

# Appointment of Commissioners for the Hearing on Private Plan Change 81 - Dargaville Racecourse

**Meeting:** Kaipara District Council  
**Date of meeting:** 14 December 2022  
**Reporting officer:** Paul Waanders, District Planner; Katherine Overwater, Team Leader  
District Plan

## Purpose | Ngā whāinga

Council is currently processing a Private Plan Change application for the Dargaville Racecourse. The next step in the Schedule 1 of the Resource Management Act 1991 (the RMA) process is to hold a hearing. To hold a hearing, Commissioners need to be appointed to hear the submissions on the application.

The purpose of this report is to:

- Delegate functions, powers, and duties to the hearing commissioner(s);
- Confirm the number of Commissioners required to conduct the hearing and the make-up of internal Council Commissioners or external Independent Commissioners for the hearing on Private Plan Change 81 for the Dargaville Racecourse.

## Executive summary | Whakarāpopototanga

Private Plan Change 81 for the Dargaville Racecourse was lodged with Kaipara District Council (KDC) as a Private Plan Change on 21 February 2022 for processing in accordance with Schedule 1 of the RMA.

Council accepted the Plan Change for processing on Wednesday 27 July 2022 and then publicly notified the application on Monday 29 August 2022. Submissions closed on Monday 26 September 2022 - 18 submissions were received.

Further submissions were notified on Tuesday 1 November and closed 10 working days later on Tuesday 15 November 2022 - 7 further submissions were received.

The application and submissions are yet to be considered through a public hearing by a hearings panel of accredited Commissioners (proposed to be scheduled for late March 2023). The panel of Commissioners will be required to make a recommendation to Council for consideration.

## Recommendation | Ngā tūtohunga

That the Kaipara District Council:

- a) Delegate functions, duties, and powers under section 34A(1) of the Resource Management Act 1991 to a hearing panel to **hear and recommend** outcomes on Private Plan Change 81 (Dargaville Racecourse) and the submissions received; and
- b) Approves that **three** Commissioners be appointed to hear the submissions on Private Plan Change 81: and
- c) Approves the composition of the hearing panel - being two 'Independent' Hearing Commissioners and one 'Internal' Commissioner; and
- d) Notes that staff will seek to engage one Independent Commissioner with an understanding of tikanga Māori.

## Context | Horopaki

Kaipara District Council has a Hearing Commissioner Policy, adopted 27 May 2020 (**Attachment A**). The alphabetical list of Commissioners for Kaipara District is attached at **Attachment B**.

This report discusses the appointment of Commissioners and composition of a panel with internal Council Commissioners and external Independent Commissioners to hear and recommend outcomes on the Private Plan Change application and submissions received for the Dargaville Racecourse.

## Discussion | Ngā kōrerorero

Kaipara District Council has the Commissioners Policy and a list of 13 Commissioners accredited in terms of sec 39A of the Resource Management Act 1991. The accreditation distinguishes between Commissioners that are Chair endorsed with the other Commissioners being members.

### Delegation of functions, powers, and duties to the Hearings Panel

In terms of Section 34A(1) of the RMA, Council can delegate its functions, powers, and duties to a Hearings Panel to 'hear and decide' or 'hear and recommend' the Private Plan Change application and submissions.

**Option 1:** If the function is to 'hear and decide', the hearings panel makes the decision on behalf of Council (it does not come back to full Council for a decision).

**Option 2:** If the function is to 'hear and recommend' the hearings panel will only make a well formulated recommendation and Council makes the decision.

It is noted that Council in making its decision on the Private Plan Change application, generally cannot deviate from the Hearings Panel's recommendation as it did not hear all the evidence itself, but Council can refer matters back to the Hearings Panel for further recommendations.

Plan Changes, different than for Resource Consents, amend a Council approved document and normally the decision to approve or reject is undertaken by full Council.

The recommendation is therefore to delegate functions, duties, and powers under section 34A(1) of the RMA to the hearing panel to **hear and recommend** outcomes on the Private Plan Change 81 for the Dargaville Racecourse and the submissions received.

Furthermore, it is noted that eventually, should the Private Plan Change be approved, it will be incorporated into the Operative District Plan, which is a function that cannot be delegated.

### Appointment of the number of Commissioners on the panel

There are no limitations on the number of Commissioners that are appointed to hear a Private Plan Change. It is preferable to have an uneven number of Commissioners in case there are differences of opinion which can lead to a hung decision unless the chair has a casting vote.

Staff recommend having **three** commissioners to ensure a decision can be made without the Chair having to use a casting vote.

### Composition of the Hearing Panel

According to Council's Hearing Commissioners Policy, Council decides whether there is a preference for utilising internal Commissioners or independent Commissioners or a combination.

Kaipara District Council has the Commissioners Policy and a list of 13 independent Commissioners accredited in terms of Section 39A of the RMA. The accreditation distinguishes between Commissioners that are Chair endorsed with the other Commissioners being members only.

The Kaipara District Council Policy requires that a hearing panel Chair needs to be an Independent Commissioner. The policy does not make a distinction between Commissioners that are Chair endorsed and panel members only, but it is best practice that the Chair should be accredited as "chair endorsed".

Clause 4.4 of the policy describes the requirements for an internal Council Commissioner who also has to be an accredited Commissioner in terms of Section 39A of the RMA.

**Option 1:** to appoint three independent Commissioners from the list of Commissioners.

**Option 2:** to appoint an internal Commissioner and two independent commissioners Note: Deputy Mayor Larsen is presently the only qualified internal Commissioner.

Option 2 is the preferred option as local knowledge and understanding of Council's activities and policies will be an advantage during the hearing and in the deliberations of the application.

Staff recommend that the proposed panel of three commissioners for Private Plan Change 81 is therefore comprised of two independent Commissioners and one internal Commissioner.

Following the policy and the list of accredited Commissioners, appointment of the panel will be based upon the availability of members and those who are Chair endorsed following an alphabetical order.

### **Appointment of a Panel member with understanding of tikanga Māori**

The provisions of section 34A of the Resource Management Act requires that:

- (1A) If a local authority is considering appointing 1 or more hearings commissioners to exercise a delegated power to conduct a hearing under [Part 1](#) or [5](#) of Schedule 1,—*
- (a) the local authority must consult tangata whenua through relevant iwi authorities on whether it is appropriate to appoint a commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapu, and*
- (b) if the local authority considers it appropriate, it must appoint at least 1 commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū, in consultation with relevant iwi authorities.*

Given that Ngāti Whātua are part of the applicant group of this Private Plan Change and that three Iwi/hapū have submitted on the Private Plan Change application, staff consider that the application merits appointing a commissioner with an understanding of tikanga Māori. Furthermore, the content of the submissions provided from iwi/hapū apply a tikanga Māori or Māori world view of land development.

Staff have consulted with Council's iwi authorities as per the requirements of section 34A. Te Uri o Hau and Te Roroa have indicated that they would prefer that a commissioner be appointed with an understanding of tikanga Māori to hear the Private Plan Change application.

There are two options here:

**Option 1:** Appoint a commissioner with an understanding of tikanga Māori to hear the private plan change application.

**Option 2:** Do not appoint a commissioner with an understanding of tikanga Māori to hear the private plan change application.

Staff recommend Option 1.

### **Financial implications**

The Commissioners are contractually appointed by Kaipara District Council with set rates whilst the Internal Commissioner is remunerated according to the Local Government Members (2022/23) Determination 2022.

The full cost of the hearing is on-charged to the applicant given that the application is for a Private Plan Change.

### **Risks and mitigations**

The risk of not appointing Commissioners could lead to the delay of the hearing, which could pose a risk to Council in respect to meeting the timeframes set out in Schedule 1 of the Act for processing a Private Plan Change application.

## Impacts on Māori

There are no impacts on Māori. However, it is noted that staff have engaged with mana whenua partners, who have indicated their preference for one of the Hearings Commissioners to have an understanding of tikanga Māori.

## Significance and engagement | Hirahira me ngā whakapāpā

The decisions or matters of this report are considered to have a low degree of significance in accordance with Council's Significance and Engagement Policy. No feedback is required, and the public will be informed of Council's decision via the agenda and minutes publication of this meeting, on the website and through other channels if appropriate.

The appointment of Commissioners is undertaken in accordance with Councils adopted Hearings Commissioners Policy.

## Next steps | E whaiake nei

Once direction has been provided by Council on the number and make-up of commissioners appointed to hear Private Plan Change 81, including whether a panel member should have tikanga Māori understanding, staff will work from the list of accredited commissioners in alphabetical order to determine the availability of commissioners for the dates proposed.

## Attachments | Ngā tapiritanga

	Title
A	KDC Hearing Commissioners Policy
B	Updated Commissioners Details