

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

REPLY LEGAL SUBMISSIONS ON BEHALF OF THE RISE LIMITED

Summary of reply on behalf of applicant (Delivered orally at the hearing).

1. The planning context for the application is founded in the operative district plan 2013. 20 years ago the majority of the site was identified in that document for urbanisation. Subsequently the Mangawhai Spatial Plan, December 2020 identifies all of the site as one of two areas proposed for urban expansion at Mangawhai.
2. Reference is made to the 2020 Mangawhai Spatial Plan, section 1.4 Project Output where it is stated, amongst other matters, that the Spatial Plan covers the Mangawhai urban area and immediate surrounding rural land. It is a visual illustration of the recommended future location, form and mix of residential, rural community and business areas.
3. While the Spatial Plan is made under the Local Government Act and therefore non-statutory in the sense that Council is not obliged to implement it, nevertheless it builds upon previous work undertaken by KDC since the adoption of the Operative District Plan in 2013. It also built on the key moves set out in the MCP. It is intended that the Spatial Plan will inform the review and preparation of statutory documents

required by the Resource Management Act 1991 and the Local Government Act 2002, such as the Kaipara District Plan and the KDC long term plan.

4. Section 1.1 of the Mangawhai Spatial Plan describes the project background. Section 1.2 describes the project process and section 1.3 the project purpose. In terms of process, in mid 2019 the Council commissioned Urban Isthmus and Campbell Brown Planning to develop a spatial plan for the Mangawhai area. The plan has been informed by a series of consultation sessions and an inquiry-by - design workshop held in the period between August and December 2019. The Spatial Plan was released for public feedback July and August 2020. That project process is described in more detail in Appendix A to the Spatial Plan.
5. In a little more detail, Appendix A refers to consultation in two stages. First there was feedback on the draft spatial plan by an online survey. 124 responses were received and reviewed, including in relation to the PC-83 site which was incorporated into the draft spatial plan. The document was then released for formal public feedback in June-August 2020. It included a detailed growth analysis and a number of growth options were considered. All of those options engaged the PPC 83 land.
6. The applicant's urban designer Mr. Wayne Bredemeyer , was engaged by the Council from the inception of the work on preparation of the Spatial Plan, and has subsequently been engaged by Mr. Rowbotham in relation to the development of PPC 83 in a manner consistent with the Spatial Plan.
7. Chapter 3.3 of the Spatial Plan addresses 3 Waters and specifically identifies the site as one capable of additional wastewater service ability area – see Spatial Plan figure 3-3.1.
8. In terms of providing for the Living Environment, the Spatial Plan at chapter 3.4 includes the following statement of direct relevance to the current proposal:

“Current residential development patterns are provided by the operative Kaipara district plan. The existing planning rules provide for relatively low density open residential development. The current restrictions on residential development within the existing urban area do not provide for a variety of housing types, styles and sizes that reflect the variety of housing and lifestyle choices required by the community. The current demand driven scenario has

resulted in an increase in non-complying activity consents for smaller lots of between 600m² and 700 m² (while the 1000m² is the minimum lot size) in the urban residential zone.”

9. PPC83 contains provision allowing for an appropriate degree of flexibility in terms of site sizes and arrangements, the exception being the northern sub zone where 1000m² minimum lot size is proposed. Commissioners will recall the statement by Mr Rowbotham in relation to making specific provision for what he described as the active elderly within the wider community. Mr Rowbotham is well placed to understand that need and desire, given his long standing association with Mangawhai as a resident and as a developer.
10. In summary, the Spatial Plan was adopted in December 2020, having been developed through a detailed and public process under the local government legislation. Its terms are well understood within the community, including that the PPC83 site has been identified for urban development. PPC 83 has built on that knowledge and community understanding that has evolved through the process of developing the Spatial Plan. It recognises a need to provide for a variety of housing opportunities.
11. RMA s.74(2)(b)(i) relevantly provides:

In addition to the requirements of [section 75\(3\) and \(4\)](#), when preparing or changing a district plan, a territorial authority shall have regard to—

*(b)
any—*

*(i)
management plans and strategies prepared under other Acts; and*

12. The Spatial Plan is such a document. Accordingly the Commission is obliged to have regard to it in considering PPC 83. It is submitted that the Spatial Plan deserves considerable weight given its formulation through the public process under the LGA; its purpose in addressing how the community sees Mangawhai's future; its aim of providing a high level spatial picture of how Mangawhai can grow over the next period; and the explicit identification of the PPC83 site for urbanisation.

13. The plan change provides a sound framework for the establishment of those varying housing opportunities referred to in the Spatial Plan. In a direct way, it is giving substance to the Spatial Plan identification of the land for urbanisation.
14. The provisions proposed through PPC83 build on the detailed site analysis described in the applicant's evidence in terms of environmental constraints and opportunities. It is respectfully submitted that the provisions of PPC 83 provide a sound basis for urbanisation of the land, consistent with the statutory requirements, and consequently deserves to be approved.
15. The applicant has discussed PPC 83 with other land owners before and after its acceptance by the Council for public notification. There has been no breach of any consultation requirement. There has been direct consultation and meetings with local iwi who have provided a cultural values assessment supporting the proposal. There has been pre and post notification discussion with the adjoining neighbour, Mr Grant Renall. Mr Renall supports PPC83. There has also been post notification meeting with nine residents within the plan change area, as detailed at the hearing. Those residents were each provided with a full sets of the PPC documents by Mr Rowbotham .
16. A final set of the PPC 83 provisions has been forwarded to Council by the applicant's planning consultants. The provisions include changes and items arising through the consultation and hearing process.
17. The alterations to the PC-83 provisions has been described by the applicants planning consultants in their reply evidence. They included an amendment to the precinct plan with the additional shared path. It is submitted that the internal footpath network is the preferred mechanism to achieve connectivity outcomes. If this is not provided, the provisions of the plan change will ensure that a footpath connection along Cove Road and Mangawhai Heads Road. With regard to access off Cove Road, if the speed limit remains unchanged (and it may well be reviewed by Council on urban rezoning of the site), there are robust matters of discretion in place to ensure that new road connections onto Cove Road will be adequately considered at time of subdivision (rules 13.14.2 and 13.14.3).
18. Ms Vilde provided a written reply statement of evidence addressing ecological mapping and cats and dogs. Her expert evidence is based on direct experience, including with immediately adjoining Bream Tail land. Based on her evidence, it is

submitted that there is no need to impose controls or restrictions on dogs or cats belonging to persons who reside on the site.

Further Reply to Council and Submitters

19. Mr Cleese suggested that multi-unit development should be a non-complying activity and that that would provide a “consent pathway”. It is submitted that is entirely inappropriate. A non-complying activity status places legal and planning obstacles to multi-unit development and would be inconsistent with the direction of the Spatial Plan identification of the need for varying housing typologies/options in order to meet community needs. The plan change provides a restricted discretionary activity consent pathway enabling different housing forms to meet those identified needs.
20. It is noted that Mr Cleese confirmed that the PPC83 assessment criteria for multi-unit development are acceptable, should Commissioners conclude that provision should be included for multi-unit housing opportunities.
21. Water supply is addressed through the plan provisions/table setting standards for the availability of water for residents based of roof/bedroom/numbers of occupants. The site is not too distant from Mangawhai facilities and commercial centres, so as to preclude some opportunities multi-unit development. The current absence of a bus route to the site is not grounds for blocking provision for multi-unit development on application.
22. Mr Nathan’s property is on the corner of Cove and Mangawhai Heads Road. He raised two concerns, being the odour from the Sanctuary Estates sewerage system and the concern he has regarding the run-off of water from the PPC 83 site to his lower land. The Estuary Estates sewerage matter is separate from the plan change. So far as water run-off is concerned, the engineering evidence of Mr Rankin addressed clearly how stormwater is to be contained and treated before controlled discharge, so as to avoid downstream effects. Ms Vilde referred also to the improvements to the stream ecology through plantings that would result from implementation of the plan change provisions. Mr Senior for the Council considers that the approach to stormwater management is appropriate.

23. Bream Tail Residents were represented by Claire Phillips and sought certain controls to address a perceived reverse sensitivity effect. The controls requested included provision of a six metre wide planted buffer with PPC 83 along the common boundary with the Bream Tail land. In reply, it is submitted that no proper planning or effects based justification was provided for this requirement, which is unwarranted and excessive. It is also noted that Bream Tail currently enjoys a southern boundary approximately 1 kilometre in length with the residential zone immediately east of the PPC83 site, where there is no planted buffer. The boundary with the PPC83 site in contrast is approximately 280m long.
24. That aside, Mr. Slaven's landscape evidence for the applicant carefully considered the need or otherwise for screening of development on the application site with the Bream Tail land. He considered the topography of the land, the larger lot sizes proposed in the northern sub-catchment, and identified the appropriate position for a length of two metre depth planting along a section of that common boundary. It is submitted that that is a sound approach and addresses the boundary interface appropriately.
25. Mr and Mrs Brotherton are the Bream Tail owners of land adjoining PPC83 and it is their land that will directly benefit from the boundary planting proposed by Mr Slaven. It is noted also that the Brotherton's identified building site for a house is 80m from the PPC83 boundary (and they mentioned at the hearing that the house position was to be further moved away from the common boundary for other (unspecified) reasons)
26. Ms Phillips also requested provision of people proof fencing along the common boundary with Bream Tail so that no people can enter. That suggestion is unorthodox to say the least. Again no such fence exists on the longer southern boundary to Bream Tail adjoining the operative residential zone. It is submitted that there is no planning basis for such an extreme requirement in this location.
27. In reply to the restrictions sought by Bream Tail and Mr and Mrs Brotherton on pets, reference is made again to the reply evidence of Ms Vilde. Furthermore, it is not uncommon for urban areas to have a rural border and a ban on pets has not proven necessary in that context generally.
28. Mr Vern Dark spoke on behalf of Estuary Estates and raised as a main issue the control of stormwater, referring to instances when SW flooded the entrance to the

Estuary Estates affected the operation of the entrance gates. It transpired that those two events occurred during the extreme rain events experienced earlier this year, (as opposed to being a persistently occurring problem).

29. It is submitted that the SW measures described by Mr Rankin, supported by Council's engineer, are appropriate for the management of SW associated with the urban development proposed by PPC83. They are assisted also by the stream planting referred by Ms Vilde.
30. Mr Dark described the Estuary Estates sewage arrangements and said this was also an important issue. In reply, The PPC83 area is intended to connect to the Mangawhai WWTP, avoiding any WW issues.
31. He referred to traffic turning movements, including into Estuary Estates from Cove Road and queried the turning movements identified by Mr Kelly, traffic engineer for the applicant. However Mr Dark did not present any data or counts of traffic movements to support his comment. It is submitted that the expert evidence of Mr Kelly is sound and able to be accepted by Commissioners as providing a reliable basis for assessing and ultimately accepting PPC83 as sound from a traffic perspective.
32. There was general agreement from Mr Dark that Cove Road deserved consideration of a 50 kph speed limit and that access could be restricted until limit that was introduced by Council.
33. Mr. Parker resides at 55 Cullen Steet, which borders the PPC83 site to the east. He referred to concerns he has with absorption of water resulting from the development of the plan change area and subsequent catastrophic events. In reply, Mr. Parker is not a qualified engineer and had not considered the applicant's engineering evidence in relation to the control of stormwater. Reference is made again to the evidence of Mr. Rankin and the design measures to be implemented to control stormwater in association with development of the land.
34. Mr Cayford spoke for himself and as a member of Mangawhai Matters Incorporated Committee. His presentation focused on research that MMI had commissioned in relation to the health of the Mangawhai Estuary, including the vulnerability of the containing spit to weather and climate changes. He spoke also of concern in relation to the management of stormwater and in particular the control of

sediments. Mr. Cayford considered that the plan change appeared to focus on chemical contaminants and not sediments; and focused on post development effects and not what happens when the land is being developed.

35. In reply, that is not the case and during the development of the land, appropriate stormwater and sediment controls will be employed and can be imposed by Council through the subdivision and land use consent processes. It is for the Council to determine what requirements are to be included in consent conditions in due course. The plan change provisions do not limit Council's ability in that regard. The applicant supports entirely that appropriate best practise measures to be employed through the development stages. That has been the basis of its own assessments.
36. As an aside, it is observed that the substantial development at Mangawhai Central is proceeding apace, that being many times larger than PPC83 and located on the immediate fringe of the Mangawhai Estuary. Council has determined that the Mangawhai estuary is able to be safeguarded through that development phase by the imposition of appropriate sediment controls.
37. Mr. Cayford referred to the New Zealand Coastal Policy Statement and certain objectives and policies directed at maintaining coastal water quality and reducing sediment loadings in runoff and stormwater systems through controls on land use activities. In reply, it is submitted that the proposal is entirely consistent with the provisions of the NZCPS, (whether or not the site is regarded as being within the coastal environment). Council retains proper control over sediment through the operative district plan subdivision rules. With respect, Mr Cayford is not an engineer. The applicant and its expert advisers consider that the development on the site is able to be managed in a way that addresses appropriately the potential for discharge of sediment in accordance with best practice.
38. That conclusion is consistent with the evidence of Mr Carey Senior for the Council who was clear that the assessment of SW volumes/ flow rates was sound and referenced the "toolbox" of SW quality measures in GD04 available for employment for different stages/sized developments and would be employed at consent stage. He advised Commissioners that in his opinion the PPC83 provisions were good and did not require change.

39. It is submitted that there is no basis for declining the plan change on the basis of absence of an ability to control sediment.
40. Horizon Surveying represented by Mr Fletcher, supports the plan change and wanted to be assured that sufficient provision was engaged in the PPC83 provisions to cover transport and infrastructure issues. He advised, however, did he did not hear the applicant's case and in it submitted that had he had that opportunity, any concerns would be allayed.
41. Mr Boonham raised a number of issues, some of which did not appear to be RM related. He maintained that these should have been considered through the LGA and that the plan change was using the "back door" of the RMA. With respect that is not accepted as correct. The identification of the land through the LGA and spatial planning process has been well documented. The advancement of PPC83 under the RMA is a logical next step following the identification of the land for urbanisation through the spatial plan processes.
42. He referred to the capacity of the wastewater treatment plant. Council's advisors have made it quite clear here that plans for the upgrade and extension of the plant are well in hand. There is no basis for declining the plan change on waste water grounds, given the clarity of the Council's position in that regard, as detailed by Mr Cantrell.
43. Heritage New Zealand Pouhere Taonga presented evidence by Robinson and Alice Morris. They do not oppose PPC 83 but see amendments in relation to preparation of an archaeological assessment to determine the potential significance of any historic heritage values within the environment of PPC 83. The applicant has already obtained an Archaeological Assessment in respect of the large northern part of the site in its ownership. A copy can be provided to Commissioners. No archaeological sites were identified in this area.



22 April 2024