

Before the Kaipara District Council

In the Matter of the Resource Management Act 1991 (“**RMA**”)

And

In the Matter of Proposed Plan Change 83 (“**PC83**”) by THE RISE LIMITED

Evidence of Thomas Keogh on behalf of:

R & R Davies (“RRD”) (#56)

Dated 08 March 2024

Reyburn and Bryant 1999 Ltd
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1. Introduction

- 1.1 My name is Thomas Keogh. I am a planning consultant employed by Reyburn and Bryant in Whangarei. I hold a Bachelor of Arts (Geography) and a Master of Urban Planning from Auckland University. I am an intermediate member of the New Zealand Planning Institute.
- 1.2 I have 10 years of experience as a planning consultant in the Auckland and Northland regions. My role has typically been to lead project teams through various resource consent processes and to provide environmental and strategic planning advice for these projects.
- 1.3 Most of my work has been in the Northland Region, and so I am familiar with the history, content, and structure of the Kaipara District Plan (“**KDP**”) and the higher-level planning documents.
- 1.4 I prepared the submission to Plan Change 83 (“**PC83**”) filed on behalf of R & R Davies (“**RRD**”).
- 1.5 I have visited the site and general PC83 area on a number of occasions, mostly recently in January 2024.

2. Code of conduct

- 2.1 While this is a Council hearing, I record that I have read and agree to abide by the Environment Court’s Code of Conduct for Expert Witnesses (2023). This evidence is within my area of expertise. I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed.

3. Scope of evidence

- 3.1 This evidence addresses the following matters:
 - a) A description of the land owned by RRD.
 - b) A summary of the original submission and relief sought;
 - c) Response to the s42A report and applicants planning evidence;
 - d) Conclusions/recommendations.

4. A description of the land owned by RRD

General description

- 4.1 RRD own four titles that are located on the northern side of Mangawhai Heads Road (RT 911113 – 911116). The titles were created as part of a recently completed subdivision and range in size from 1,249m² to 4,732m².
- 4.2 Two of the titles owned by RRD accommodate existing commercial land use activities, specifically:
 - (a) The Orang-otang Tree Trimmers business is located on RT 911113; and
 - (b) Te Whatu Ora – Te Tai Tokerau occupy the building located on RT 911115.
- 4.3 The Kaipara District Council (“**KDC**”) has confirmed that these activities have existing use rights. The other two titles do not have established land use activities.
- 4.4 RRD intends to establish additional commercial activities on the two vacant titles. To that end, I am currently in the process of preparing a resource consent application to establish and operate a commercial activity on RT 911116. The application will be lodged with KDC prior to the hearing date for PC83.
- 4.5 Each of the RRD titles are accessed from the northern side of Mangawhai Heads Road via a single shared vehicle crossing and associated right of way.
- 4.6 There is an unnamed stream that traverses through the centre of the RRD titles from east to west. The stream conveys stormwater from the upstream catchment to the upper reaches of the Mangawhai Harbour on the opposite side of Mangawhai Heads Road. There are stormwater easements in gross in favour of KDC registered over the stream where it is within the boundaries of the RRD titles.

Zoning – KDP

- 4.7 The four titles owned by RRD are located in the ‘Rural Zone’, are subject to the Mangawhai Harbour overlay, and form part of the Greater Mangawhai Growth Area identified under the KDP.

Zoning – Exposure Draft Kaipara District Plan

- 4.8 The four titles owned by RRD are included in the Low-Density Residential Zone under

the Exposure Draft Kaipara District Plan. This plan is yet to be publicly notified by the KDC and has no statutory weight.

- 4.9 I am aware that RRD provided feedback on the Exposure Draft Kaipara District Plan. In summary, RRD sought that the four titles be rezoned Light Industrial Zone or that a mixed Light Industrial/Commercial Precinct apply.

Proposed zoning – PC83

- 4.10 The four titles owned by RRD are located within and near the south-eastern corner of the PC83 area. The titles are proposed to be re-zoned Residential and will be subject to the 'Cove Road North Precinct' under PC83.

5. Summary of the submission and relief sought

- 5.1 The RRD submission opposed PC83 in part. The key aspect of the RRD opposition was the zoning of the four RRD titles. RRD requested amendments to rules 13.10.12 'Permeable Surfaces' and 13.14.5 'Stormwater Disposal' as proposed under PC83.

- 5.2 I have reviewed the additional information provided on stormwater management and the associated rules since the submission was made. In my view the RRD concerns have been sufficiently addressed.

- 5.3 The remaining relief sought and the associated reasons with respect to the zoning of the RRD titles are summarised as follows:

Rezoning the RRD titles Business: Industrial or Commercial

- 5.4 The primary relief sought in the RRD submission is that the four RRD titles are rezoned Business: Industrial or Commercial. These are the two existing business zones in the KDP. For clarity, in my opinion the Business: Commercial zone is the most appropriate zone for the RRD titles.

- 5.5 While I can understand why the applicant has sought to include property that they do not own in the Cove Road North Precinct, the proposed Residential Zone and Cove Road North Precinct do not take into account (and are incompatible with) the existing activities (that have existing use rights) on RT 911113 and RT 911115, with these activities forming part of the existing environment. Furthermore, the zoning does not provide for or enable future commercial uses on the land.

Rezoning the RRD land in accordance with PC83 subject to amendments to bulk and location rules

- 5.6 As an alternative to the primary relief, the RRD submission sought that the RRD land be rezoned in accordance with PC83 with amendments to the following rules:
- a. Rule 13.10.1a 'Excavation and Fill': That the permitted allowances are increased to align with Rule 12.10.1a (Rural Zone earthworks rule).
 - b. Rule 13.10.7a 'Fence and Landscaping': That the proposed height restriction for fences adjacent to roads does not apply.
 - c. Rule 13.10.18 'Traffic Intensity': That the permitted traffic movements are increased to align with Rule 12.10.28 (Rural Zone traffic intensity rule).
 - d. Rule 13.10.24 'Signage (including signs on and adjacent to roads and buildings)': That the permitted signage limits are increased to align with Rule 12.10.24 (Rural Zone signage rule).
- 5.7 These amendments were requested because there are rules in the Residential Zone chapter and additional precinct specific rules proposed by PC83 that are considerably more restrictive than the corresponding rules that apply within the Rural Zone (status quo). Some of those rules are at odds with the existing commercial activities located on or planned for the RRD land. This alternative relief would ensure that, if the RRD is rezoned in accordance with PC83, the associated rules provide for the existing/planned commercial and/or industrial activities in a manner that is consistent with the existing environment. This would be achieved by creating a Sub-Precinct Area B and applying it to the RRD land.

Alternative relief with similar effect

- 5.8 The RRD submission also sought alternative relief with similar effect. This alternative relief could include the RRD land retaining its original 'Rural' zoning (the status quo).
- 5.9 This alternative relief would provide for the existing industrial/commercial activities located on or planned for the RRD land.

6. Response to s42A report and applicants planning evidence

S42A report

- 6.1 Paragraphs 30 – 33, 159, and 206 of the s42A report are relevant to the Business: Commercial zoning sought as part of the RRD submission. The s42A report does not address any of the alternative relief sought.
- 6.2 Paragraphs 30 – 33 of the s42A report question whether the requested Business: Commercial zone is within the scope of the plan change. The applicant has not sought legal advice on this matter and will rely on the legal submissions of Mr Bangma on behalf of KDC. If it is determined that this relief is not within scope of PC83, then the alternative relief detailed in the RRD submission remains relevant.
- 6.3 Paragraph 159 of the s42A report discusses the merits of the requested business zoning, concluding that there is merit in including a small business zone at the southern end of the plan change to provide the opportunity for local convenience retail activities to establish over time and to provide more certainty for the existing non-residential operations. I agree with this conclusion and note that it reflects the primary reasons for and relief sought in the RRD submission.
- 6.4 For clarity, paragraph 159 of the s42A report suggests that there is a single 'Business: Industrial or Commercial' zone in the KDP. I do not agree with this statement. While the rules for the Business Industrial and Business Commercial zones are both included in Chapter 14 of the KDP, they are in fact two separate zones. This is shown on the KDP planning maps, with the Business: Industrial zone coloured purple and the Business: Commercial zone coloured pink. As per point 5.2 of this evidence, it is the Business: Commercial zone that is the most appropriate for the RRD land.
- 6.5 Overall, the s42A report supports the plan change subject to a number of amendments. Those amendments are summarised in point 206 of the s42A report and include the rezoning of the RRD titles to a business zone, subject to there being scope.

Applicants planning evidence

- 6.6 Paragraphs 9.50 and 9.51 of the applicants planning evidence refer to the Business: Commercial zoning sought as part of the RRD submission. The planning evidence does not address any of the alternative relief sought.
- 6.7 Paragraph 9.50 acknowledges the conclusions of the s42A report with respect to the RRD submission but notes that no information has been provided as to how this zoning would be provided or whether bespoke provisions should apply, and that no s32AA

evaluation has been undertaken. I address these matters as follows:

- a. With respect to how the zoning would be provided, in my view this would require changes to the PC83 concept and precinct plan to show the RRD titles as a business zone. This would also need to be reflected in any subsequent changes to the KDP planning maps.
- b. The primary relief sought by RRD is to zone the RRD land Commercial and no bespoke provisions apply. As alluded to in point 159 of the KDC s42A report, the operative rules in the Business: Commercial chapter are sufficient to control the type of activity that could establish and the compatibility of that activity with residential neighbours. There are rules that control height and height in relation to boundary, that require that outdoor areas are screened, that impose noise limits, that specify separation distances for potentially offensive activities, that control lighting and glare, and that require the screening of parking areas as they relate to adjoining residential zones and/or activities. Given the range of existing rules, I do not consider that any further bespoke provisions are necessary.
- c. I have undertaken a s32 analysis for the three outcomes possible under the RRD submission and the outcome sought by PC83 as they relate to the RRD land. This analysis is specific to the four RRD titles. I do not contest or oppose the applicants s32 analysis as it relates to the rest of the PC83 area. The analysis identifies the costs and benefits associated with each of the options and provides conclusions in terms of the appropriateness of the options to give effect to the purpose of RMA, and the efficiency and effectiveness of the options to achieve the purpose and objectives of PC83. A copy of the analysis is included as **Attachment 1**. The conclusions of the s32 analysis form the basis for the conclusion of this evidence and are summarised in section 7.

7. Conclusion

7.1 In accordance with the s32 analysis (**Attachment 1**):

- a. The most appropriate zone (in this case 'method') for the RRD land to achieve the purpose of the Act is the 'Commercial Zone'.
- b. If the land is not zoned 'Commercial Zone', the next most appropriate option would be the inclusion of provisions in the 'Cove Road North Precinct' to accommodate/facilitate existing and future commercial uses on the land.

- c. If the two options above are not adopted, then the RRD land should remain 'Rural' pending further consideration under the impending District Plan review.
- d. Rezoning the RRD land 'Residential' as proposed under PC83 does not achieve the purpose of the RMA.
- e. If the RRD land is to be included in the precinct, then a new objective and provisions should be added. Potential wording is detailed in the s32 analysis.



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Thomas Keogh (Planner)

08 March 2024

ATTACHMENT 1

Section 32 analysis

ATTACHMENT 1: SECTION 32 EVALUATION

1. INTRODUCTION

- 1.1 This report presents an evaluation undertaken on behalf of R & R Davies in accordance with Section 32 of the Resource Management Act (the "RMA") in relation to Proposed Plan Change 83 "The Rise" (PC83). The purpose of this report is to assist the Hearings Panel with their deliberations.
- 1.2. The report examines the extent to which changes sought in the R & R Davies submission are the most appropriate way to promote sustainable management whilst still achieving the purpose of PC83.

2. SECTION 32 REQUIREMENTS

- 2.1 Section 32 of the RMA requires a council or proponent of a private plan change to evaluate the purpose of the proposal along with the proposed policies and methods, including rules. The evaluation must:
 - Examine whether the objectives of the plan change are the most appropriate way to achieve the purpose of the RMA;¹
 - Examine whether the proposed approach is the most appropriate way of achieving the objective, including identifying other reasonably practicable options;²
 - Examine the efficiency and effectiveness of the provisions (including identifying and assessing the benefits and costs of new provisions);³
 - Assess the risks of acting or not acting if there is uncertain or insufficient information.⁴

¹ s32(1)(a)

² s32(1)(b)(i)

³ s32(1)(b)(ii) and s32(2)

⁴ s32(2)(c)

3. OBJECTIVES OF THE PLAN CHANGE

3.1 The stated purpose of the plan change is:

To deliver additional land for residential use with a supporting network of connections and management of landscape, ecological, infrastructure transport, and character and amenity effects are managed.

3.2 The objective of the plan change (PRECX-01) is:

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.

4. APPROPRIATENESS OF THE OBJECTIVES OF PC83

4.1 Section 32(1)(a) requires an examination of the extent to which the objectives of the proposal being evaluated (identified in Section 3 above) are the most appropriate way to achieve the purpose of the RMA.

4.2 While the stated purpose of PC83 and the Cove Road North Precinct objective PRECX-01 might be appropriate for the majority of the land in the proposed Cove Road North Precinct, they are not appropriate for the RRD land. This is because:

- (1) Rezoning the land for residential purposes is inconsistent with existing and planned commercial uses of the RRD land.
- (2) The residential zoning does not provide for the social and economic well-being of the Davies, and it is inconsistent with their existing use and future aspirations for the land.
- (3) Use of the Davies land for residential purposes is not needed to provide for the reasonably foreseeable residential needs of the Mangawhai and wider Kaipara community.
- (4) Facilitating residential development in close proximity to existing commercial uses on the Davies land without appropriate provisions to manage reverse sensitivity and to otherwise avoid compromising the existing and future use of the Davies land

for commercial and industrial activities will result in adverse effects on the environment.

4.3 Alternative provisions (including alternative zones) are examined in Section 5 below.

5. APPROPRIATENESS OF PROVISIONS TO ACHIEVE THE OBJECTIVE

5.1 Section 32(1)(b) requires an examination of whether the provisions⁵ in the proposal are the most appropriate way to achieve the objectives by –

- (i) Identifying other reasonably practicable options for achieving the objectives;
- (ii) Assessing the efficiency and effectiveness of the provisions in achieving the objectives;

Other reasonably practicable options (Section 32(1)(b)(i))

5.2 In addition to the proposed PC83 provisions (Option 1), other reasonably practicable options for the R & R Davies land are as follows:

- Option 2: Rezone the Davies land Commercial.
- Option 3: Amend the precinct provisions to provide for commercial/industrial uses on the R & R Davies land and related exemptions.
- Option 4: Retain the existing Rural zoning.

Efficiency and effectiveness (Section 32(1)(b)(ii))

5.3 The efficiency of the provisions, which in this case includes the objective PRECX-O1 and the Residential zone/precinct provisions are considered in **Appendix 1**.

5.4 The PC83 provisions are effective in achieving the purpose and stated objective of PC83. However, the effectiveness of the provisions is not compromised by the alternative zones and/or provisions sought for the RRD land. Put another way, rezoning

⁵ **Provisions** means, –

(a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:

(b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.

the RRD land commercial, or incorporating specific provisions within the precinct to facilitate existing and future commercial uses on the RRD land, does not compromise the ability to achieve the stated purpose and objective of PC83 on the remainder of the land.

Risk of acting or not acting Section 32(2)(c)

5.4 There is no uncertain or insufficient information about the subject matter of the provisions. Therefore, no risk assessment is required under s32(2)(c).

6. CONCLUSIONS/RECOMMENDATIONS

6.1 The most appropriate zone (in this case 'method') for the RRD land to achieve the purpose of the RMA is the 'Commercial Zone'.

6.2 If the land is not zoned 'Commercial Zone', the next most appropriate option would be the inclusion of provisions in the 'Cove Road North Precinct' to accommodate/facilitate existing and future commercial uses on the land.

6.3 If the two options above are not adopted, then the RRD land should remain 'Rural' pending further consideration under the impending District Plan review.

6.4 Rezoning the RRD land 'Residential' as proposed under PC83 does not achieve the purpose of the RMA.

6.5 If the RRD land is to be included in the precinct, then a new Objective PREX-O2 should be added generally as follows:

Existing and future commercial activities in Sub-Precinct Area B is provided for and enabled, whilst managing reverse sensitivity effects.

6.6 Proposed provisions for inclusion in Sub-Precinct Area B are as follows. A track-changed version of the PC83 provisions can be provided as required:

- Rule 13.10.1a 'Excavation and Fill' – add another layer that is specific to Sub-Precinct Area B and that aligns with the permitted allowance under the operative Rural Zone earthworks rule.

- Rule 13.10.7a 'Fencing and Landscaping' – exclude Sub-Precinct Area B from this rule.
- Rule 13.10.18 'Traffic Intensity' – add another layer that is specific to Sub-Precinct Area B and that aligns with the permitted allowance under the operative Rural Zone traffic intensity rule.
- Rule 13.10.18 'Signage (including signs on and adjacent to roads and buildings)' – add another layer that is specific to Sub-Precinct Area B and that aligns with the permitted allowance under the operative Rural Zone signage rule.

Appendix 1: Efficiency assessment (Section 32(1)(b)(ii)) in the context of the RRD land

OPTION	BENEFITS	COSTS
Environmental		
1. Residential zone in accordance with PC83	<ul style="list-style-type: none"> ▪ No benefits to the RRD land. 	<ul style="list-style-type: none"> ▪ Will restrict the use of the RRD land for commercial purposes. ▪ Will increase the potential for adverse reverse sensitivity effects by bringing more intensive residential development closer to existing and future commercial uses on the RRD land. ▪ Will create uncertainty in terms of the intended amenity outcomes for the zone and the community's expectations for existing and future use of the RRD land.
2. Rezone the RRD land Commercial.	<ul style="list-style-type: none"> ▪ Will not impact the zoning or environmental outcomes sought for the rest of the PC83 area. ▪ Will provide certainty in terms of the intended amenity outcomes and the community's expectations for existing and future use of the RRD titles. ▪ Chapter 14 includes provisions that would suitably manage the interface between the business and residential zones (reverse sensitivity). 	<ul style="list-style-type: none"> ▪ No environmental costs to the RRD or wider PC83 land.
3. Amend the precinct provisions to provide for commercial/industrial uses on the RRD land and related exemptions.	<ul style="list-style-type: none"> ▪ Additional provisions could be added to manage reverse sensitivity. ▪ Will provide some certainty in terms of the intended amenity outcomes and the community's expectations for existing and future use of the RRD titles. 	<ul style="list-style-type: none"> ▪ No environmental costs to the RRD or wider PC83 land.
4. Retain the existing Rural zoning (status quo)	<ul style="list-style-type: none"> ▪ No environmental benefits to the RRD or wider PC83 land. 	<ul style="list-style-type: none"> ▪ No environmental costs to the RRD or wider PC83 land.
Economic		
1. Residential zone in accordance with PC83	<ul style="list-style-type: none"> ▪ No economic benefits to the RRD or wider PC83 land. 	<ul style="list-style-type: none"> ▪ While there is some provision for non-residential activities in the Residential Zone, the more restrictive bulk and location requirements would increase the likelihood that RRD would require a resource consent to establish such activities. The cost of a non-notified land use consent can vary between \$10,000 and \$20,000 + GST depending on the range of technical input that is required. Those costs can easily double if the application is notified. The reduced certainty that a Residential Zone would create in terms of the intended use of the RRD titles would increase the likelihood of notification.
2. Rezone the RRD land Commercial.	<ul style="list-style-type: none"> ▪ Potential rate increase (economic benefit to community). ▪ Will avoid cost of resource consents for future activities (economic benefit to RRD). ▪ Will provide RRD with a degree of certainty, allowing them to provide for their economic well-being. ▪ Increased employment opportunities would also allow the community to provide for their economic well-being. 	<ul style="list-style-type: none"> ▪ Potential rate increase (economic cost to RRD).

3. Amend the precinct provisions to provide for commercial/industrial uses on the R & R Davies land and related exemptions.	<ul style="list-style-type: none"> ▪ Will avoid cost of resource consents for future activities (economic benefit to RRD). ▪ Potential rate increase (economic benefit to community). ▪ Will provide RRD with a degree of certainty, allowing them to provide for their economic well-being. ▪ Increased employment opportunities would also allow the community to provide for their economic well-being. 	<ul style="list-style-type: none"> ▪ Potential rate increase (economic cost to RRD). ▪ The underlying residential zone could change through the impending District Plan review process, creating uncertainty in respect to zoning expectations and possible future resource consent costs.
4. Retain the existing Rural zoning.	<ul style="list-style-type: none"> ▪ No economic benefits have been identified with respect to this option. 	<ul style="list-style-type: none"> ▪ Retaining the rural zoning may trigger the need for resource consents for commercial uses in the future (relative to options 2 and 3).
Social		
1. Residential zone in accordance with PC83	<ul style="list-style-type: none"> ▪ Some social benefits for future residents may accrue if commercial uses are forced off the RRD land for reverse sensitivity reasons. 	<ul style="list-style-type: none"> ▪ May create uncertainty for the community in terms of the intended environmental outcomes for the RRD land, including uncertainty in respect to existing use rights.
2. Rezone the RRD land Commercial.	<ul style="list-style-type: none"> ▪ Will provide the community with more certainty in terms of the intended environmental outcomes for the RRD land. ▪ Will facilitate employment opportunities in proximity to residential land (improving social wellbeing). 	<ul style="list-style-type: none"> ▪ No social costs have been identified with respect to this option.
3. Amend the precinct provisions to provide for commercial/industrial uses on the R & R Davies land and related exemptions.	<ul style="list-style-type: none"> ▪ Will provide the community with more certainty in terms of the intended environmental outcomes for the RRD land. ▪ Will facilitate employment opportunities in proximity to residential land (improving social wellbeing). 	<ul style="list-style-type: none"> ▪ No social costs have been identified with respect to this option.
4. Retain the existing Rural zoning.	<ul style="list-style-type: none"> ▪ No social benefits (status quo). 	<ul style="list-style-type: none"> ▪ No social costs (status quo).
Cultural		
	For the purpose of this assessment, it has been assumed that all options have the same or similar cultural effects.	