

**SUPPLEMENTARY SUBMISSIONS ON BEHALF OF MANGAWHAI MATTERS INC,
NZ FAIRY TERN CHARITABLE TRUST, AND TERN POINT RECREATION AND
CONSERVATION SOCIETY INC**

1. These brief submissions respond to the following matters raised by counsel for the Applicants' legal submissions, presented yesterday, or by questions from the Commissioners at the conclusion of that presentation:
 - a. Capacity of the wastewater system
 - b. Relative importance of spatial plans
2. In relation to the first issue, it appears that the argument being promoted by the Applicants is that, despite a considerable amount of "zoned land" available for development, not all of that land is either feasible or likely to be developed. That fact, it is said, generates "headroom" that, coincidentally, is just sufficient to accommodate the entirety of the proposed development authorised by PC85.
3. In my submission, in the context of assessing available infrastructure capacity for the purpose of assessing the merits of a plan change, it is not appropriate to undertake the extent of "discounting" promoted by the Applicant so as to generate a hypothetical headroom:
 - a. First, once land is zoned, the Council will have very little control over when and how that zoned land is developed. In short, once land is zoned, any landowner of zoned land would have an expectation that the land can be developed. It would represent poor planning practise if a situation arose where a landowner could not develop zoned land because there is an capacity constraint that has come about because the PC85 land was zoned, and a moratorium on development was needed. (This coincidentally is the exact issue facing the Hibiscus Coast in Auckland due to constraints at the Army Bay Treatment Plant. It is causing enormous difficulties for landowners, the Council, and Watercare.)
 - b. Secondly, as well as being poor planning practise, significant issues of equity and fairness arise if a landowner who has purchased zoned land (which is able to be serviced by wastewater) subsequently is not able to connect because at the time they choose to develop there is no longer any capacity.
 - c. Thirdly, an experienced infrastructure provider of wastewater services will always try and plan ahead, and always run surplus capacity within the network and treatment plant. This is because development can come on stream quickly – relative to the time taken to upgrade a treatment plant – but also because running networks and treatment plant at or near capacity risks overflows or other malfunctions that might generate adverse environmental outcomes. The likely receiving environment, the Mangawhai Harbour, is very sensitive to any such incident.

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- d. Fourthly, this discounting requires the Commissioners to make judgement calls about whether or not, when, and to what extent, zoned land will be developed. In my submission, there is simply not the evidence before the Commissioners to make this assessment.
4. Adopting the approach urged upon you by the Applicants puts the risk on the Council that it will need to fund, consent and construct, currently unplanned for infrastructure works in order to provide for the development of the zoned land.
5. While I accept the submission made yesterday by counsel for the Applicants that, in making a decision as to whether or not to allow a developer to connect, a Council must act reasonably, in my submission any Court reviewing such a decision would:
 - a. Recognise that the Council is best placed to make a decision as to whether or not there is capacity and over what timeframe;
 - b. Recognise that, while an applicant for review might argue that it is “not fair” that they cannot connect, allowing such a connection might give rise to unfairness to others (ie existing landowners who cannot in future connect). In other words, fairness needs to be assessed from all directions – not just from the Applicants’ perspective;
 - c. Accept that decisions about how to spend ratepayer money on wastewater upgrades is squarely a matter within the four corners of a Council’s responsibility, and no Court would feel able to second guess any (reasoned) Council decision as to how that money was spent; and
 - d. Accept that the Council is likewise best placed to make a judgement call on where the appropriate balance of risks lies in terms of current landowners and developers seeking the rezoning of land.
6. In respect of the relative importance of spatial plans, counsel for the Applicants promoted an argument that PC85 represents a more detailed assessment and in that regard it should be seen as “superseding” or otherwise be preferred to the Spatial Plan 2020.
7. The Commissioners will appreciate that if that argument were accepted, then any spatial plan could be overridden by a private plan application because any plan change application:
 - a. would be later in time than the spatial plan; and
 - b. provide more detail than the spatial plan.
8. The purpose of a spatial plan is not to provide that granular detail, rather it is designed to provide overarching guidance as to where development should occur. A key role of any spatial plan is to ensure that the provision of infrastructure can match development demand. This is also important because, for linear infrastructure, the road (or in this case pipeline) needs to connect the entire distance. Furthermore, in installing pipework, it is far

more efficient (and affordable) to place in pipelines with sufficient capacity for the ultimate demand.

9. I accept, of course, that the one constant in planning is that communities are never static, and planning needs to be responsive to such change. But, any departures from agreed spatial plans (in particular) needs to be assessed by reference to the degree of divergence and the implications of that for wider urban form and infrastructure affordability issues. Context is everything. In no way, can PC85 be considered anything but a significant divergence from the Spatial Plan.
10. While the PC85 land may be appropriate for development at some time in the future, the question for the Panel is – what is the most appropriate zoning of the land **now**? A decision to decline PC85 is not a decision that development can never occur on that land – it is simply that, for all of the reasons identified, that time is not now.

Dated: 17 February 2026



Bal Matheson KC

Counsel for Mangawhai Matters Inc, NZ Fairy Tern Charitable Trust, and Tern Point Recreation and Conservation Society