

# Appointment of Commissioners for the Hearing on Private Plan Change 82 – Moonlight Heights

Meeting: Kaipara District Council  
Date of meeting: Wednesday 31 May 2023  
Reporting officer: Taiawhio Wati - Graduate Planner  
Katherine Overwater - District Planning Team Leader

## Purpose | Ngā whāinga

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 for Moonlight Heights and submissions received on the Private Plan Change.

The purpose of this report is to:

- seek approval to delegate functions, powers, and duties to a Hearing Panel
- confirm the number of commissioners to be appointed to the Hearing Panel.

## Executive summary | Whakarāpopototanga

Private Plan Change 82 - Moonlight Heights is currently working its way through the statutory process under the Resource Management Act 1991 (RMA).

The next step in the process is to hold a hearing but before this can occur, Commissioners must be appointed for the hearing. This report recommends that three Hearings Commissioners be appointed to a Hearings Panel for the Private Plan Change and that the composition of the Hearings Panel be comprised of two 'Independent' Hearings Commissioners and one 'Internal' Commissioner.

## 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** to Council outcomes on Private Plan Change 82 (Moonlight Heights) and the submissions received; and
- b) Approves three Commissioners to be appointed to the Hearing Panel; and
- c) Approves the composition of the Hearing Panel as two 'Independent' Hearing Commissioners and one 'Internal' Commissioner; and
- d) Notes that staff will follow clause 4.3 of Council's Hearings Commissioner Policy when appointing Independent Hearings Commissioners.

## Context | Horopaki

Council is currently processing Private Plan Change 82 – Moonlight Heights Limited. Council accepted the Private Plan Change for processing on Wednesday 14 December 2022 and publicly notified the application on Tuesday 17 January 2023. The submission period was scheduled to close on Friday 17 February 2023. However, due to issues with mail delivery, the submission deadline was extended by an additional fourteen business days, until Thursday 9 March 2023. A total of 21 submissions were received. Further submissions were notified on Wednesday 26 April 2023 and closed 10 working days later, Tuesday 9 May 2023. One further submission was received. The next step in the RMA statutory process is to hold a hearing, which is being planned for early August 2023. Accordingly, Commissioners need to be appointed to hear the submissions on the application.

## Discussion | Ngā kōrerorero

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

KDC has the Commissioners Policy and a list of thirteen Commissioners accredited in terms of s39A of the RMA. The accreditation distinguishes between Commissioners that are members and those that are Chair endorsed. In accordance with 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. 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).

If the function is to 'hear and recommend', the hearings panel will only make a well formulated recommendation and ultimately Council makes the decision. However, 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. Unlike decisions made on resource consents, Private Plan Changes 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** on Private Plan Change 82 - Moonlight Heights, meaning that Council will make the final decision on the application.

## 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 on the hearing panel to ensure a decision can be made without the Chair having to use a casting vote.

According to Council's Hearing Commissioners Policy, Council decides whether there is a preference for utilising only internal commissioners, independent commissioners, or a combination of both. 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 or members only, but best practice supports using a commissioner who is Chair endorsed.

Clause 4.4 of the Hearing Commissioners Policy describes that an internal Council commissioner must be accredited in accordance with Section 39A of the RMA. Deputy Mayor Larsen is presently the only accredited Council commissioner.

## Options

Depending on the direction provided from Council to delegate functions, duties, and powers under section 34A(1) of the RMA, there are four options for Council to consider in terms of the composition of the Panel.

- **Option 1** - Appoint three independent Commissioners from the list of Commissioners to **hear and recommend** on Private Plan Change 82 – Moonlight Heights, meaning the independent commissioners would make a recommendation to Council, but Council would make the final decision.
- **Option 2** - Appoint three independent Commissioners from the list of Commissioners to **hear and decide** on Private Plan Change 82 – Moonlight Heights, meaning the independent Commissioners would make the final decision.

- **Option 3** - Appoint a Council commissioner and two independent commissioners to **hear and recommend** on Private Plan Change 82 – Moonlight Heights, meaning the panel would make a recommendation to Council, but Council would make the final decision.
- **Option 4** - Appoint a Council commissioner and two independent commissioners to **hear and decide** on Private Plan Change 82 – Moonlight Heights, meaning the panel would make the final decision.

Staff recommend that three commissioners are appointed to the Hearing Panel comprised of two independent commissioners and one Council commissioner to hear and recommend on Private Plan Change 82 for Moonlight Heights, meaning the panel would make a recommendation to Council, but Council would make the final decision.

**Option 3** is therefore the preferred option, as having the local knowledge and understanding of Council's activities and policies from a Council commissioner will be an advantage during the hearing and in the deliberations of the application.

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. The selection of Commissioners will follow alphabetically from the last Commissioner appointed to a Hearing.

### Policy and planning implications

It is noted that should Private Plan Change 82 for Moonlight Heights be approved by Council, it will be incorporated into the Operative District Plan 2013.

### Financial implications

The commissioners are contractually appointed by Kaipara District Council with set rates. The Council 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 as 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 meeting the statutory timeframes set out in Schedule 1 of the RMA for processing a Private Plan Change application.

### Impacts on Māori

There are no known impacts on Tangata Whenua / Mana Whenua. However, it is noted that Te Roroa Whatu Ora Trust have provided a Cultural Impact Assessment for the applicant as requested by Council as part of the Clause 23 of Schedule 1 of the RMA request for further information.

### Significance and engagement | Hirahira me ngā whakapāpā

The decisions 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 Council's adopted Hearings Commissioners Policy.

### Next steps | E whai ake nei

Following Council's decision, staff will work to appoint the Hearing Panel in accordance with Council's Hearing Commissioners Policy and begin planning for the hearing.

### Attachments | Ngā tapiritanga

	Title
A	Kaipara District Council's Hearing Commissioner Policy
B	Alphabetical list of commissioners