

BEFORE THE Kaipara District Council

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER Private Plan Change 83 by THE RISE LIMITED to rezone
56.9 ha of land at Cove Road and Mangawhai Heads Road,
Mangawhai from Rural Zone to Residential Zone

STATEMENT OF EVIDENCE OF ALICE JANE MORRIS
ON BEHALF OF HERITAGE NEW ZEALAND POUHERE TAONGA

Submission # 26

Dated 12 March 2024

INTRODUCTION

1. My full name is Alice Jane Morris.
2. I am the Planner for the Mid-Northern and Northland offices for Heritage New Zealand Pouhere Taonga ('HNZPT'). I have held this position since January 2023.
3. I have 32 years' experience in planning and resource management, and I am a full member of the New Zealand Planning Institute.
4. I hold the qualification of a Bachelor of Regional Planning from Massey University and a Masters in Heritage Conservation from the University of Auckland.

EXPERT CODE OF CONDUCT

5. Although this evidence is not prepared for an Environment Court hearing I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and have complied with it in when preparing this evidence. I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. This evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

PURPOSE AND SCOPE OF EVIDENCE

6. HNZPT has made a submission to the Proposed Plan Change 88 (Private): The Rise Limited ('PC83') prepared for The Rise Limited ('Applicant') to the Kaipara Operative District Plan ('ODP').
7. In the preparation of my evidence, I have considered the following information:
 - (a) The Applicant's evidence, in particular planning
 - (b) Council's s.42A report
 - (c) HNZPT submission
 - (d) notification documentations, including the s.32 evaluation, the cultural values, landscaping and planning assessments
 - (e) Kaipara Operative District Plan ('OPD')

- (f) Northland Regional Policy Statement ('NRPS')
 - (g) The Resource Management Act 1991 ('RMA')
 - (h) Heritage New Zealand Pouhere Taonga Act 2014 ('HNZPTA')
8. I rely on the technical expertise of my colleague Dr James Robinson, Archaeologist from the Northern office for HNZPT.
9. HNZPT did not oppose PC83, it sought amendments following the preparation of an archaeological assessment to determine and confirm the potential significance of the historic heritage values within the environment the extent of PC83.
10. I have reviewed the recommendations in the s.42A report and matters raised through the applicant's evidence and in my view, the matter raised by HNZPT has not be adequately considered.¹ I explain this further in the body of my evidence.

EXECUTIVE SUMMARY

11. The purpose of PC83 has been clearly articulated through both the notification documentation, s.42A description and as set out in the planning evidence for the application. Accordingly, I do not repeat that information, other than to highlight, the plan change will result in the rezoning of 56.9 hectares of land north west of Mangawhai, on the eastern side of Cover Road, and zoned Rural in the Kaipara ODP. The existing rurally zone land is proposed to be rezoned to a Residential zone and the creation of a precinct over that rezoned area with an estimated 380 lot yield. The precinct, 'Cove Road North Precinct' to protect ecological features, promote high quality urban design, ensure a safe transport network and enhance landscape and amenity.²
12. HNZPT did not object to the proposed purpose for PC83. However, it raised concern with the minimal historic heritage assessment undertaken, and sought preparation of an archaeological assessment to determine and confirm the potential significance of the historic heritage values within

¹ s.42A report, paragraphs 241-243

² s.42A, paragraph 41

the environment the extent of PC83, and any recommendations arising to be followed.

13. Reliance on the existing situation that there are no scheduled or recorded historic heritage sites is inadequate to determine potential effects on historic heritage values as a result of PC83. Rather, an archaeological assessment to analyse the potential archaeological values within the plan change extent is required both in respect of understanding and mitigating any adverse effects on archaeology; and also, that would inform the appropriate mechanism to regulate any modification of archaeological sites.
14. I rely on Dr Robinson's evidence and explanation of the appropriateness of the use of the Accidental Discovery Protocol ('ADP') should only be applied when there is expert advice that the potential for archaeology to be present is low. Until it is known whether archaeological materials/features exist or not, reliance on the use of the ADP, the default being relied on in the s.42a report is inappropriate.³

ROLE OF HERITAGE NEW ZEALAND POUHERE TAONGA

15. HNZPT is an autonomous Crown Entity with statutory responsibility under the HNZPT Act 2014 for the identification, protection, preservation, and conservation of New Zealand's historic and cultural heritage.
16. HNZPT prepares and maintains the New Zealand Heritage List / Rārangī Kōrero ('the List'), which is primarily an identification and recognition tool for New Zealand's significant and valued historical and cultural heritage places. Inclusion on the List does not offer any form of direct protection, so statutory protection of historic heritage relies on provisions in RMA documents. As such, HNZPT advocates for all entries on the List to be protected through scheduling on district plans where appropriate and for provisions that protect historic heritage from inappropriate subdivision, use and development.
17. The HNZPTA provides an authority process for managing and regulating activities that may modify or destroy an archaeological site, defined as any place occupied prior to 1900 that may provide archaeological

³ S.42A report, paragraph 242; Kaipara ODP, Rule 13.10.1a

information on the history of New Zealand. It is an offence under the HNZPTA to modify or destroy an archaeological site without an authority from HNZPT irrespective of whether the works are permitted, or a consent has been issued under the RMA.

18. As New Zealand's lead agency for heritage protection HNZPT advocates for the conservation and protection of the historical and cultural heritage of New Zealand. Further, HNZPT actively engages with RMA processes to ensure both the purpose of the HNZPTA and Part 2 of the RMA are achieved.

HERITAGE NEW ZEALAND POUHERE TAONGA'S SUBMISSION

19. The purpose of HNZPT's submission focused on the inadequate assessment undertaken in preparing the plan change, specifically the lack of relevant archaeological assessment of the area to be rezoned.
20. HNZPT considered the historic heritage information that informed the framework of PC83 is not complete. Historic heritage is a matter of national importance under Section 6(f) of the Resource Management Act 1991 (the RMA). The definition of historic heritage under Part 2 of the RMA includes cultural and archaeology [emphasis applied]. Therefore, the identification of archaeological sites and effects must be informed by appropriately qualified archaeological assessment and the appropriateness of planning provisions to protect the plan change's area's historic, cultural, and archaeological values considered when assessing PC83.

IDENTIFICATION OF ARCHAEOLOGY

21. The identification of archaeology as a part of the plan change process relies on an assessment following the well-established statutory framework in accordance with First Schedule of the RMA.
22. Clause 21 of the First Schedule process details how a private plan change is to be prepared. The change to a plan must be fully analysed to ensure the application of the most suitable planning framework as required through s.32, RMA.

23. The purpose of PC83 is to rezone an area of land presently zoned for Rural to Residential.
24. There is no argument that PC83 has not followed the statutory framework, However, I do not consider the present structure of PC83 gives full effect to Part 2 of the RMA, specifically section 6(f), the protection of historic heritage from inappropriate subdivision, use and development.⁴
25. The direction set out in section 6, RMA states that “*all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance*”.
26. Therefore, while there are functions and powers proposed through PC83 to recognise and provide a consenting route to manage potential effects on cultural values as identified, I do not consider the proposed framework will appropriately protect archaeological values, because presently the archaeological values of the PC83 extent are unknown.

Northland Regional Policy Statement (NRPS)

27. I note the application includes an assessment of the proposed plan change against the NRPS; and agree with the direction set out in the section 32 Evaluation that of “particular relevance to the proposed plan change, are the provisions of the RPS pertaining to economic wellbeing, regional form, tangata whenua participation in resource management and water quality”.⁵ However, I consider the evaluation is incomplete as the plan change has not been fully assessed against the objectives, policies identifying matters of national importance, being historic heritage:

Objective 3.14 *Natural character, outstanding natural features, outstanding natural landscapes and historic heritage*

Identify and protect from inappropriate subdivision, use and development;

- (a) *The qualities and characteristics that make up the natural character of the coastal environment, and the natural character of freshwater bodies and their margins;*
- (b) *The qualities and characteristics that make up outstanding natural features and outstanding natural landscapes;*

⁴ Section 6(f), RMA

⁵ Section 7.1, PC83 s.32 Evaluation, page 22

- (c) *The integrity of historic heritage.*

Objective 3.15 Activity Management

Maintain and / or improve;

- (a) *The natural character of the coastal environment and fresh water bodies and their margins;*
- (b) *Outstanding natural features and outstanding natural landscapes;*
- (c) *Historic heritage;*
- (d) *Areas of significant indigenous vegetation and significant habitats of indigenous fauna (including those within estuaries and harbours);*
- (e) *Public access to the coast; and*
- (f) *Fresh and coastal water quality by supporting, enabling and positively recognising active management arising from the efforts of landowners, individuals, iwi, hapū and community groups.*

Policy 4.5.3 Assessing, identifying and recording historic heritage

Historic heritage resources (areas, places, sites, buildings, or structures either individually or as a group) are identified taking into account one or more of the following criteria:

- (a) *Archaeological and / or scientific importance: the resource contributes significantly to our understanding of human history or archaeological research;*
- (b) *Architecture and technology: the structure or building is significant due to design, form, scale, materials, style, period, craftsmanship, construction technique or other unique element / characteristic;*
- (c) *Rarity: the resource or site is unique, uncommon or rare at a district, regional or national level;*
- (d) *Representativeness: the resource is an excellent example of its class in terms of design, type, use, technology, time period or other characteristic;*
- (e) *Integrity: the resource retains a high proportion of its original characteristics and integrity compared with other examples in the district or region;*
- (f) *Context: the resource forms part of an association of heritage sites or buildings which, when considered as a whole, become important at a district, regional or national scale;*
- (g) *People and events: the resource is directly associated with the life or works of a well-known or important individual, group or organisation and / or is associated with locally, regionally or nationally significant historic events;*
- (h) *Identity: the resource provides a sense of place, community identity or cultural or historical continuity;*
- (i) *Tangata whenua: the resource place or feature is important to tangata whenua for traditional, spiritual, cultural or historic reasons; and*
- (j) *Statutory: the resource or feature is recognised nationally or internationally, including: a World Heritage Site under the World Heritage Convention 1972; is registered under the Historic Places Act 1993; or is recognised as having significant heritage value under a statutory acknowledgement or other legislation.*

Policy 4.6.2 Maintaining the integrity of heritage resources

- (1) *Protect the integrity of historic heritage resources that have been identified in plans in accordance with Policy 4.5.3 and Method 4.5.4(3):*

- a) *By avoiding significant adverse effects of subdivision, use and development and avoiding, remedying or mitigating other adverse effects (including cumulative adverse effects) on historic heritage in the following way:*
- (i) *Requiring careful design and location of subdivision, use and development to retain heritage buildings and other physical elements of historic heritage and where practical enhance public use and access;*
 - (ii) *Restricting the demolition / relocation of and / or inappropriate modifications, additions or alterations to physical elements of historic heritage;*
 - (iii) *Recognising that the integrity of many historic heritage resources relies on context and maintain these relationships in the design and location of subdivision, use and development;*
 - (iv) *Recognising the collective value of groups of heritage buildings, structures and / or places, particularly where these are representative of Northland's historic settlements, architecture or periods in history and maintain the wider character of such areas; and*
 - (v) *Restricting activities that compromise important spiritual or cultural values held by Māori / Mana Whenua and / or the wider community in association with particular heritage places or features.*
- (2) *Despite the above:*
- a) *Clause 1 does not apply where natural hazards threaten the viability of regionally significant infrastructure and / or public health and safety; or*
 - b) *Regionally significant infrastructure proposals that cannot meet 4.6.2(1) may still be appropriate after assessment against the matters in Policy 5.3.3(3).*

Kaipara Operative District ('ODP') – Objectives and Policies and Rules

28. The ODP details a number of outcomes achieved through a suite of objectives and policies; and these have been considered through the s.32 Evaluation for PC83.⁶ However, again, because there has been no archaeological assessment undertaken, I do not consider it is correct to say that the plan change area is “without significant areas of historic heritage or landscape”;⁷ the “this application has comprehensively considered and addressed all potential adverse effects”;⁸ or “the proposed Precinct provisions set out to protect cultural, heritage and amenity values through the management of lot sizes, locations and associated built form

⁶ Section 7.3, s.32 Evaluation, page 24

⁷ Section 7.3.1, s.32 Evaluation, page 24

⁸ Section 7.3.2, Table 3, s.32 Evaluation, pages 27-28

and development”⁹ until the necessary archaeological assessment has been prepared and applied.

Heritage New Zealand Pouhere Taonga Act 2014 (‘HNZPTA’)

29. The purpose of the HNZPTA is to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand (section 3, HNZPT). Nevertheless, the functions and powers of HNZPT relating to the controlling the protection of historic heritage is limited, such as:

section 13(1)(a) to identify, record, investigate, assess, list, protect, and conserve historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas or enter such places and areas on the New Zealand Heritage List/Rārangi Kōrero, or to assist in doing those things, keeping permanent records of that work, and providing support for persons with a legal or equitable interest in such places and areas.

Section 13(1)(c) to advocate the conservation and protection of historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas

30. Obtaining an archaeological authority does not mitigate the adverse effects on heritage values generated; however, it does ensure that any adverse effects on archaeology are regulated. The requirement for an archaeological authority provides for assessment, recording, and monitoring of any archaeology and archaeological features that may be present in the area.
31. Accordingly, the mechanism for actual and enforceable protection of historic heritage falls under the RMA.

APPROPRIATE PROTECTION OF HISTORIC HERITAGE

32. The s.42A report author states there has been a full consideration of matters raised by submitters, however they have not deemed the need for an archaeological assessment a matter necessary to ensure Council’s statutory functions and responsibility are fulfilled.¹⁰ This is while, stating

⁹ Section 7.3.4, Table 5, s.32 Evaluation, page 32

¹⁰ S.42A, paragraphs 53-55

reliance on the Cultural Effects Assessment ('CEA') prepared by Environs Te Uri o Hau (Environs Holdings Limited) on behalf of Te Uri o Hau Settlement Trust, recommendations pertaining to issues of interest to mana whenua.¹¹ In particular the recommendations regarding biodiversity, water quality and downstream discharges into the Mangawhai estuary, and identifying the need for an accidental discovery protocol to be in place when earthworks are undertaken.

33. In the same paragraph 2.4.1 of the s.42A report, I note the s.42A author notes HNZPT "raise concerns regarding the need for an archaeological assessment to be undertaken prior to earthworks commencing on the site".¹² I note that under section 11 Recommendations/Consent Notices/Conditions of Consent of the CEA, Environs Te Uri o Hau recommend:

Archaeological:

All archaeological sites, whether these are known (or recorded) or unknown are protected under the Heritage New Zealand Pouhere Taonga Act (HNZPTA 2014). The potential for sub-surface taonga to be discovered during works is a distinct possibility.

- 4. All contractors, servicers, workers, or independents involved in earthworks activities will be made aware of and adhere to Accidental Discovery Conditions set out in Appendix 1.*
- 5. Te Uri o Hau assigned kaitiaki can be present at a pre-start meeting to inform those involved in earthworks activities of their responsibilities under the HNZPTA and Te Uri o Hau ADP.*
- 6. The applicant considers commissioning an updated archaeological assessment for the PPC area.*

34. However, there is no archaeological assessment provided either at notification or through hearing evidence; and the s.42A author has only considered the CEA recommendation for ADP; linking the recommendation to the existing earthwork controls under the ODP (Rule 13.10.1a) and that the ADP rules manage the discovery of archaeological material.

35. At paragraph 10 of HNZPT's submission, it states:

¹¹ S.42A, paragraph 239

¹² S.42A, paragraph 241

“Without undertaking an archaeological assessment prepared by a suitably qualified archaeologist, it is not possible to determine the potential for effects on archaeological sites resulting from the rezoning of this area from rural to urban, a large portion of which is currently in pasture. In HNZPT’s opinion and contrary to what is stated in Section 8.11, presently it is unknown if there will be effects on archaeological sites, an Accidental Discovery protocol is not a mechanism for the appropriate management of archaeological sites. The HNZPTA 2014 is a separate statutory process provided for under a different legislation”

36. I rely on Dr Robinson’s expertise in advising that while the plan change area presently does not contain any recorded archaeology, this is most probably due to the lack of survey rather than the lack of the existence of site. Dr Robinson has noted that there are a number of recorded sites within the wider environment PC83 extent is within.¹³ Accordingly, in my opinion, while there are no scheduled or recorded archaeological sites within the plan change extent there are recorded archaeological sites within the immediate setting. The absence of scheduled or recorded archaeological sites, within the plan change area should not immediately be a confirmation that the area does not contain any historic heritage.¹⁴
37. While the full historic heritage values of the plan change area have not been fully determined, along with how, if present, the protection of those values are to be recognised and provided for. I support the direction set out in the s.42A report when addressing the identified cultural values of the plan change extent, as identified and discussed through the CEA.
38. However, I note that the CEA recommendation for an archaeological assessment to be undertaken is not addressed through the s.42A report. Instead, the direction set out in the s.42A report is that the mitigation of effects on archaeology will be achieved through the application of an ADP as required through existing provisions in the ODP. I do not agree with this approach, relying on both the recommendations set out in the CEA¹⁵ and Dr Robinson’s evidence that an archaeological assessment is required to identify the potential for encountering archaeology, along with

¹³ Evidence, Dr Robinson, paragraphs 15-17

¹⁴ S.42A report, paragraph 36

¹⁵ Cultural Effects Assessment, page 26

the qualified archaeologist's recommendation as to the appropriate mechanism to be applied in response to that potential.¹⁶

CONCLUSION

39. It is important to recognise the roles the RMA and the HNZPTA have when considering how historic heritage can and should be protected. As outlined in my evidence, it is the RMA that provides the tools to consider the effects on historic heritage and how those should be managed appropriately in order to achieve the purpose of the RMA.
40. According, I consider this approach problematic when there has not been a full archaeological assessment of the plan change area is required to determine the is appropriate mitigation is applied to give effect to Part 2 of the RMA, specifically the protection from inappropriate subdivision, use and development which will be the outcome of adopting PC83.

Alice Morris

Planner, Northland, HNZPT

March 2024

¹⁶ Dr Robinson evidence, paragraph 9