

# Private Plan Change 81 - Trifecta Development Area (Dargaville Racecourse) – Council decision on provisions and matters raised in submissions

**Meeting:** Kaipara District Council  
**Date of meeting:** 30 August 2023  
**Reporting officer:** Paul Waanders, District Planner & Katherine Overwater, District Planning Team Leader

## Purpose | Ngā whāinga

For Council to make a decision on the recommendations of the Hearing Panel on Private Plan Change 81 (PPC81) for the Trifecta Development Area (Dargaville Racecourse).

## Executive summary | Whakarāpopototanga

A hearing has now been conducted for Private Plan Change 81 – Dargaville Racecourse (PPC81). The appointed Hearings Panel has considered the Plan Change application, which proposes to amend the rural zoning included in the Operative District Plan and create a bespoke Chapter: TDA (Trifecta Development Area) in the Operative District Plan.

The Hearings Panel has now made a recommendation to **approve** PPC81 for Council to consider.

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

## Recommendation | Ngā tūtohunga

That the Kaipara District Council:

- a) Accepts the recommendations of the Hearings Panel in **Attachment A** and adopts the recommendations as the Council's decisions on provisions and matters raised in submissions, pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991.
- b) Approves the amended Chapter 16B and Maps for TDA (Trifecta Development Area) for the Dargaville Racecourse as recommended by the Hearings Panel in **Attachment B and C**.
- c) Approves the public notification of Council's decisions (pursuant to clause 10(4)(b), Schedule 1, RMA) and that the public notification be on or before 12 September 2023.
- d) Delegates to the Mayor and Chief Executive, the authority to make any necessary minor formatting, typographical and administrative changes to Chapter 16B (Trifecta Development Area) and the Maps of TDA within the Operative Kaipara District Plan, as set out in **Attachment B and C** of this report.

## Context | Horopaki

An application to amend the Operative District Plan and accompanying maps for TDA (Dargaville Racecourse) was received on 21 February 2022 in terms of Part 2 of Schedule 1 of the Resource Management Act 1991 (RMA).

Council appointed Independent Hearing Commissioners Mark Farnsworth (chair), Michael Campbell and Deputy Mayor, Jonathan Larsen to hear the submissions, assess the application and make recommendations to Council on PPC81.

The Hearings Panel's assessment and recommendation has been submitted to staff and the next step is for Council to consider the recommendation and make the ultimate decision on the Private Plan Change application – PPC81.

## Discussion | Ngā kōrerorero

PPC81 was lodged as a private plan change by Dargaville Racecourse Incorporated on 21 February 2022.

PPC81 seeks to rezone 47ha (approximately) of land. The area of PPC81 is situated at the corner of State Highway 14 and Awakino Point North Road, Dargaville comprising Part Lot 37 DP 7811 (NA 692/361) (46.6729ha) and Part Lot 37 DP27168 (NA689/300) (4,047m<sup>2</sup>).

PPC81 proposes to rezone the site from its current rural zoning to a mixture of residential, light industrial, neighbourhood centre and open space zoning. The subject site is proposed to be a specific Development Area, which will sit as a precinct in the Operative Kaipara District Plan 2013.

Specifically, PPC81 proposes the following changes to the Operative District Plan:

- a new chapter is added with the 'working title' of TDA (Trifecta Development Area), generally known as Dargaville Racecourse;
- TDA objectives, policies, rules, and information requirements for the different zoning areas;
- The Operative District Plan Map 10 is to be amended to reference the Development Area chapter.
- Development Area Plan (Map 10A) showing the spatial extent of the different areas, the Hauora Hub, and indicative layout for the roading and in the Blue Green Network.

Under Clause 25(2)(b) of Schedule 1 of the RMA, Council "accepted" PPC81 on 27 July 2022 and decided to publicly notify the Private Plan Change.

Statutory notification was published in two local papers and the submission period ran from 30 August 2022 to 26 September 2022. The further submission period ran from 1 November 2022 to 15 November 2022.

In December 2022, the Council appointed the Hearings Panel. Council also delegated the functions, powers and duties to the Hearings Panel to hear submissions and make a recommendation on PPC81, after considering:

- the request (including the section 32 evaluation),
- all the submissions received,
- the section 42A reports prepared by the officers for the hearing,
- legal submissions and,

- the evidence presented during the hearing and the Applicant's closing legal submissions.

Full information including the section 42A report and all evidence was made available on Council's website <https://www.kaipara.govt.nz/dargavillerafacecourse>.

The hearings were conducted between 27 and 28 March 2023 and the Hearing Panel's report and recommendation have now been received by staff (**Attachment A**). The recommendation from the Hearing Panel is to approve the Private Plan Change, subject to modifications to the provisions contained in **Attachment B and C**.

Council must now make the ultimate decision on PPC81 in accordance with clause 10, Schedule 1 of the RMA.

### Options

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

#### **Option 1 - To adopt the Hearing Panel's recommendation as Council's decision**

This is the **recommended option**.

#### **Advantages**

- Council has followed a proper process, in line with statutory requirements and the Hearing Commissioner Policy, to ensure recommendations to Council are independent and made by experienced, skilled and professional Commissioners.
- Council has delegated the Hearings Panel the authority to hear all matters, including matters raised in submissions and to make recommendations to Council. Not agreeing with their recommendations, after not hearing the submissions would not be due or proper process for those parties involved in the hearing.
- Significant engagement and transparency on PPC81 has occurred through robust Council processes.
- Council has invested time and resources into processing PPC81 in organising the hearing and processes.
- The applicant, local individuals, and the community have also invested significant time, cost and their own resources into the process.
- Adopting this recommendation avoids any actual and possible perceived Council predetermination or bias and will help protect Council and ratepayers from any potential judicial review of the process followed.

#### **Disadvantages**

- None apparent.

#### **Option 2 - Reject the Hearings Panel's recommendation and re-hear the application.**

This **is not** the recommended option.

#### **Advantages**

- None apparent.

### **Disadvantages**

- It is well established in local government that where a Council delegates a Hearings Panel to hear and provide recommendations for RMA processes, Council's consideration of the recommendations becomes more of a procedural decision. If Council were to revisit the reasoning or conclusions of the Hearings Panel, issues of natural justice and fairness would arise. This would require Council to provide robust reasons for any decision not in line with the Hearing Panel's recommendations. It would also mean that Council would need to re-hear all of the submissions and evidence, which would come at a cost to the applicant.
- If Council was to re-hear the matter, the current Hearing Commissioner Policy applies. There is currently only one elected member qualified with the Making Good Decision Certification.
- There is a high risk of reputational damage as Council would not be adopting the recommendations provided by experienced, professional RMA hearings practitioners. Rejecting the recommendations from a Hearings Panel would be extremely unusual, especially as elected members have not been actively involved in the process (e.g. they have not read all submissions and evidence and have not attended the hearing).
- This option would result in significant additional costs (for the applicant, Council, and submitters), delay the process, and may result in Council not meeting its statutory obligation to make decisions on submissions within two years of notifying the private plan change.

### **Assessment of Options**

It would be problematic for Council not to accept the recommendations of the appointed Hearings Panel, as the panel were delegated the responsibility (by Council) to hear all submission and evidence.

The extent of Councils decision making is therefore limited because any departure from the Hearings Panel recommendation would require submissions to be re-heard, in order to follow due process, including providing reasons for the decision. Additionally, any possibility that the Council may wish to depart from the Hearing Panel's recommendation and/or debate its merits carries with it a degree of risk of legal challenge, either in subsequent Environment Court proceedings or a judicial review of the Council's decision on PPC81.

### **Policy and planning implications**

PPC81 is a private plan change request to the Operative Kaipara District Plan. Once approved, the provisions will therefore need to be included in the Operative District Plan and it will form a new chapter within the Operative District Plan.

### **Financial implications**

The PPC81 development will contribute to the economic and financial strength of Dargaville, through the collection of development contributions, creating additional rateable properties and the development of other physical works to be included.

As this was a Private Plan Change, the developer was obliged to fund the plan change application (as opposed to being funded by general ratepayers). However, Council is required to fund Environment Court appeal costs associated with 'defending' Council's decision.

### **Risks and mitigations**

If Council does not agree with the recommendations of the Hearings Panel, they would need to rehear all evidence and submissions already considered by the appointed Hearing Panel. This

would result in additional costs to ratepayers, potentially lead to reputational damage for Council; delay the process; and may result in council not meeting its statutory obligations to make decisions on submissions within two years of notifying PPC81. This risk is mitigated by accepting the recommendations of the Hearings Panel.

### **Impacts on Māori**

The applicant submitted a Cultural Values Assessment from Te Roroa as well as Archaeological reports with its application, which have been given regard to. The local hapu (Te Kuihi) also provided evidence at the hearing, which was considered by the hearing's commissioners in their recommendation.

### **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.

This Private Plan Change request has followed all statutory processes under the RMA (including public notification of the application and a public hearing) and there have been multiple opportunities for members of the community to become involved in the process.

### **Next steps | E whaiake nei**

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

### **Attachments | Ngā tapiritanga**

	<b>Title</b>
A	Attachment A Commissioners recommendation on Private Plan Change 81
B	Attachment B Trifecta Development Area Final Provision Chapter
C	Attachment C Trifecta Development Area Maps 10 and Map 10A