

IN THE MATTER

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

AND

IN THE MATTER

of a submission pursuant to Clause
6 of Schedule 1, of the RMA in
respect of the **Plan Change 83 –
The Rise Limited**

SUBMISSION ON PLAN CHANGE 83 – THE RISE LIMITED

To: Policy Department

Kaipara District Council

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1. Details of persons making submission

Regan and Rochelle Davies (RRD)

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2. General statement

- 2.1 RRD cannot gain an advantage in trade competition through this submission. They are directly affected by Plan Change 83 (PC83). The effects are not related to trade competition.

3. Background and context

Description of land owned by RRD

- 3.1 This submission relates to four titles located on Mangawhai Heads Road that are owned by RRD. The titles were created as part of a recently completed subdivision and are referenced as 911113 – 911116. The titles range in size from 1,249m² – 4,732m². A location map is provided in **Figure 1** below.



Figure 1: Location map (Source: Google Earth).

- 3.2 RT 911113 accommodates the Orang-otang Tree Trimmers business, which is owned by RRD. The building on 911115 is occupied by Te Whatu Ora Health NZ - Te Tai Tokerau. The Kaipara District Council (KDC) have confirmed that both of these activities have existing use rights. RT 911114 and 911116 are currently vacant, although food trucks intermittently operate from RT 911116.
- 3.3 The existing use rights for the activities on RT 911113 and RT 911115 were established during a pre-application meeting with the KDC. The meeting also covered the possibility of RRD establishing further commercial/industrial activities on the vacant titles. RRD have since progressed with site specific geotechnical reports and have been liaising with potential lessees,

with the intention of lodging a resource consent application to establish commercial/industrial activities on the vacant titles. A resource consent application of this nature is imminent.

Zoning – Kaipara District Plan (KDP)

- 3.4 The four sites 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

- 3.5 The four sites 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 KDC and has no statutory weight.
- 3.6 It is noted that RRD provided feedback on the Exposure Draft Kaipara District Plan. A copy of that feedback is **enclosed** with this submission. In summary, the feedback sought that the four titles be rezoned Light Industrial Zone or that a mixed Light Industrial/Commercial Precinct apply. This is consistent with the feedback that RRD provided on the KDC spatial plans when public feedback was sought.

Proposed zoning – PC83

- 3.7 The four titles owned by RRD are proposed to be re-zoned Residential and will be subject to the Cove Road North Precinct under PC83.

4. The specific provisions of the Plan Change that this submission relates to are:

- 4.1 RRD oppose PC83 in part and seek changes to the following:
- a) The Residential Zone and Cove Road North Precinct as they relate to the four titles owned by RRD; and
 - b) The proposed provisions of the Residential Zone and Cove Road North Precinct.

5. RRD seek the following amendments/relief:

The Residential Zone and Cove Road North Precinct as they relate to the four titles owned by RRD

- 5.1 That the four titles owned by RRD are re-zoned Business: Industrial or Commercial; or
- 5.2 That the four titles owned by RRD are rezoned in accordance with PC83 subject to the amendments to the provisions as outlined in points 5.3 and 5.4 of this submission.

The provisions of the Residential Zone and Cove Road North Precinct

- 5.3 As an alternative to the relief sought under 5.1 above, that the provisions of the Residential Zone and Cove Road North Precinct are amended as they relate to the four titles owned by RRD so that:
- a. Rule 13.10.1a: The permitted earthwork limits are increased to align with the existing allowances applicable in the Rural Zone under Rule 12.10.1a.
 - b. Rule 13.10.7a: The proposed height restriction for fences adjacent to road boundaries does not apply. This will facilitate a maximum permitted height of 2m, noting that a fence becomes a 'building' and is subject to the setback requirements once higher than 2m.
 - c. Rule 13.10.18: The permitted traffic movements are increased to align with the existing allowances applicable in the Rural Zone under Rule 12.10.18.
 - d. Rule 13.10.24: The permitted signage limits are increased to align with the existing allowances applicable in the Rural Zone under Rule 12.10.24.
- 5.4 In addition to the relief sought under points 5.1 – 5.3, that the provisions of PC83 relating to permeable surfaces and stormwater disposal are amended so that:
- a. Rule 13.10.12(2): The maximum impermeable surface coverage of 60% is only permitted where it is demonstrated that attenuation to 80% of pre-development runoff will be achieved (using a Type 1A nested rainfall hyetograph – TR-55 typology) to ensure that there is no exacerbation of flooding downstream resulting from incumbent network constraints.
 - b. Rule 13.4.5(3): There is a requirement to demonstrate that stormwater from the 60% of permitted impermeable coverage can be attenuated to 80% of pre-development runoff (using a Type 1A nested rainfall hyetograph – TR-55 typology) to ensure that there is no exacerbation of flooding downstream resulting from incumbent network constraints.

Other relief sought

5.5 RRD also seek any other changes to the provisions in PC83 where those provisions are inconsistent with the outcomes sought for the land subject to this submission.

6. The reasons for making the submission on PC83 are as follows:

The Residential Zone and Cove Road North Precinct as they relate to the four titles owned by RRD

6.1 The proposed Residential Zone and Cove Road North Precinct do not take into account the existing activities (that have existing use rights) located on the two of the titles owned by RRD. These activities form part of the existing environment. In this respect, *Queenstown Lakes District Council v Hawthorn Estate Limited* (2006) 12 ELRNZ 299; [2006] NZRMA 424 has previously determined that:

“the word “environment” embraces the future state of the environment as it may be modified by the utilisation of rights to carry out a permitted activity under a District Plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented”

6.2 The proposed Residential Zone and Cove Road North Precinct do not take into account RRD’s intentions to establish further commercial and/or industrial activities on the two vacant titles. RRD also note that there are a range of other existing commercial/industrial activities located within the surrounding environment.

6.3 Zoning the titles either Commercial or Industrial takes into account the existing and planned future activities and is consistent with the feedback provided by RRD on the Spatial Plan and Exposure Draft Kaipara District Plan.

The provisions of the Residential Zone and Cove Road North Precinct

6.4 With respect to the site-specific changes outlined under point 5.3:

- a. There are certain rules in the Residential Zone chapter of the KDP that are considerably more restrictive than the corresponding rules that apply within the Rural Zone. Some of

these rules are at odds with the existing industrial/commercial activities located on, and the future industrial/commercial activities planned for the four titles owned by RRD.

- b. The relief sought will ensure that, should the four titles owned by RRD be rezoned Residential and included within Cove Road North Precinct, the associated rules will provide for existing/planned commercial and/or industrial activities in a manner that is consistent with the existing environment.
- c. While the relief sought will provide some added flexibility with respect to RRD's existing and anticipated industrial and/or commercial activities, it will also ensure that amenity and character values are maintained in a manner that is appropriate to the surrounding environment.

6.5 With respect to the general changes outlined under point 5.4:

- a. The four titles owned by RRD are bisected by an unnamed stream. The stream is subject to 'right to drain water' easements in gross in favour of KDC as shown on DP 541848. The stream conveys stormwater from the upstream catchment (including from land owned by The Rise Limited), conveying it under Mangawhai Heads Road where it ultimately drains to the Mangawhai Harbour.
- b. While no flood susceptible areas are identified in the KDP, there are flood susceptible areas associated with the stream on the Northland Regional Council (NRC) natural hazard GIS (10, 50, and 100-year flood extents). The presence of these flood hazards necessitated site specific flood assessments as part of the geotechnical reports that RRD have obtained for the planned commercial/industrial development of the two vacant titles. This assessment resulted in the identification of site-specific floor levels for each of the vacant lots.
- c. Given the proposed increase in residential density and the associated increase in the extent of building and impermeable coverage proposed as part of PC83, RRD are concerned regarding the associated impact on stormwater being discharged to the stream and the associated impacts on flood extents on the four titles they own.
- d. The relief sought is intended to increase the consideration given to the management of stormwater within the PC83 area, both at the subdivision and development stage. A more explicit requirement to attenuate stormwater flows/ demonstrate that stormwater

attenuation can be achieved will ensure that there is no exacerbation of flooding on downstream properties resulting from incumbent network constraints.

Conclusions

6.6 The relief sought represents the most effective and efficient use of the land having considered the requirements of s32 of the RMA, particularly given the existing activities located on/activities planned for the four titles owned by RRD.

6.7 The relief sought best achieves sustainable management under Part 2 of the RMA.

7. RRD wishes the Kaipara District Council's decision to address the above issues by:

7.1 Rezoning the four titles owned by RRD as either Commercial or Industrial; or

7.2 Should the four titles owned by RRD be rezoned Residential in accordance with PC83, amending the earthworks, fence, traffic movements, and signage rules as per point 5.3 of this submission; and

7.3 Amending the land use rule 13.10.12 'Permeable Surfaces' and subdivision rule 13.14.5 'Stormwater Disposal' to require greater detail on stormwater attenuation to avoid potential adverse flood effects on downstream properties including the four titles owned by RRD as per point 3.6 of this submission.

7.4 Alternative relief with similar effect.

8. RRD wishes to be heard in support of their submission at a hearing.



Thomas Keogh

Planning Consultant

On behalf of Regan and Rochelle Davies

Dated this 23rd of August 2023