

**BEFORE THE**

Kaipara District Council

**IN THE MATTER**

of the Resource Management Act 1991 (RMA)

**AND**

**IN THE MATTER**

of an application for 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

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**STATEMENT OF EVIDENCE OF JAMES JUSTIN ROBINSON  
ON BEHALF OF HERITAGE NEW ZEALAND POUHERE TAONGA**

**Submission # 26**

**Dated 12 March 2024**

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## **INTRODUCTION**

1. My full name is James Justin Robinson.
2. I am an archaeologist for the Northland region, Heritage New Zealand Pouhere Taonga (HNZPT). My current role focuses on reviewing and processing archaeological authority applications under the provisions of the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA). I have held this position since 2015.
3. I hold a PhD from the University of Otago, in archaeology. I have technical expertise in investigating and recording historic and pre-European sites using archaeological methods.
4. I am a member of the New Zealand Archaeological Association for 20 years. For the last two years I have been the New Zealand committee member of the Australasian Society for Historical Archaeology

## **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.

## **EXECUTIVE SUMMARY**

6. My evidence relates solely to the effects on archaeology arising from the outcomes of the land subject to Plan Change 83 – The Rise (PC83) being rezoned.
7. In preparing this evidence I have read the relevant submissions, further submissions, and the Section 42A reports prepared by Council staff and/or consultants.
8. I disagree with the comments and recommendations of both the Section 42A Report and the planning evidence on behalf of the applicant, in relation to the risks associated with encountering archaeology and the

proposed responses to address these levels of risk, i.e., an archaeological authority or an accidental discovery protocol (ADP).

9. In summary, it is my opinion that:

- In the absence of an archaeological assessment, it is difficult to fully assess the adverse effects on archaeological values;
- It is not appropriate for anyone who is not a qualified archaeologist to deem whether an accidental discovery protocol is appropriate;
- In my view any adverse effects can be managed through a two-step process, first identifying the potential for encountering archaeology through an archaeological assessment undertaken by a qualified archaeologist, and second, following the archaeologist's recommendation as to the appropriate mechanism in response to that potential based on the assessment. This is discussed in my evidence.

#### **SCOPE OF EVIDENCE**

10. The scope of my evidence addresses the following matters, insofar as they relate to archaeology:

- Adverse Effects generated by the Plan Change
- The Protection of Archaeology;

11. I have not undertaken any site visits to the proposed locations. I have considered recorded archaeological sites in the New Zealand Archaeological Association (NZAA) Site Recording Scheme (ArchSite) database, and other archaeological assessments carried out in the Mangawhai area in order to identify any areas of recorded archaeology or potential unrecorded archaeology within the extents of the land subject to PC83.

#### **Adverse Effects Generated By The Plan Change**

12. I have reviewed the relevant PC83 information, in particular the Section 32 Report, November 2022 and the Cultural Effects Assessment (CEA) prepared by Te Uri o Hau, June 2023; the relevant sections in the section 42A report and the planning evidence on behalf of the applicant.

13. The applicant has not commissioned an archaeological assessment of the proposed development. They have examined the NZAA database 'ArchSite' and interpreted the lack of recorded archaeology within the development area to represent a lack of archaeology being present.

#### Adequacy of the Assessment

14. The proposed development will change an area of rural land into an area for a 93 lot residential development. Implicit in this is the carrying out of extensive infrastructure earthworks associated with the construction of roads, sewerage and water systems and communication services along with 93 building platforms. This is a major change in land use from the current rural farm use and from my experience will damage or destroy any unrecorded surface archaeology as well as any unrecorded subsurface archaeology within the development envelope.

#### Effects on Archaeology

15. Notwithstanding the fact that the development area has no recorded archaeology within its boundary, this is likely due to a lack of survey rather than a lack of sites since there are a number of recorded sites to the north and south of the development area which have been surveyed by a qualified archaeologist.

16. From my desk top review, I considering that there is a real potential for the development to damage or destroy archaeology.

17. It is my view that the area has not been adequately assessed for archaeological values. Under the RMA that means that I cannot be satisfied that the adverse effects on any archaeology have been considered and appropriately mitigated.

#### **The Protection Of Archaeology**

18. The HNZPTA provides a process for regulating the modifying and/or the destroying of archaeological sites, defined as any place associated with human activity prior to 1900 that through investigation by archaeological method may provide evidence on the history of New Zealand.

19. It is an offence under section 87 of 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.

20. Where there is no potential for archaeology and therefore any discovery would be accidental, rather than anticipated, then an ADP would be the appropriate mechanism to use. By converse, where there is potential for archaeology then it cannot be considered an accident if encountered, and as such an ADP is not appropriate.
21. Where there is potential for archaeology at the location of any proposed works then those works may result in modification of an archaeological site. In this situation, an archaeological assessment by a qualified archaeologist is needed to assess if the proposed works will affect recorded or potential archaeology. If the archaeological assessment confirms there is a risk of site damage, then it will recommend that an archaeological authority be applied for from HNZPT. Only when an archaeological authority is granted can development works commence. Depending on the nature and degree of site damage required, conditions in any such issued authority could include archaeological monitoring, investigation and recording to inform our knowledge and understanding of the social history of the area.
22. The HNZPT Archaeological Guideline Series, which includes 'Guidelines for Writing Archaeological Assessments' and 'Archaeological Assessment Template', are available for consultants on the HNZPT website to assist with effects assessments relating to archaeological sites. In my view, the HNZPT Archaeological Guideline Series should be utilised to guide any assessment on effects on archaeological sites which would therefore inform any mitigation measures.

#### Potential for Archaeology

23. In my opinion and experience there is a real potential for encountering archaeological values in the area of the proposed development.
24. An archaeological assessment, and an archaeological authority application if recommended by the assessment, is the appropriate way to address the risks to archaeology and provide for mitigation through consideration, monitoring and recording is through the archaeological authority process.

25. Due to the high potential for unrecorded archaeological sites to be present and that the earthworks associated with this large development may damage or destroy such unrecorded sites, then it is not appropriate to proceed under an ADP – as any discovery would not be an accident. Therefore, in my view any effects on archaeological sites/features should be mitigated through an archaeological assessment by a qualified archaeologist, and the HNZPT archaeological authority process.
26. Although there is no detailed design, it is anticipated that the works required to facilitate this extent of the PC83 has the potential to adversely impact on archaeology if any is identified in the archaeological assessment.
27. As such, I further agree with the CEA recommendations<sup>1</sup> that an archaeological assessment is the most appropriate way to address the risks to archaeology and, if recommended by the assessment, provide for mitigation through consideration, monitoring and recording through the HNZPT archaeological authority process.

#### Appropriateness of an Accidental Discovery Protocol

28. It is important to remember that the HNZPTA archaeological protection provisions cover recorded and unrecorded archaeological sites. Therefore, any archaeological assessment must include not only recorded archaeological sites, but also the potential for discovering any previously unknown archaeological features. Further, the effects on archaeology are not limited to those sites that are scheduled in the District Plan, rather my evidence focuses on the effects in relation to archaeological sites as defined in the HNZPTA.
29. An ADP is used when a qualified archaeologist considers the chance of finding archaeology in a development area is low. Considering that the development area has not been assessed by an archaeologist and the potential for encountering archaeology I do not consider an ADP to be the appropriate mechanism to use here when the potential effects are not certain. The advocating of an ADP by persons who are not qualified archaeologists is, in my view, speculative.

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<sup>1</sup> Cultural Effects Assessment, Archaeological, points 4 – 6, page 26

30. In order to determine the appropriate mechanism an archaeological assessment must be completed. It would provide an understanding of the area, identify any archaeological sites visible on the ground and the potential for further archaeology to be encountered based on the social history of the area. Once this context is understood then an informed effects assessment can be undertaken.
31. Should the archaeological assessment identify unrecorded archaeology that can't be avoided by the development or consider that unrecorded subsurface may be encountered in the area where earthworks are proposed, then it is my view that a precautionary approach should be followed, and an archaeological authority application be submitted to HNZPT. Should the archaeological authority application be determined in favour of the applicant then conditions issued will include monitoring of development earthworks, and the investigation and recording of any archaeology encountered. Such conditions are standard requirements in respect of an archaeological authority.
32. I agree with the recommendation in the CEA that an archaeological assessment should occur due to the chance of finding unrecorded archaeology.<sup>2</sup>
33. Based on my review of the potential for archaeology to be present in the development area, I consider that an archaeological assessment rather than an ADP is the appropriate action given the reasonable risk of encountering archaeological features.
34. Thus, it is my view that HNZPT's request that an archaeological assessment be prepared for the full extent of the plan change is appropriate to the scale of the project and the potential for archaeology to be encountered in the area.

## **CONCLUSION**

35. With respect to any adverse effects on archaeology arising from the outcomes of PC83, in my view an archaeological assessment rather than

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<sup>2</sup> CEA, Recommendations – Archaeology, page 26

an ADP is the most appropriate way of determining if archaeology is present and whether it will be affected by the proposed development.

36. Where earthworks take place in high-risk areas, effects on archaeology should be mitigated through the legal framework of the HNZPTA 2014.

**Dr James Robinson**

**11 March 2024**