

Private Plan Change 83 The Rise Limited: Decision to adopt, accept or reject the plan change or determine it as a resource consent

Meeting: Kaipara District Council
Date of meeting: 28 June 2023
Reporting officer: Paul Waanders, District Planner
Katherine Overwater, District Planning Team Leader

Purpose | Ngā whāinga

To decide whether the application for a Private Plan Change by The Rise Limited (PPC83) is adopted, accepted, rejected, or to be determined as if it was a resource consent application.

Executive summary | Whakarāpopototanga

The Rise Limited requests through a Private Plan Change application in accordance with Schedule 1 of the Resource Management Act 1991 (RMA) to rezone 56.9 hectares of rural land at Cove/Mangawhai Heads Roads in Mangawhai to modify the present Rural Zone to a Development Area precinct providing for residential development.

Council is required to make a decision to process this application in accordance with Clause 25 of Part 2 of Schedule 1 to the RMA.

Clause 25 of the RMA directs Council to either:

1. **Adopt** the request either in whole or in part as if it were a proposed plan change made by the Council, which must then be processed in accordance with the provisions of Part 1 of Schedule 1 Clause 25(2)(a) of the RMA; **or**
2. **Accept** the Private Plan Change request either in whole or in part, which then triggers a requirement to notify the request, or part of the request under Clause 25(2)(b) of the RMA; **or**
3. **Reject** the Private Plan Change request in whole or in part, in reliance on one of the limited grounds set out in Clause 25(4) of the RMA; **or**
4. **Determine** the request as if it were an application for a resource consent under Clause 25(3) of the RMA.

Staff have followed the RMA processes to get to this stage and are now seeking a Council decision on the application within the parameters of Clause 25 of the RMA. It is important to note that the terminology 'adopt' or 'accept' does not imply that the plan change is or will be 'approved' by the Council. The process of consultation through notification and publicly held hearings must be undertaken before the application is submitted to Council for a final decision.

Recommendation | Ngā tūtohunga

That the Kaipara District Council:

- a) Accepts in whole, the private plan change request (Private Plan Change 83 – The Rise Limited, in accordance with Clause 25(2)(b) of the Resource Management Act 1991.
- b) Requests the Chief Executive publicly notifies the Private Plan Change, and that public notification commences on 25 July 2023.
- c) Notes that public consultation will occur for one month, ending 23 August 2023.

Context | Horopaki

Clause 21 of Schedule 1 of the RMA provides that “any person” may request a change to the Operative District Plan.

The Private Plan Change application was lodged by The Rise Limited proposing to rezone land at the Rise/Cove Roads, Mangawhai from Rural Zoning to a Development Area precinct providing for residential development (see **Attachment A**).

The RMA prescribes the process that Council must follow for private plan change requests to make changes to the Operative District Plan, which includes:

- An assessment of the submitted documentation following a request for additional information from Council (Clause 23 of Schedule 1 of the RMA) to better understand the potential effects of the proposal on the environment; the ways in which any potential adverse effects may be mitigated; and the nature of any consultation undertaken or required to be undertaken.
- In terms of Clause 25 of Schedule 1 of the RMA, once Council is satisfied with the additional information requested, a decision then needs to be made if Council will “accept”, “adopt” or “reject” the requested Private Plan Change application in whole or in part.
- Following a decision pursuant to Clause 25 of Schedule 1 of the RMA, Council then needs to notify the Private Plan Change, with or without amendments.
- After public notification of the Private Plan Change and receiving submissions a public hearing is then held.
- Following the hearing, Council will then generally consider the recommendations and make a decision to “approve” or “decline” the plan change, depending on the delegations Council makes to the hearing panel (which will be presented in a future report to Council to appoint Commissioners).

For clarity, this report only deals with the decision the Council must make under Clause 25 of the RMA – to ‘accept’, ‘adopt’ or ‘reject’ the private plan change request or whether to treat it as a resource consent application.

Discussion | Ngā kōrerorero

Private Plan Change 83 - The Rise Limited is a request to rezone 56.9 hectares of rural land at Cove/Mangawhai Heads Roads in Mangawhai.

The private plan change seeks to rezone the Operative District Plan from a rural zoning to a residential zone and apply a bespoke precinct and to adapt the Residential Chapter of the Operative District Plan in respect to the rules that affect the private plan change area.

Clause 21 of Schedule 1 of the RMA provides that “any person” may lodge a private plan change request with the Council. The Council is then required to make a decision under Clause 25, which requires Council to choose between 1 of the 4 following options:

1. **‘Adopt’** the private plan change request, or part of the request, which means that the request then becomes a Council or public plan change;
2. **‘Accept’** the private plan change request, or part of the request, in which case it remains a private plan change;
3. **‘Reject’** the private plan change request, or part of the request based on one of the limited grounds set out in Schedule 1, Clause 25(4) of the RMA;
4. **‘Change’** the private plan change request into a resource consent application.

The options to either ‘adopt’ or ‘accept’ does not imply that Council has approved (i.e. granted) the plan change. Consultation through public notification and hearings is still required to be undertaken before the matter is submitted to Council for a decision on the private plan change.

The matter of ‘adopting’ or ‘accepting’ the application **‘in part’** needs to be assessed. It is technically possible for Council to make different decisions on the various aspects of the

application. However, given that the application was submitted comprehensively, it would be expected that the whole application be considered as a 'complete private plan change package' from the outset. It is best practice to keep the application intact. Whilst deciding an application in part is technically an option, it is very rare for this to occur or never happens in practice. The implication of this outcome is that deciding the application in part may lead to public confusion as well as the council/community 'picking up the costs' for part of the application and the applicant paying for the remainder of the private plan change.

Assessing the application for 'adopting' or 'accepting' 'in part' is not recommended by staff.

The decision required from Council is to **either** enable the process to continue (to proceed to public notification for submissions on the plan change to be received followed by a public hearing) **or** to terminate the private plan change application (i.e. reject the private plan change application for processing).

Any decision of the Council, including one which considers the application 'wholly' or 'in part' can be appealed by the applicant to the Environment Court in terms of Schedule 1, Clause 27 of the RMA. Therefore, the four options must be considered and analysed against the information received from the applicant and the legal requirements of the RMA.

Options

The four options to be considered are set out as follows:

Option 1

'Adopt' the request, or part of the request, as if it were a proposed plan change made by the Council itself – under Schedule 1, Clause 25(2)(a) of the RMA.

Council can decide to adopt the private plan change request, and process it, as though it were a Council initiated plan change. A decision to adopt the plan change triggers the process set out in Part 1 of Schedule 1, which would then require the Council to consult as required in clauses 3 to 3C of Part 1. Following the required consultation, the Council would then need to notify the proposed plan change for submissions from the public and hold a public hearing.

The applicant has not requested the Council to adopt the Private Plan Change. It is also important to note that if Council were to adopt the plan change, the Council (and therefore the wider community) also become responsible for paying for the full or part cost of the plan change request (depending on whether it is adopted in part or in full). As noted previously it would be unusual practice for Council to adopt the private plan change in part.

Regarding costs, it is difficult to provide an estimate of costs at this stage of the entire process because there are many variables which dictate costs, but the estimate would be in the 'hundreds of thousands of dollars', including any appeals to the Environment Court.

For the above reasons, it is not recommended that the Council adopts the private plan change either in full or in part.

Option 2

'Accept' the private plan change request for processing under Schedule 1, Clause 25(2)(b) of the RMA and proceed to publicly notify the request under Clause 26 of the RMA.

If the Council accepts the request, it must then proceed to publicly notify the request for submissions from the public. After the submission period closes, Council needs to hold a public hearing to consider any submissions received and a decision would then generally be made by the Council in relation to the request in accordance with Schedule 1 of the RMA, unless the functions and powers are delegated to the hearing Commissioners. Importantly, all costs associated with the request (including

notification and any hearing held) would lie with the applicant instead of Council (and therefore not the wider community).

This is the recommended option and is the option sought by the applicant.

Option 3

'Reject' the Private Plan Change request - Schedule 1, Clause 25(4), of the RMA.

The Council has the power to reject a Private Plan Change request, in reliance on one of the limited grounds set out in Clause 25(4) the RMA. If the Private Plan Change request is rejected by the Council, the applicant can appeal that decision to the Environment Court.

The grounds for rejection under Clause 25(4) of the RMA are as follows:

- a) the request or part of the request is frivolous or vexatious; or
- b) within the last two years, the substance of the request or part of the request has been considered and given effect to, or rejected by the local authority or the Environment Court; or has been given effect to by regulations made under Section 360A; or
- c) the request or part of the request is not in accordance with sound resource management practice; or
- d) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or
- e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than two years.

The private plan change request contains a comprehensive section 32 evaluation report (**Attachment B**), including an assessment of the objectives and policies, and a sufficiently detailed Assessment of Environmental Effects. The request is also accompanied by a range of specialist assessments in relation to the key matters considered to be material to the request, including transport, three waters, economic, ecology, geotechnical, urban design, and landscape.

The request enables the nature of the private plan change and its effects to be reasonably understood. It is therefore considered that the Council cannot reject the private plan change request on the basis that it is frivolous or vexatious.

This private plan change has not been considered within the last two years, therefore it is considered that the Council cannot reject the request on this matter.

The substance of the private plan change or part of the request, being the rezoning of land, does not relate to section 360A of the RMA (which refers to regulations for amending regional coastal plans pertaining to aquaculture activities). It is therefore recommended that the Council does not reject the request on the basis of this matter.

"Sound resource management practice" is a frequently used term but is not defined in the RMA. Case law indicates that "sound resource management practice" relates to scale of effects and the alignment of any private plan change to Part 2 of the RMA, i.e. - the purpose and principles.

The applicant has considered the available zoning options for the site and concluded that the proposed rezoning of rural land along with the introduction of new provisions including a precinct overlay will result in a mixed-use development. It is anticipated that the proposed private plan change will positively contribute to the existing business and residential zones included in the Operative District Plan, while maintaining the existing character and amenity of the area, and appropriately managing any potential effects associated with servicing future development of the application area.

Various specialist reports support the private plan change and while the private plan change need to be assessed through the public submission and hearing processes, the scope and extent of the changes sought do not, in themselves, threaten the purpose and principles of the RMA.

Staff have reviewed the applicant's planning and specialist reports and taken the purpose and principles of the RMA into account. Therefore, the private plan change is considered to be in

accordance with sound resource management practice.

Staff therefore recommend that the Council does not reject the private plan change on the basis that it is contrary to sound resource management practice.

The private plan change request will not make the Operative District Plan inconsistent with Part 5 of the RMA, which sets out the role and purpose of planning documents created under the RMA including those documents that assist a local authority in giving effect to the sustainable management purposes of the RMA.

It is therefore recommended that the Council does not reject the private plan change on the basis that the substance of the request would make the Operative District Plan inconsistent with Part 5 of the RMA. The Operative District Plan provisions relevant to the private plan change were made Operative in 2013. The provisions have therefore been operative for more than two years, and it is recommended that the Council not reject the Private Plan Change request on this basis.

With all grounds considered, it is **not** recommended to reject the private plan change request.

Option 4

The council has the option to decide to deal with the private plan change request as if it were an application for a resource consent under Schedule 1 clause 25(3) of the RMA. However, in this case, the private plan change request seeks to rezone the whole area of land to achieve an integrated development.

It is considered that the most appropriate process for achieving rezoning for this site and subsequent development is through a plan change process. Additionally, the applicants have specifically requested a private plan change (as opposed to a resource consent/subdivision process).

Staff therefore **do not** recommend that the Council deals with the request as if it were an application for a resource consent.

Summary of Options

Staff have provided an assessment of all 4 options. The recommended option is option 2 – to **accept** the Private Plan Change under Clause 25(2)(b) of Schedule 1 of the RMA, which would mean that the private plan change request can continue to be processed and public notification of the application can proceed on 25 July 2023.

Policy and planning implications

‘Accepting’ the private plan change for processing in accordance with Schedule 1 of the RMA will mean that the application can proceed to public notification, followed by a public hearing.

All factors (including public submissions and further submissions) will be considered by a Hearings Panel before Council makes its final decision on the application, dependent on the delegation which will be submitted to Council when appointing the Commissioners.

Financial implications

Private plan change requests that are ‘accepted’ by Council are processed with the ability to recover all costs from the applicant up to the Council’s final decision, excluding any appeals to the Environment Court.

Risks and mitigations

If Council chooses to reject the private plan change or to treat it as a resource consent application, the applicant may appeal this decision to the Environment Court. This could lead to reputational risk for Council as well as unanticipated financial costs.

Impacts on Māori

The applicant has contracted the development of a cultural assessment which has been compiled

by Te Uri o Hau as a full Cultural Impact Assessment (CIA). The applicant has also had six months of discussions with the Iwi about the development of this CIA and has therefore fulfilled its consultation role. This includes recommendations such as ongoing consultation with mana whenua. The CIA will form part of the notification material when the private plan change is publicly notified.

Other iwi/hapu will have the opportunity to provide submissions when the private plan change is notified.

Significance and engagement | Hirahira me ngā whakapāpā

The decisions or matters of this report are considered to have a low degree of significance in accordance with Council's Significance and Engagement Policy. The RMA does not provide for public consultation in the Schedule 1, Clause 25 decision (as this is a Council only decision). Therefore, no feedback is required, and the public will be informed of Council's decision via the publication of the agenda and minutes of this meeting on the website and through other channels if appropriate.

Formal public consultation will be required after the Council has made this RMA Schedule 1, Clause 25 decision, and the public will have the ability to provide submissions on the private plan change proposal.

Next steps | E whaiake nei

The private plan change must be notified within four months of being accepted under Schedule 1, Clause 25 of the RMA. It is recommended to commence public notification from 25 July 2023.

The private plan change application will then work its way through the Schedule 1 process, which will include opportunities for the public to make submissions and attend a hearing.

Attachments | Ngā tapiritanga

	Title
A	Locality and zoning map
B	Private Plan Change 83 The Rise – Section 32 Evaluation Report