

**Before the Kaipara District Council**

**IN THE MATTER OF** the Resource Management act 1991

**AND IN THE MATTER** Of an application for private plan change 83(“PC83”) by THE  
RISE LIMITED to rezone 56.9 ha of land at Cove Road and  
Mangawhai Heads Road, from Rural Zone to Residential Zone

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**OPENING LEGAL SUBMISSIONS OF THE RISE LIMITED**

**21 March 2024**

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**Counsel instructed:**

Michael Savage

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## **INTRODUCTION**

1. These submissions are in support of Plan Change 83 (“PC83” or “the Proposal”) to the Kaipara District Plan (“the operative plan”) requested by The Rise Limited (“TRL”).
2. The property the subject of the Proposal comprises 56.9ha and is located at the intersection of Cove Road and Mangawhai Road. The detailed addresses and titles are included in the AEE.
3. The purpose of the plan changes is to rezone the location from its current Rural zone into a Residential zone with a site specific Precinct to promote a high quality urban design, protect ecological features, ensure a safe traffic environment and enhance landscape and amenity.
4. The Rise and its consultants have been engaging with Kaipara District Council (KDC) staff since late 2021 on the proposal. Additionally, consultation has been undertaken with a number of stakeholders including ongoing discussion with Mana Whenua and other landowners within the proposed plan change area. Feedback from Council and stakeholders has informed the development of the approach and provisions of the plan change.

5. The proposal is founded on a rigorous expert assessment. The evidence demonstrates that PC-83 provides an optimal planning framework for the land, being an area identified by Council as one of two areas for the expansion of the Mangawhai urban area.
6. It is submitted that the Panel can justifiably conclude that PC-83 satisfies the relevant provisions of the Resource Management Act 1991 (“RMA”) and that it should be approved. The Section 42A report concurs with this assessment, and there is a very high degree of agreement between TRL’s experts and KDC advisors. I address the one key area of difference concerning provision for medium density housing typologies later in this submission.
7. Having undertaken a detailed and rigorous peer review the author of the s.42A report recommends *“that the plan change be accepted, subject to the recommended amendments to the concept plan and ODP provisions. It is accordingly recommended that those submissions in support of the plan change be accepted, and those submissions opposing the plan change be rejected”*<sup>1</sup>.
8. Mr Cleese has also produced rebuttal evidence in which he considers the additional evidence from advisors<sup>2</sup> about stormwater, ecology (cats and dogs) and water supply. He comments also on advice received from Mr van der Westhuizen on transport.
9. In summary, and consistent with that further advice, Mr. Cleese confirms his view that the approach to stormwater management is appropriate. Control of cats/dogs is appropriately handled at subdivision consent stage (ie without a ban on cats and dogs in the Structure Plan). The existing ODP transport rule and associated matters of discretion are generally adequate for enabling assessment of the safety and efficiency of new vehicle access points and that the Cove Road precinct access formation rule has a restricted discretionary activity status, thereby enabling applications to be declined if safe access cannot be provided. And in response to HNZPT, the ODP earthworks rules enable an assessment of archaeological values to an

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<sup>1</sup> S42A report para270

<sup>2</sup> Melissa Parlane on water supply; Stephen Brown on ecology and Carey Senior on stormwater

appropriate extent. He also confirms his s.42A report in relation claimed reverse sensitivity effects as between pastoral farming and urban areas.

### **The Rise Limited evidence**

10. Witnesses for The Rise have prepared a comprehensive suite of pre-circulated evidence and provided their responses to the s.42A report, and commented on submissions. That evidence fully describes PC-83 and addresses all relevant issues under the RMA. The evidence is the culmination of extensive work and detailed assessment by a range of highly experienced independent experts, who collectively possess a wealth of practical experience in the design and assessment of plan changes.
11. Eight witnesses have prepared evidence on behalf of The Rise:
  - (a) Mark Rowbotham - corporate evidence
  - (b) Wayne Bredemeijer – urban design evidence
  - (c) Steven Rankin – Engineering evidence (3 waters and flooding)
  - (d) Peter Kelly – Transport evidence
  - (e) Simon Cocker – Landscape evidence
  - (f) Madara Vilde – Ecological evidence
  - (g) Tim Heath – Economic evidence

### **The Plan change area and surrounding locality**

13. The plan change area comprises a 56.9 hectares of land north of Mangawhai Heads Road and west of Cove Rd. The Rise is the largest individual landowner within the plan change area and owns the 11.27 hectare parcel of land on the northernmost portion of the plan change area.
14. Full descriptions of the site locality are contained in the AEE and planning evidence and the s.4A Report. In overview, the site is gently rolling farmland with a varied topography comprising a range of valleys extending to the flatter land adjacent to Mangawhai Heads Road.

15. At present the plan change area is primarily dominated by exotic pasture with an area of regenerating Bush extending along the northern boundary, protected by a conservation covenant. There are two streams within the plan change area that exit the site via culvert under Mangawhai Heads Road. Isolated areas of wetland exist in the location of those streams. The stream areas have been identified as being of moderate ecological value in the context of the site location on the residential fringes of Mangawhai.
16. The north western corner of the site has been developed as lifestyle blocks and the conditions of that subdivision consent require planted buffer strips between several of the lots.
17. The land to the north and west of the site is zoned Rural, comprising rural-residential development to the north and larger lot residential development to the west, essentially providing transitions to the rural land beyond.
18. The land to the south and east of the site is zoned Residential, with the southern area comprising predominantly residential development.

### **The Plan Change**

19. PPC83 seeks to change the rural zone to the residential zone of the ODP, in combination with a site specific precinct (the Cove Road North Precinct) comprised of a suite of objectives policies and rules to guide development. The purpose of having a bespoke suite of provisions is to protect the ecological features while promoting a high quality urban design appropriate to this particular land. The provisions include rules to ensure sufficient infrastructure and servicing is available, to provide for a safe transport network for cars bicycles and pedestrians, and to enhance the landscape and amenity of the site.
20. The plan change has been designed to fit comfortably within the ODP, recognising that it will also be included in a future PDP.

## Key Benefits of PC83

21. The key positive features enabled by the proposal are encapsulated in the Objective for the Precinct:  
*“Residential living opportunities and housing choice is enabled in the Cove Road North Precinct, whilst landscape, ecological, infrastructure, transport and character and amenity effects are managed”*
22. PPC83 seeks to implement Kaipara District Spatial Plan, providing residential capacity within a location identified for residential growth in the Mangawhai Spatial Plan.
23. Kaipara District Spatial Plan – Ngā Wawata 2050 – Our Aspirations The Kaipara District Spatial Plan sets a spatial plan framework for growth of Kaipara and identifies key urban areas, including Mangawhai.
24. In turn, the Mangawhai Spatial Plan provides a high-level ‘spatial picture’ of how Mangawhai could grow over the next 20-25 years, address the community’s social, economic and environmental needs, and respond to its local context. It includes an overall plan of the growth for Mangawhai and identifies the plan change area as an Urban Expansion Area with a potential biodiversity connection.
25. PPC83 in seeking to rezone the area from Rural to Residential zoning is consistent with this anticipated growth of Mangawhai in the Spatial Plan.
26. The Spatial Plan has been provided for within the Infrastructure Strategy for Mangawhai. PPC83 is therefore also consistent with the expected growth and strategic direction anticipated and provided for within the Infrastructure Strategy.

## Modifications to PPC83 post notification

27. Following ongoing discussions with Council advisers and in response to submissions, various modifications have been made to the notified plan change on the advice of expert witnesses.

28. A key modification has been the decision to increase the minimum site size in the northern area of the precinct to 1,000m<sup>2</sup>. This is in recognition of its north facing topography and location closer to the rural-residential development further north. The northern sub-precinct land is separated from the broadly south facing land in the balance of the precinct by the ridge running through the site. In conjunction with this increase in lot size for the northern sub-precinct, there is alignment in that sub-precinct with the ODP provisions for impermeable surface, building coverage, and private open space provisions.
29. An increase in the maximum height for dwellings within this northern sub-precinct is also proposed to allow for the construction of dwellings while reducing the extent of earthworks that otherwise may be needed in order to build a house. The landscape benefits are referred to by Mr. Crocker and the maximum height is proposed to be increased from six metres to seven metres, with an allowance for 50% of the vertical height of the roof up to 8 metres.
30. In the balance of the precinct outside of the northern sub-precinct the minimum lot size for subdivision purposes is increased from 400m<sup>2</sup> to 600m<sup>2</sup>.
31. Other alterations include an increase in the minimum building set back along Mangawhai Heads Road to 5m; an increase of the minimum set-back of garages to 5m, and the introduction of an at least two metre wide landscape strip along the boundary of the site with the building site on lot 42 of the Bream Tail Farm. There are updates to the Precinct Plan to ensure consistency with the traffic advice.
32. The amendments are referred to in the applicants planning evidence.

### **Statutory and legal context**

33. Without setting out the statutory framework in detail, the key RMA provisions applying to the Panel's consideration of PPC 83 are sections 72-76 RMA. The

approach to the assessment of a proposed plan change is set out in *Long Bay*<sup>3</sup> and has since been updated by the Environment Court.<sup>4</sup>

34. It is submitted that the Panel can be satisfied that PPC 83 is in accordance with the approach formulated in *Long Bay*, and in particular:
- (a) Is in accordance with;
    - i. the Council's functions set out in section 31 of the RMA;
    - ii. the purpose and principles in Part 2 of the RMA;
    - iii. the Council's obligations under section 32 of the RMA.
  - (b) Gives effect to (and is consistent with):
    - i. the NZCPS;
    - ii. all relevant national policy statements;
    - iii. the Northland regional policy statement.
  - (c) is not inconsistent with any Northland regional plans for any matters specified in s.30(1) of the RMA.

## **Part 2 RMA**

35. It is submitted that PPC 83 is the most appropriate framework for giving effect to the purpose of the Act and should be approved.
36. The application material, the applicant's expert evidence, and (with the exception in relation to multi-unit or medium density development) the section 42A report, provide detailed analysis demonstrating that the proposal will promote the sustainable management purpose of the RMA and is entirely consistent with all Part 2 matters. PPC 83 will enable both present and future communities to provide for their social, economic and cultural well-being, including through the efficient use of resources.

## **Applicable planning framework**

37. The relevant planning instruments set out comprehensively in the application, expert evidence and in the Section 42A report. The applicant's and the Council's advisers agree that the proposal gives effect to, and is consistent with the applicable higher order documents.

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<sup>3</sup> Long Bay-Okura Great Park Society v North Shore City Council EnvC A0789/08

<sup>4</sup> colonial vineyards limited v Marlborough District Council [2014] NZEnC 55, para 17



38. I do not propose to repeat that work, beyond highlighting certain matters below.
39. With regard to the NPS:UD, regardless as to whether Mangawhai (or anywhere in the Kaipara district) meets the definition of ‘Urban Development’, it is clearly desirable that a proposed plan change delivers a well-functioning urban environment and aligns with the overall direction set out in the NPS:UD. In this regard, the evidence of Mr. Bredemeijer on urban design and Mr. Osborne on economics, demonstrates that PPC 83 will have that result.
40. Planning advisors for the applicant and the Council have concluded that the plan change gives effect to the NRPS. That document refers to flood hazard maps which are out of date. The applicant’s engineer is able to produce current hazard maps for the Panel’s information if needed.

**Key issues/assessment of effects**

41. The proposal has been developed and designed in a manner that recognises the particular features of this site, both constraints and opportunities.
42. Effects associated with PPC 83 have been identified to the extent necessary at a rezoning and plan change level. Any future subdivision or land use proposal will require site specific assessments in accordance with the settled provisions of the Precinct Plan. All relevant considerations (ecological stormwater water supply etc) have been included in the Cove Road North Precinct Plan, enabling not only an assessment of potential adverse effects, but to promote positive outcomes in terms of ecology, amenity and social benefits.
43. It is submitted that the environmental effects are appropriately managed and that the plan change has the potential to result in the overall enhancements and long term protection of ecological values in accordance with the directions in both the NPS:FM and NPS:IB.
44. The inclusion in the plan change of a consent pathway for medium density housing is an important component. TRL’s director, Mr Mark Rowbottom, is a

longstanding local resident with a substantial proven track record of successful developments appropriate to Mangawhai. He explains his involvement in Mangawhai development and his vision for this particular land, and the importance of enabling development for medium density housing. Commissioners will have noted that provision is included also for retirement villages.

45. The reporting planner opposes provision for medium density housing. There appear to be two or three reasons given for his view, the first being that a 600m<sup>2</sup> minimum lot size for development is consistent with the site sizes for the majority of existing housing in the Mangawhai urban area and the second being that the site is too far from the existing urban centres to consider a more intensive form of housing. The third reason is the availability of a water supply.
46. Mr Rowbotham and Mr Brademeyer disagree with this reasoning. Putting it bluntly, a cookie-cutter approach to a minimum lot size does not equate to a well-designed urban environment and in fact excludes consideration of the needs of many residents (often older, although not exclusively) who do not want a larger site and/or others who seek a more affordable housing option. It is inconsistent also with a retirement style development for what might be termed “the active elderly”, seeking a more compact well designed housing arrangement, within the wider community.
47. A mixed-use or medium density development is based on a comprehensive design approach in which all effects can be considered concurrently, leading to more positive design outcomes.
48. As to distance from urban Mangawhai, it is not that far at all. People in Mangawhai cycle and drive to facilities now. Excluding a consent track for a medium density component for this reason is tantamount to saying that it will never happen.
49. In relation to water supply, that is a matter that must be addressed at resource consent stage. If a supply cannot be demonstrated then consent would not be forthcoming. To preclude the possibility of appropriate engineered solutions at plan change stage on the basis of concerns today

around shared supply, or adequacy of supply, is not a sound approach. It precludes an applicant designing appropriate water supply arrangements at application stage for Council's consideration at the appropriate time.

50. It is noted that the reporting planner does agree that if Commissioners are minded to retain a consent pathway for medium density, the provisions within the PPC83 are acceptable and provide the Council with the appropriate discretions in assessing water supply and other relevant matters at consent stage.
51. I touch briefly on the at various expert assessments in support of the plan change, particularly elements of their evidence relevant to submitter points. I do not therefore comment on individual named submitters.
52. First, there was the question of need. In short, the economic evidence of Mr. Heath refers to the importance of being "development ready" to accommodate future growth. PPC 83 will provide development capacity that will add to a competitive land market while not resulting in an inefficient dispersal of activity through the area.
53. In order to grow, Mangawhai must provide increased infrastructure capacity. The Spatial Plan 2020 recognises this and has focused on the two urban expansion zones, including the subject land. The addition of the PPC 83 land capacity within the market is likely to provide a greater safeguard for growth as well as improving the counterfactual affordability.
54. Growth pressures on infrastructure are an issue faced by most councils around New Zealand. However, the need for infrastructure should not form the basis for not providing for growth and it's significant economic benefits.
55. Mr Bredemeijer addresses also the urbanisation of the site which in his view has been comprehensively considered during the structure plan production process. He strongly supports this analysis underlying the structure plan and in inclusion of the site is suitable and for several reasons including:
  - (a) its contribution to more housing choice;
  - (b) its contribution to sustainability through more efficient use of the land and infrastructure;

- (c) is the resulting protection of rural character of land elsewhere that is less suitable for urban development;
  - (d) the PPC 83 provisions achieve an optimum balance between providing for residential growth and managing impacts on the character of the surrounding area.
56. Secondly, in relation to transport matters here is substantial agreement between a Mr Kelly and Mr van der Westhuizen. Matters of timing, for example in relation to a shared path on the frontages of the plan change area and some intersection upgrades, have been discussed. Mr. Kelly considers, correctly in my submission, that appropriate responses should be developed in conjunction with applications for consent within the plan change area, and not in advance of any dwelling at all establishing.
57. It is noted that Mr Clease agrees (para 125) in relation to the provision of transport infrastructure and also consideration of speed limits (para 126). The precinct provisions allow Council sufficient recourse in the future to require upgrades to be provided as part of subsequent subdivision applications. As such a more considered design response will be able to be crafted as greater details of the proposal and site constraints will then be known.<sup>5</sup>
58. The expectation is that as part of PPC83 being granted, a speed review process should be started by Council along Cove Road and Mangawhai Heads Road due to the expectation of further development and urbanisation in this area.
59. In overview, the precinct plan provisions as proposed, are appropriate to enable the safe efficient movement of vehicles, pedestrians and cyclists from the land.
60. In relation to landscape effects, reference has been made to the changes proposed by the applicant for the northern sub-precinct, the addition of a landscape strip in the vicinity of the house site on lot 42, Bream Tail Farm

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<sup>5</sup> RDA rule 13.13X2iv, Rule 13.4.2 - ensure that suitable supporting infrastructure will be considered and implemented as appropriate.

(included at R13.13X.2(xi)) and to the Cove Road frontage setbacks to retain an open spacious character.

## **Conclusion**

61. It is submitted that there are no impediments to the plan change and if approved it will have significant benefits.
62. In terms of s32 of the RMA:
  - (a) The objectives of PPC83 are the “most appropriate” way to achieve the purpose of RMA, and give effect to the higher order planning instruments.
  - (b) The revised rules proposed are the most effective and efficient way of achieving the objectives and policies of the plan change and those of the ODP.
63. PPC83 will promote the sustainable management purpose of the RMA. Any potential adverse effects can be appropriately avoided, remedied or mitigated through the provisions proposed. The proposed development of the site is an efficient use of the natural and physical resource, and can be achieved in a way that maintains or enhances the quality of the environment and amenity values.
64. The change accords with the Councils functions under section 31 of the RMA. In particular urbanisation of the site is provided for in the growth strategy and the proposed provisions are entirely appropriate for the site. Those provisions strike a balance between provision of urban living opportunities, protection of the internal ecological elements of the site, and responding to the surrounding environment.

Dated this 22nd day of March 2024



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M Savage

Counsel for The Rise Limited