastructure does not already exist, providing it is feasible and that there is a commitment to providing it.

5.5 Given this is a plan change, if it were to be approved, it is also important that the plan provisions provide the Council with appropriate matters of discretion and assessment criteria to allow the Council to assess, at the resource consent stage, whether adequate wastewater supply and potable water can be provided for a particular proposal at the time that land comes to be developed.

Wastewater servicing

5.6 The capacity of the Dargaville WWTP has been comprehensively assessed by Mr David Usmar in his memorandum attached to the section 42A Report. In summary:

- (a) Although PPC82 (as a private plan change request) sits outside the Council's "business as usual" planning, Mr Usmar concludes there will be sufficient capacity in the Dargaville WWTP to service all of the growth anticipated from PPC82 under both Scenarios 2 and 3 that he has modelled.

- (b) However, in the event that both PPC82 and PPC81 (for the rezoning of the Dargaville Racecourse site) are approved and are both fully developed then there will only be capacity to service projected growth from both plan changes under Scenario 2.
- (c) If both plan changes are approved and fully developed and Silver Fern Farms discharges to the Dargaville WWTP at the maximum capacity allowed under its draft trade waste agreement (Scenario 3) the capacity of the Dargaville WWTP would be exceeded.

5.7 In relation to funding for upgrades of the Dargaville WWTP, as Mr Usmar explains:

- (a) \$1 million has been committed for upgrades to the Dargaville WWTP in the Council's 2023/2024 Annual Plan to ensure the WWTP is able to operate at its design capacity. However, increasing the capacity of the Dargaville WWTP capacity beyond its current design capacity would require a larger project and a more modern treatment process. Given the capacity currently still available in the Dargaville WWTP and that neither PPC82 or PPC81 have been approved at this stage (let alone fully developed), the costs and scoping for such an upgrade have not yet been carried out. No investment for this is currently signalled in the Kaipara District Council's Long Term Plan.
- (b) The Council is committed to monitoring connections to the Dargaville WWTP and upgrading it, as required, to ensure capacity is available. However, assuming Central Government's proposed Three Waters Reforms proceed, any decisions in relation to funding of further upgrades to the Dargaville WWTP,

and the timing of this, will need to be made by the new Water Entity.³⁰

5.8 In terms of the ability to convey wastewater from the plan change site to the Dargaville WWTP, Mr Usmar notes there are at least three potential options for this. While these would be scrutinised further through the resource consent process (along with funding options), in his opinion, they are all considered feasible.³¹

5.9 In light of the above evidence, in my submission, there is no wastewater related reason to decline PPC82.

Potable water supply

5.10 The ability of the Dargaville WTP to supply the plan change site with potable water has been assessed by Mr David Usmar in his memorandum attached to the section 42A Report.

5.11 In summary, there is sufficient treatment capacity in the water treatment plant itself to supply the plan change area. However, the Dargaville WTP currently experiences shortages of raw water in the summer months that mean, at present, it would not be able to meet projected demand for potable water from the plan change area. As outlined by Mr Usmar:

- (a) The Council is currently investigating different options for the shortages of raw water to be addressed, and is committed to progressing this through an options assessment this year. While no option has yet been confirmed, two options that are currently being considered to address the seasonal raw water shortages are joining the Te Tai Tokerau Water Trust or upgrading the Council's Waitatua Reservoir;

³⁰ Memorandum by Mr Usmar dated 6 July 2023, pages 3-4.

³¹ Memorandum by Ms Usmar, page 6

(b) In addition, the Council is supportive of options to reduce water demand (such as rainwater harvesting for non-potable supply) as is proposed as part of PPC82. These options can be further assessed, as part of the resource consent process.³²

5.12 As set out above, there is no requirement for the Hearing Panel to be satisfied that all of the infrastructure necessary to service PPC82 exists at present.

5.13 For the Hearing Panel to recommend decline of PPC82 on the basis of inadequate potable water supply, it would need to be satisfied that it was not feasible to provide potable water to the plan change site, or that it was feasible but the Council was not committed to providing this (e.g. due to remoteness of the site and the cost of servicing). In relation to this, as explained by Mr Usmar:

(a) The Council has identified a number of different options to secure further raw water to address current summer shortages, and allow for growth in Dargaville. Mr Usmar will be available at the hearing to answer questions from the Hearings Panel in relation to these different options; and

(b) The Council will complete an options assessment process to identify its preferred option to increase raw water supply. Assuming Central Government's proposed Three Waters Reforms proceed, any decisions in relation to funding, and the timing of this, will be for the new Water Entity.

5.14 In addition to this, as set out in the Addendum to the section 42A Report, Ms Buckingham and Mr Usmar agree with the Applicant that development should not be required to connect to the public reticulated water supply. In the alternative, onsite water resources could also be

³² Memorandum by Mr Usmar, page 7.

used.³³ Accordingly, it would be open for development on the Site to receive potable water from rainwater tanks, as is the case throughout much of Northland.

5.15 Overall, in my submission, on the basis of Mr Usmar’s evidence that the Council is committed to addressing current raw water shortages in Dargaville and there are options to do this, and that in the alternative the plan provisions provide for onsite potable and non potable water to be used, there is not a potable water related reason to decline PPC82.

6. THE TRANSPORTATION UPGRADES REQUIRED FOR PPC82

6.1 As the Hearing Panel will be aware, a key remaining area of disagreement between the Applicant and the section 42A team is the extent of the upgrades to the transport network that are required to address the effects on the transport network of re-zoning the Site.

6.2 In this respect, it is noted that PPC82 is intended to significantly increase housing supply in Dargaville and provide approximately 350 residential lots. Depending on rates of occupancy, this will result in in the order of 1,000 additional people, or roughly 20% of the current population of Dargaville, using the transport network. While the section 42A team is supportive of PPC82, it is important that if PPC82 is approved, it includes plan provisions requiring its effects on the transport system to be appropriately assessed, and mitigated.

6.3 From a legal perspective, an applicant is not required to resolve existing infrastructure problems outside its boundaries. However, it is required to mitigate the effects of its development on the transport network. As the Environment Court held in *Laidlaw College Inc v Auckland Council*:

“Whilst we agree with the general principle that an applicant is not required to resolve existing infrastructure problems, neither should it add significantly to them. The question is always one of degree depending on the facts of each case.

³³ Addendum to the section 42A Report, paragraph 11.

The focus must be on the effects which arise from a particular proposal.³⁴ (my emphasis)."

6.4 Where more general upgrades are required to improve the transport network or address effects from a wide range of users, the Council can fund upgrades to the transport network through a combination of development contributions and financial contributions, rates and other sources.³⁵

6.5 Accordingly, in my submission, the key issue for the Hearing Panel to determine, based on the evidence before it, is what upgrades should the Applicant be required to provide to mitigate the effects of its proposal on the transport network.

6.6 In relation to this, having considered the evidence provided by the Applicant, Mr Marshall for the NTA has prepared an Addendum to the original memorandum dated 6 July 2023 attached to the Section 42A Report setting out his updated position. By way of summary:

(a) The revised provisions provided by the Applicant are generally supported by the NTA.

(b) However, key areas of disagreement between Mr Marshall and Mr Kelly for the Applicant remain in relation to:

(i) The triggers and scope of the integrated transportation assessments that are required; and

(ii) The extent of the upgrades to the transport system required to address the effects of the plan change. In particular, Mr Marshall considers that:

- a SUP needs to be provided on the eastern side of Awakino Road from the southern end of the site to Kauri Street (via Kauri Crescent) or to some

³⁴ *Laidlaw College Inc v Auckland Council* [2011] NZEnvC 248 at [38].

³⁵ E.g. funding from Waka Kotahi or Central Government is in some instances provided.

- other suitable location to provide safe cycle access from the site into the Dargaville CBD;
- The proposed footpath should be shifted from the western side of Awakino Road (as proposed by the Applicant) to the eastern side and; and
 - The proposed location of the pedestrian crossing that is to be provided needs to be shifted further south to connect to the SUP, and the standard of the crossing increased so that a primary safe system crossing is provided.

6.7 Mr Marshall will address these matters, and other more detailed matters, further at the hearing, and be available to answer any questions from the Hearing Panel.

7. CONCLUSION

7.1 I am happy to answer any questions.



Warren Bangma
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4 August 2023