

BEFORE THE HEARING PANEL APPOINTED BY KAIPARA DISTRICT COUNCIL

In the matter of Private Plan Change 85, by Foundry Group Limited and Pro Land Matters Company Limited, being referred to as Mangawhai East (**PPC85**).

Speaking notes of Jason Smith

My full name is Jason Graham Smith.

I am a Principal Scientist with Morphum Environmental.

My role in terms of Plan Change 85 has been on behalf of Kaipara District Council to undertake a peer review of ecological aspects of the application and to respond to ecological matters raised in submissions.

To this effect, I prepared a statement of evidence dated 1 December 2025.

I have also reviewed the Applicant's Evidence in Chief, and the evidence of submitters where relevant to my scope.

I prepared a statement of rebuttal evidence, dated 9 February 2026 where I outline my position in regarding these matters.

Differences of opinion with the applicant

In terms of the areas of disagreement between myself and Mr Delany for the applicant, as I see it, from an ecological perspective, there remains one key point of disagreement regarding the keeping of dogs within the plan change.

Mr Delany's, and the Applicant's preference is for consent notices on future records of title in the plan change area to require dogs to be contained on properties and to be on-leash in public places. My position that a more robust control of prohibiting dogs within the plan change area to the extent possible is preferable from an ecological perspective.

Mr Delany acknowledges the need for this control on dogs is driven by to the known potential disturbance dogs, even on-leash, can create for the New Zealand Fairy Tern/ Tara iti, as well as, the New Zealand Bittern.

I note that in point 19 of Ms O'Conner's rebuttal evidence, she recognises that a total ban on dogs as pets within the PC85 Development area is, from a purely ecological perspective, the preferred outcome.

Ms O'Connor position is that the panel also needs to consider the existing use of the harbour by people walking their dogs and along informal walkways.

I retain my position that banning dogs from the plan change area is the preferable outcome.

As outlined in my rebuttal evidence (paragraph 3.8), if dogs are allowed in the plan change area (as sought by the Applicant) and even one dog were to escape from a property unsupervised or was let off leash by its owner and entered areas in the estuary where New Zealand Fairy Tern/Tara iti forage and nest this could have an effect on the New Zealand Fairy Tern/Tara iti given its 'Threatened – Nationally critical' endangered threat status. Even if the chance of this occurring was regarded as low (on the basis that it was assumed dog owners would comply with requirements to keep dogs confined and on-leash), in my view it would be an effect of low probability but high potential impact. For these reasons, I consider a ban on dogs in the plan change area to be more appropriate.

Differences of opinion with the Department of Conservation

In relation to the Department of Conservation, I understand the key difference of opinion between the witnesses called on behalf of the Department of Conservation and the section 42A team, is that the Department of Conservation considers that the proposed walkways shown on the structure plan in ecologically sensitive areas should be removed.

In my opinion, the walkways do not need to be removed from the structure plan. I understand that the construction of the walkways will require regional consents. This will allow for any adverse effects on wildlife to be considered through a future consenting process.

Difference of opinion with the New Zealand Fairy Tern Trust

I understand from the legal submissions filed on behalf of the New Zealand Fairy Tern Trust that the Trust is seeking PPC85 be declined on the basis it will have significant effects on the New Zealand Fairy Tern, and to a lesser extent the Australasian Bittern, through impacts on feeding.¹

In response to this, as outlined in my rebuttal evidence, in response to Mr Southey's evidence:

- The plan change itself is primarily located on pasture/farmland, and SNAs are proposed to be protected. The plan change itself does not authorise the construction of any walkways, or destruction of any sensitive habitat. Any such activities will be required to obtain resource consent in the future, with their effects being subject to assessment.
- The change in land use is likely to lead to an increase in the potential for disturbance for native avifauna utilising adjacent habitats through an increase in pedestrians and dogs. In relation to dogs, my preferred position is that they be banned (rather than a requirement they be securely confined within properties, and on leash). This is assessed as resulting in at least a Moderate level of effect using the EIANZ framework.
- I agree with Mr Southey that, in a general sense, any change from rural to urban land creates an increase in risk to wildlife. Even with the measures proposed for PPC85 there remains an element of residual risk compared to if the plan change area remained undeveloped.

While I do not agree that the effects of the plan change are sufficient to justify the plan change being declined, I do agree that potential effects on wildlife from the plan change must be avoided and reduced to the extent possible.

¹ Paragraph 1.2(d) of the Opening Legal Submissions for the Tern Point Recreation and Conservation Society Inc, Mangawhai Matters Inc, and the New Zealand Fairy Tern Charitable Trust Inc.

Overall, in light of the other measures proposed in the plan change, provided dogs are banned from the plan change area, in my opinion, there is no ecological reason to decline the plan change.