

BEFORE THE KAIPARA DISTRICT COUNCIL'S HEARING PANEL

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER An application for Private Plan Change 85 (**PC85**)
- **MANGAWHAI EAST** by Foundry Group Limited
(formerly Cabra Mangawhai Limited) and Pro
Land Matters Company to rezone approximately
94-hectares of land at Black Swamp and
Raymond Bull Roads, Mangawhai

**Legal Submissions on behalf Foundry Group Limited and Pro Land Matters
Company**

Dated 16 February 2026

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May it please the Commissioners:

Introduction

1. These submissions are filed on behalf of Foundry Group Limited and Pro Land Matters Company (**the Applicant**), the applicant for Private Plan Change 85 – Mangawhai East (**PC85**) to the Kaipara District Operative District Plan (**KDP**).
2. PC85 seeks to rezone approximately 94-hectares of land at Black Swamp and Raymond Bull Roads, Mangawhai (**Site**) a mixture of Neighbourhood Centre Zone, Mixed Use Zone, Large Lot Residential Zone, Low Density Residential Zone, Medium Density Residential Zone and Rural Lifestyle Zone.
3. PC85 also proposes to apply a new Mangawhai East Development Area (**DA Provisions**) which introduces new provisions to manage land use and development within the Site. The DA Provisions also secure urban design, ecological, transportation and connectivity and infrastructure outcomes.
4. As noted in the s 42A Report, PC85 was:¹
 - a. Accepted by Kaipara District Council (**Council**) pursuant to cl 25(2)(b) of Schedule 1 to the RMA on 25 June 2025;
 - b. Publicly notified on 14 July 2025; and
 - c. The subject of 87 primary submissions and 11 further submissions.
5. The Site comprises various parcels of land which can be categorised into two areas:
 - a. The 'Northern Site' bordered by Raymond Bull Road to the Site's northern and eastern boundaries; and

¹ Section 42A report at [24] – [28].

- b. The 'Southern Site' located south of Black Swamp Road bordered at the western edge by Insley Street/Tomarata Road.
- 6. The Site's western boundary is bordered by the Mangawhai Estuary. This coastal margin contains dunes, tidal flats, saltmarsh, freshwater wetlands and native vegetation. Both the Northern and Southern Sites contain portions of Significant Natural Areas (**SNA**) which are identified on the proposed Structure Plan.²
- 7. PC85 has been deliberately designed to ensure that terrestrial, freshwater and coastal ecological values within and adjacent to the Site are protected, maintained and enhanced.
- 8. PC85 seeks to enable comprehensive and cohesive urban outcomes which achieve:
 - a. Appropriate transitions from the estuarine environment to residential land uses;
 - b. A well-connected and walkable neighbourhood (including neighbourhood amenities);
 - c. High-quality public open space and the preservation of core ecological features and habitats; and
 - d. A mixture of high-quality residential outcomes.
- 9. There is limited utility in repeating the extensive descriptions of the proposal in the application documentation and supporting evidence. I do say that the Site is land well suited to the outcome advanced and the Applicant's proposed provisions are an output of detailed assessment and analysis by experienced technical experts.

Key Issues

- 10. There has been a significant narrowing of the issues between Council and the Applicant since notification of PC85.

² O'Connor Rebuttal, Attachment B.

11. The core area of disagreement relates to wastewater serviceability and the inter-related considerations of:
 - a. The underlying economic assessments relating to urban capacity and demand; and
 - b. Whether PC85 is “infrastructure ready”.
12. Tern Point Recreation & Conservation Society Incorporated (**TPRCS**), Mangawhai Matters Incorporated (**MMI**), and The New Zealand Fairy Tern Charitable Trust (**Fairy Tern Trust**) are submitters in opposition to PC 85 jointly represented at this hearing. TPRCS and MMI have concerns regarding wastewater servicing, and raise issues relating to:
 - a. Urban Form and considerations arising out of the National Policy Statement – Urban Development (**NPS – UD**);
 - b. Clause 3.6(5) of the National Policy Statement – Highly Productive Land (**NPS – HPL**).
13. TPRCS, MMI, the Fairy Tern Trust and the Department of Conservation (**DoC**) also raise potential effects on avifauna.

Executive Summary

14. The Applicant’s position with respect to the key issues is:
 - a. With reference to sufficient development capacity under the NPS-UD, the Applicant says that consequent on a proper assessment the capacity enabled by PC85 is needed, and further that there are no wastewater infrastructure shortfalls. That is because current development capacity correctly interpreted is significantly less than Mr Foy asserts. The implication is that there is significant headroom from the perspective of wastewater infrastructure. Mr Thompson says the demand over the medium and long-term is significantly higher than Mr Foy has assessed which means more development capacity is needed.

- b. With respect to urban form, the Applicant says that the development enabled is appropriate and will contribute to a well-functioning urban environment. There is acknowledgement that the land is desirable for residential living, it has been signalled as a location for residential as opposed to rural productive use in the future (albeit at a density less than now proposed), and with linkages in place as required by proposed provisions the proposed development is connected and compact by reference to Mangawhai Village.
- c. With respect to NPS-HPL Clause 3.6(5), the position advanced by Mr Bangma provides an answer to whether it is engaged. If you disagree with Mr Bangma, then I say PC85 satisfies cl 3.6(5).
- d. Potential effects on avifauna are appropriately avoided through design of the proposal and associated DA Provisions including specifically restrictions on dogs (and the banning of cats and mustelids).

15. In my submission, PC85:

- a. Gives effect to the relevant statutory documents including the:
 - i. New Zealand Coastal Policy Statement 2010 (**NZCPS**);³
 - ii. NPS-UD;
 - iii. National Policy Statement for Freshwater Management 2020 (**NPS-FM**);⁴
 - iv. NPS-HPL;⁵
 - v. National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**);⁶

³ As amended 15 December 2025. Amendments in force from 15 January 2026.

⁴ As amended 15 December 2025. Amendments in force from 15 January 2026.

⁵ As amended 15 December 2025. Amendments in force from 15 January 2026.

⁶ As amended 15 December 2025. Amendments in force from 15 January 2026.

- vi. National Policy Statement for Natural Hazards 2025 (**NPS-NH**);⁷
- vii. National Policy Statement for Infrastructure 2025 (**NPS-I**);⁸
- viii. National Environmental Standard for Freshwater (**NES-FM**);⁹ and
- ix. National Environmental Standard for assessing and managing contaminants into soil to protect human health (**NES-CS**).

b. Gives effect to:

- i. The Northland Regional Policy Statement 2016 (**RPS**); and
- ii. The Northland Regional Plan Operative in Part 2023 (**NRP**).

c. Is the most appropriate means of achieving the purpose of the RMA by reference to s 32.

16. The PC85 application and evidence lodged on behalf of the Applicant comprehensively addresses the proposed rezoning and proposed DA Provisions and conclude they are the most appropriate method to achieve the purpose of the RMA.

17. The rebuttal evidence lodged on behalf of Council records a high level of alignment with the Applicant's experts. In most areas there is agreement that the rezoning sought is appropriate, with the key exception of Council's conclusions on wastewater serviceability (and the associated provisions of the NPS-UD).

18. The rebuttal evidence lodged by Mr Cleese on behalf of Council recommends PC85 be declined on the basis of uncertainty of wastewater serviceability.¹⁰ Mr Cleese confirms that all other matters are either agreed

⁷ In force from 15 January 2026.

⁸ In force from 15 January 2026.

⁹ As amended by the Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2025 in force from 15 January 2026.

¹⁰ Cleese Rebuttal at [5.3].

to or, to the extent disagreement remains, it is not material to his recommendation.¹¹

19. In my submission, the plan change application and supporting evidence lodged on behalf of the Applicant comprehensively address the proposed rezoning sought and conclude they are the most appropriate method to achieve the purpose of the RMA.
20. The differences in position between most submitters who have lodged evidence¹² and the Applicant are also narrow. Ms O'Connor's rebuttal evidence provides an overview of the submitters' concerns and the Applicant's responses and concludes that subject to some minor amendments, PC85 as advanced by the Applicant remains the most appropriate method of achieving the purpose of the RMA.
21. I note before completing these legal submissions I received a copy of the opening legal submissions by counsel for Council. Mr Bangma's submissions are detailed and therefore in the interests of brevity and to avoid excessive repetition I have adjusted my opening accordingly (and thus will refer to Mr Bangma's opening where appropriate).
22. I have seen a copy of the legal submissions prepared by Mr Matheson KC on behalf of submitters MMI the TPRCS and the Fairy Tern Trust. With the exception of the Fairy Tern Trust's expert Mr Southey, the evidence to be presented for these parties is lay evidence and will be made available at hearing.

Evidence

23. Evidence in Chief (**EiC**) in support of PC85 was lodged by:
 - a. Rob Pryor (Landscape);
 - b. Jason Evans (Urban Design);

¹¹ Clease Rebuttal at [5.2].

¹² Black Swamp Limited, Department of Conservation, the owners of Lots 1 – 7 Windsor Way, the New Zealand Fairy Tern Charitable Trust and the Riverside Holiday Park 2007 Limited.

- c. Leo Hills (Transport);
- d. Craig Davis (Coastal Hazards);
- e. Phillip Fairgray (Civil);
- f. Evan Peters (Stormwater);
- g. Robert White (Water and Wastewater);
- h. Mark Delaney (Ecology);
- i. Adam Thompson (Economics);
- j. Burnette O'Connor (Planning);
- k. Jonothan Carpenter (Archaeology);
- l. Christopher Davies (Soil Contamination);
- m. Jeremy Hunt (Rural Productivity); and
- n. Andy Pomfret (Geotechnical).

24. Supplementary statements of evidence in response to the Panel's Direction 2¹³ have been lodged by:

- a. Craig Davis (Coastal Hazards);
- b. Adam Thompson (Economics);
- c. Evan Peters (Flood Hazard);
- d. Jeremy Hunt (Rural Productivity); and
- e. Burnette O'Connor (Planning).

25. Rebuttal statements of evidence have been lodged by:

- a. Duncan Unsworth (Corporate);

¹³ Dated 22 December 2025 requesting further evidence with respect to the Government's recent changes to various national planning instruments.

- b. Jackson Worsfold (Corporate);
- c. Mark Delaney (Ecology);
- d. Craig Davis (Coastal Hazards);
- e. Leo Hills (Transport);
- f. Evan Peters (Flood hazards and earthworks¹⁴)
- g. Andy Pomfret (Geotechnical);
- h. Rob Pryor (Landscape);
- i. Adam Thompson (Economics);
- j. Robert White (Water and Wastewater);
- k. Jason Evans (Urban Design); and
- l. Burnette O'Connor (Planning).

26. The Commissioners have excused Messrs Carpenter, Davies, Hunt and Pomfret from attending the hearing.¹⁵

27. Due to the shared lodgement date for both the Applicant's and Council's rebuttal evidence, the Applicant's evidence does not directly respond to matters arising from Council's rebuttal. Therefore, some of the Applicant's witnesses may provide brief additional comment as relevant as part of their evidence presentation.

Statutory Framework

28. As noted above, the Applicant's private plan change request was accepted for processing by Council under cl 25 of Schedule 1 to the RMA which signifies that the Council officers accepted that PC85:

- a. Was not frivolous or vexatious;

¹⁴ Mr Peters provided a statement of rebuttal addressing earthworks as Mr Fairgray was unavailable.

¹⁵ These witnesses remain available by phone if necessary.

- b. Was in accordance with sound resource management practice; and
- c. Would not make the KDP inconsistent with Part 5 of the RMA.

29. The relevant statutory framework is set out in the s 42A Report.¹⁶ Subsequent sections in that report include analysis of the relevant policy statements, national environmental standards and regulations, KDP provisions, other relevant legislation, plans and strategies. The relevant statutory framework is also comprehensively assessed in the Applicant's s32 Report¹⁷ and in the planning evidence of Ms O'Connor. I make some further observations below.

30. PC85 is to be considered pursuant to Part 1 of the First Schedule to the Act. The plan change will therefore be determined having regard to the matters outlined in sections 31, 32 and 72 to 76 of the RMA, to the extent these are relevant to PC85.

31. In terms of the relevant provisions of the RMA, the Panel needs to be satisfied that PC85:

- a. Is in accordance with:
 - i. The Council's functions as set out in section 31 of the RMA;
 - ii. The purpose and principles in Part 2 of the RMA; and
 - iii. The Council's duty under section 32 of the RMA.
- b. Gives effect to:
 - i. Any relevant national policy statement;
 - ii. Any relevant national environmental standard; and
 - iii. The relevant provisions of the RPS.¹⁸

32. Clause 10(2) of Schedule 1 to the RMA provides that after considering PC85

¹⁶ At [15] – [23].

¹⁷ Section 6.

¹⁸ Section 75(3) of the Act.

and matters raised in submissions, the Panel must issue a decision on the provisions and matters raised in submissions, which includes the reasons for accepting or rejecting those submissions.

33. As experienced Commissioners you will be familiar with the relevant statutory approach. To summarise, the relevant statutory provisions are:

- a. Section 31 of the RMA sets out the functions of district councils. Those include the establishment and implementation of objectives, policies and methods to achieve integrated management of the natural and physical resources of the district for the purpose of giving effect to the RMA.¹⁹ Relevantly, that section also includes the establishment and implementation of objectives, policies and methods to ensure sufficient development capacity for housing and business land,²⁰ and the control of any actual or potential effects of the use, development, or protection of land.²¹
- b. Section 32 refers to the purpose of the Act and goes on to require identification and assessment of benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including specific reference to opportunities for economic growth that are anticipated to be provided or reduced and employment that are anticipated to be provided or reduced.
- c. Sections 72 to 76 outline the purpose, contents, and rules of district plans as well as the matters to be considered by territorial authorities.
- d. Part 2 of the RMA, the sustainable management purpose, and integrated management are considerations interwoven into the required analysis of the proposed plan provisions.

34. Returning to s32, in exercising its functions under the RMA, the Council is

¹⁹ Section 31(1)(a).

²⁰ Section 31(1)(aa).

²¹ Section 31(1)(b).

required to undertake evaluations and further evaluations of objectives, policies and other methods in accordance with that section of the Act.

35. Section 32 requires an evaluation of the extent to which each objective is the “most appropriate” way to achieve the purpose of the RMA and of whether the provisions in a proposal are the most appropriate way to achieve those objectives. That second evaluation is required to be undertaken by identifying other reasonably practicable options for achieving the objectives, assessing the efficiency and effectiveness of the provisions in achieving the objectives and summarising the reasons for deciding on the provisions.
36. While section 74(1)(b) of the Act provides that plans must be developed “in accordance with” the provisions of Part 2, the Supreme Court decision in *King Salmon*²² makes clear that when developing plans, if there is no ambiguity in the higher order planning documents there is generally no need to undertake an assessment against Part 2 of the RMA.²³ However, there are several ‘caveats’ to this general rule, which include:²⁴
 - a. There may be instances where the document concerned does not “cover the field” and the decision maker will have to consider whether Part 2 provides assistance in dealing with the matters not covered; and
 - b. If there is uncertainty as to the meaning of particular policies, reference to Part 2 may be justified to assist in a purposive interpretation.
37. In this case I submit that there are no ambiguities or any other reasons that would require recourse to Part 2.
38. Council’s legal submissions address the legal framework in section 2, as does the s42A Report at [15] – [22]. In short, our position is aligned, and

²² *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC).

²³ *Ibid*, at [85].

²⁴ *Ibid*, at [88].

to the extent that Mr Bangma covers additional matters of relevance to your consideration I agree with his identification of the relevant provisions.

Issues – Analysis

39. As noted above, key issues are:

- a. The NPS-UD and the inter-related considerations of:
 - i. The underlying economic assessments relating to development capacity and demand; and
 - ii. Whether PC85 is “infrastructure ready”, with reference to wastewater serviceability.
- b. Urban Form;
- c. Clause 3.6 (5) of the NPS-HPL; and
- d. Potential effects on avifauna.

40. There is a group of other issues raised in the s 42A Report which have been fully or substantially resolved.

NPS-UD, development capacity and demand, wastewater serviceability

41. Whether Mangawhai comes within the definition of “urban environment” under the NPS-UD has been addressed in recent plan changes. In my submission the hearing panels for Private Plan Change 78: Mangawhai Central, Private Plan Change 83: The Rise Limited, and Private Plan Change 84: Mangawhai Hills were correct to find that Mangawhai is an “urban environment”. Ms O’Connor concurs.²⁵ I agree with the legal submissions of Mr Bangma regarding this aspect of the matter, to the extent more needs to be said.

²⁵ O’Connor EiC at [106].

42. Consequently PC 85 must give effect to identified objectives and policies in the NPS – UD, including Policies 2 and 8 which relate to development capacity.

43. Policy 2 of the NPS-UD provides that:

Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.

44. Policy 8 of the NPS-UD provides that:

Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if development capacity is:

- (a) Unanticipated by RMA planning documents; or
- (b) Out-of-sequence with planned land release.

45. In the NPS-UD, **development capacity**:

means the capacity of land to be developed for housing or for business use, based on:

- (a) the zoning, objectives, policies, rules, and overlays that apply in the relevant proposed and operative RMA planning documents; and
- (b) the provision of adequate development infrastructure to support the development of land for housing or business use

46. Policy 2 flows through to implementation clauses in Part 3. Importantly the requirement to provide “sufficient development capacity for housing” is detailed in clause 3.2. Relevantly, how one establishes what is “sufficient” is set out in 3.2(2) as follows (inter-alia):

In order to be sufficient to meet expected demand for housing, the development capacity must be:

- (a) plan-enabled (see clause 3.4(1)); and

(b) infrastructure-ready (see clause 3.4(3));

(c) and feasible and reasonably expected to be realised (see clause 3.26)...

47. In the context of key issues for you, the first consideration arising relates to current development capacity for housing and whether it is sufficient. In undertaking that assessment you must consider (inter alia) whether it is “feasible and reasonably expected to be realised”.
48. “Feasible” is a defined term in the NPS-UD and accounts for commercial viability to a developer based on the current relationship between costs and revenue (with reasonable adjustments being made to that relationship when considering the long term).
49. “Reasonably expected to be realised” is not defined in the NPS-UD. It is therefore a matter upon which you as a panel would make a finding based on evidence before you, noting the guidance in clause 3.26 as to how that assessment might be undertaken. In my submission what is feasible and reasonably expected to be realised is likely to be a number significantly less than what is plan enabled. That is so both as a general submission, and with reference to the specific factors which can be identified in the context of Mangawhai as considered by Mr Thompson.
50. Thus your consideration of Policy 2 is not assisted by evidence which simply points to development capacity. You must assess “sufficient” development capacity by reference to whether that development capacity is feasible and reasonably expected to be realised. The other matter you must make a finding on is expected demand.
51. It is also important to record that the wording of 3.2(2)²⁶ is conjunctive. In addition to being plan enabled, the development capacity must be infrastructure ready and feasible and reasonably expected to be realised. Therefore when clause 3.4(1) and 3.4(3)²⁷ speak to “development

²⁶ 3.2 Sufficient development capacity for housing.

²⁷ 3.4 Meaning of plan-enabled and infrastructure-ready.

capacity” it is only that capacity which is feasible and reasonably expected to be realised which is relevant.

52. The consequence is that it is only feasible and reasonably expected to be realised development capacity for which the adequacy of development infrastructure is relevant. That stands to reason – there are clear economic reasons for avoiding ring fencing development infrastructure capacity for plan enabled development which is neither feasible nor reasonably expected to be realised within relevant timeframes. To do otherwise is inefficient and unnecessary from a resource management perspective.
53. The observations above are important in the context of the differing views expressed by Mr Thompson for the Applicant and Mr Foy for the Council.
54. Mr Foy speaks of 4880 dwellings of plan enabled capacity. Pure plan enabled capacity is not the correct measure. I note Mr Foy’s assessment appears to be a mix of simple plan enabled assessment and some reductions from plan enabled for certain classes (in the case of infill).
55. In contrast Mr Thompson has properly considered whether development is feasible and reasonably expected to be realised when considering development capacity. He sets out a reasoned basis for his conclusions. In the context of the sufficiency of infrastructure, his evidence is that when subject to these considerations, actual current development capacity is 2620 dwellings.
56. I say that in law, Mr Thompson has undertaken the correct analysis.
57. The next question relates to whether development capacity is infrastructure ready.
58. There is agreement that current wastewater capacity of around 2900 HUEs will go through planned upgrades to increase capacity to around 5500 connections and then on to a total of 6500 connections.²⁸ The consequence is headroom for wastewater connections of approximately

²⁸ Bennetts EiC, at 4.3(b) and (c).

3600 additional HUEs. Subtracting actual current development capacity of 2620 identified by Mr Thompson from that headroom, leaves 980 HUEs available (if all 2620 were developed – Foy says only 2500 will be developed over 30 years which would give additional headroom). That effectively aligns with the assessed 989 HUEs of demand that PC85 would generate at a full buildout (with feasible and reasonably expected to be realised capacity likely to be a subset of this number). Therefore PC85 development capacity can be properly regarded as infrastructure ready.

59. As matters stand there is no potential for development capacity (properly assessed), including PC 85, to exceed infrastructure capacity over the short, medium or long term.
60. Turning then to expected demand, as required by clause 3.2(1) the Council must provide at least sufficient development capacity to meet expected demand for housing in the short, medium and long term.
61. Mr Foy's assessment is that there is demand of approximately 2500 dwellings over 30 years. Actual current development capacity would meet Mr Foy's assessed number. The section 42A Report at [265] also considers a higher rate of demand over a 30 year horizon for a total demand of 4560 units. Actual current development capacity would not meet this number. The section 42A Report's reference to capacity of 4880 is not the correct measure in that regard.
62. Mr Thompson's assessment projects demand of 2740 dwellings in the medium term, and 12,600 dwellings over 30 years. In my submission in reliance on Mr Thompson's assessment there is a significant shortfall in comparison to actual current development capacity of 2620 (to which the 500 privately serviced dwellings in PC84 Mangawhai Hills can be added). PC 85 assists with meeting medium term demand and at least a proportion of long-term expected demand.
63. I also observe that the requirement in Policy 2 to provide "at least" sufficient development capacity does not mandate minimum provision of such capacity. In the context of the NPS – UD the door is open to provide more than that. I acknowledge there may be other considerations in

circumstances where the NPS – HPL is engaged which may act to limit how much additional development capacity might be provided over and above the sufficient development capacity level.

64. I would add that if you determine (as I say you should) that currently there is insufficient development capacity by reference to demand, then that shortcoming can be addressed at least in part through this plan change. The local authority may subsequently need to go through the process identified in clause 3.7 of the NPS – UD if a shortfall remains, however that process does not act as a barrier to this plan change proceeding.
65. The Applicant’s position is that wastewater capacity is available in the context of feasible and reasonably expected to be realised development capacity, which is the appropriate reference point for servicing capacity.
66. The Council takes a different view as to available capacity as do some submitters. That position drives legal submissions of Mr Bangma and Mr Matheson KC which refer to timing and infrastructure alignment and note various Environment Court decisions in that respect.²⁹
67. The Applicant has provided evidence regarding infrastructure options. Even if full capacity were not available in 30 years time, the Applicant says there is substantial capacity covering decades of growth (in the context of feasible and reasonably expected to be realised capacity, and real world assessment of the speed of construction and uptake). Upgrades to service 6500 connections are acknowledged as achievable, as is upgrades to treat higher capacity than 6500, and from a funding perspective development contributions or potentially a development agreement means this is not a case where Council would be forced to invest funds it does not have available to pursue additional expansion.
68. Mr Fairgray and Mr White say there are options for disposal beyond 6500 connections which can be progressed and consented over time.

²⁹ For example *Foreworld Developments Ltd v Napier City Council* [2005] NZEnvC 38, and *Norsho Bulc Ltd v Auckland Council* [2017] NZEnvC 109 (a matter in which I appeared).

Urban Form

69. A relevant consideration for the Panel is urban form in the context of the NPS – UD and a “well-functioning urban environment” and other relevant planning documents that engage with urban design/urban form.
70. The section 42 A Report discusses urban form³⁰ and suggests Mangawhai is now functionally becoming a single township comprised of three linked nodes, with PC 85 effectively seeking to introduce a fourth node. It is important to immediately observe that initially there were two nodes, which were not well linked. Over time there has been the introduction of a third node and an improvement in linkages. Change and improvement as the years unfold are to be expected. Accommodating demand over time also inevitably leads to growth. There is no specific ‘magic’ to there being three nodes as opposed to four. Nor is a linkage being required over water a disqualifying factor – such a linkage is already in place in two locations on Molesworth Drive. More linkages can be added, and in the case of the PC85 land the essential connection required is that on the causeway with little additional work needed in relative terms. Subject to assessment, an additional suitably linked node may be found appropriate and well-functioning.
71. The s42A Report correctly points out that the Chapter 3 A Structure Plan and the Appendix A maps identifying anticipated growth areas are dated, and more importantly that significant growth has already occurred outside of the areas identified 20 years ago.³¹ Mr Cleese then goes on to discuss the policy intent set out in Chapter 3A.
72. Reference is also made to the Mangawhai Spatial Plan 2020. The section 42A Report notes that the Spatial Plan identifies the PC 85 area as being

³⁰ At [230] – [320].

³¹ Section 42 A Report, at [243] – [245].

suitable for Rural Residential Zone 3 and as a consequence finds that PC 85 does not align with the Spatial Plan in terms of outcomes anticipated.

73. The evidence of Mr Evans engages with these issues. He refers to the Spatial Plan 2020³², noting shortcomings in its preparation and conclusions, and observing that the current planning framework has changed from when the Spatial Plan was prepared.
74. Ms O'Connor addresses well-functioning urban environment considerations in her evidence³³. She identifies that Mangawhai is already characterised by its relationship to the harbour, and that from the perspective of proximity PC 85 is within a 15 minute walk or cycle to the Mangawhai village shops, café's and schools. In effect she makes the point that subject to suitable connectivity across the harbour, the simple presence of intervening water between two areas of development is not of significance. In my submission she is right to interpret "compact" as more than just physically adjoining. Properly understood, PC 85 is compact by reference to Mangawhai Village and builds upon the established arc of development around the harbour.
75. Mr Evans identifies the opportunity to commit the land in question to an enabled appropriately coordinated and designed compact urban form, thereby diverting it from its current trajectory of low density countryside living subdivisions.
76. Turning back to "well-functioning urban environment", Policy 1 requires planning decisions to "contribute" to well-functioning urban environments. The conclusion of Mr Clease (subject to a suitable wastewater effluent disposal solution) is that the proposal is capable of delivering a well-functioning urban environment in terms of its internal layout. However he has "less confidence when the site is viewed through a wider lens of township urban form". That concern relates to what Mr Clease described as fourth urban node on the far side of the harbour "where none is needed

³² Evans EiC, at [14] – [35].

³³ O'Connor EiC, at [74] – [88].

for several decades” and where “a more compact urban form would be delivered if existing growth areas on the northern side of the harbour were developed first”.

77. As already referred to, the Applicant says that the proposal will contribute to a well-functioning urban environment for a plethora of reasons set out in the reports and evidence in support of the plan change. There is acknowledgement that the location is likely to be an attractive place to live, and the Mangawhai Spatial Plan 2020 identifies the area as being suitable for living purposes as opposed to rural production (acknowledging it is rural residential which is signalled) meaning the future of this land is intended as a place for Mangawhai residents to live. Mr Clease has expressed the view that a coherent urban form could be delivered that sees the township one-day wrapping right around the harbour.³⁴ In that respect he is correct, but I say is wrong to fixate on timing as a disqualifying factor from the perspective of appropriate urban form.

78. In my submission PC 85 will contribute to an overall well-functioning urban environment which meets as a minimum those matters listed in Policy 1 of the NPS – UD. I note the plan change does not of itself need to achieve all of those minimum matters – it simply needs to contribute to a well-functioning urban environment which it does so. Mr Clease’s assessment of those Policy 1 matters is that they are met in the context of the receiving environment.³⁵

79. The analysis by Mr Clease also refers to some additional considerations, being support for competitive land markets, internal urban form, township urban form and landscape change. His conclusions with respect to these matters (which are ones I agree are appropriate to consider) are positive with the exception of his concern about wider urban form outcomes. I have already referred above to why wider urban form outcomes with the approval of PC 85 will be appropriate.

³⁴ Section 42 A report at [302].

³⁵ Section 42 A report at [286] – [294].

80. Returning to the Spatial Plan, I accept it has some relevance which can be had regard to. However Mr Cleese is correct when he states it is not determinative to the more detailed examination enabled through the private plan change process.³⁶ I say that more detailed examination illustrates that there is a pathway to approval of the plan change.

81. In addition to urban form, my earlier submissions and the evidence on behalf of the Applicant regarding the availability of development infrastructure to support the development of the land (specifically wastewater capacity) are relevant to findings about a well-functioning urban environment and is also relevant to considerations arising out of Policy 8 of the NPS-UD.

NPS – HPL

82. The recent amendments to the NPS-HPL have resulted in more enabling development outcomes and rezoning opportunities for land containing LUC 3 soil.

83. There is now agreement between the Applicant and Council³⁷ that PC85 gives effect to the NPS-HPL. That is a consequence of:

- a. Amendments to restrictions on the “urban rezoning” of LUC 3 land; and
- b. Agreement between the parties that the proposed rural lifestyle rezoning of LUC 3 land falls within a cl 3.10 exception.

84. For clarity:

- a. The Site still contains “highly productive land” which engages consideration of the NPS-HPL.
- b. The recent amendments do not change:

³⁶ Section 42 A Report at [253].

³⁷ Council Opening Legal Submissions at [4.2].

- i. The definition of “highly productive land” which still includes LUC 3 land;
 - ii. Restrictions on the rezoning of highly productive land from rural to rural lifestyle (i.e. clauses 3.7(1) and 3.10);
 - iii. The obligation under cl 3.6(5) for a territorial authority to minimise the spatial extent of urban rezoning of highly productive land; and
 - iv. The NPS-HPL objective and policies.
- c. The Panel is still required to “give effect to” the NPS-HPL in its decision-making.
 - d. MMI, TPRCS and the Fairy Tern Trust submit PC85 is contrary to the NPS-HPL.
85. The two core matters arising from the assessment of the NPS-HPL can be broadly categorised as:
- a. The urban rezoning of LUC 3 land; and
 - b. The rural lifestyle rezoning of LUC 3 land.

The Proposed “Urban” Rezoning

86. In the absence of operative changes to the Northland Regional Council’s Regional Policy Statement,³⁸ the Panel must apply the NPS-HPL’s transitional definition of “highly productive land”. As amended, cl 3.5(7) provides:

Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land:

³⁸ NPS-HPL definition of “highly productive land” means means land that has been mapped in accordance with clause 3.4 **and is included in an operative regional policy statement as required by clause 3.5** but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land).

- a. Is:
 - i. Zoned general rural or rural production at the commencement date; and
 - ii. LUC 1, 2 or 3 land; but
- b. Is not:
 - i. identified for future urban development at the commencement date; or
 - ii. subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle at the commencement date; or
 - iii. subject to a resource consent application for subdivision, use or development on LUC 3 land for any activity other than rural lifestyle, where that consent has been lodged at or after the commencement date.

87. In a rezoning context, land defined as “highly productive land” is subject to rezoning restrictions. Clause 3.6(4) provides:

- (4) Territorial authorities that are not Tier 1 or 2 may allow urban rezoning of highly productive land only if:
 - (a) the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and
 - (b) there are no other reasonably practicable and feasible options for providing the required development capacity; and
 - (c) the environmental, social, cultural and economic benefits of rezoning outweigh the environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

88. While the recent amendments did not alter the definition of “highly productive land”, it did introduce new cl 3.6(6) which provides that:

- (6) Clauses 3.6(1), 3.6(2), 3.6(3) and 3.6(4) do not apply to urban rezoning of LUC 3 land.

89. Prior to that amendment, a Tier 3 authority could only allow “urban rezoning”³⁹ of “highly productive land” if the criteria in subclause (4) above

³⁹ Defined as **urban rezoning** means changing from a general rural or rural production zone to an urban zone. The NPS-HPL defines **urban**, as a description of a zone as (relevantly) low density

was satisfied.

90. Clause 3.6(6) expressly removes the cl 3.6(4) threshold tests from the Panel's consideration of proposed urban rezoning of the Site's LUC 3 land.

91. Interestingly, cl 3.6(6) does not expressly exclude consideration of cl 3.6(5) which imposes an obligation on territorial authorities to minimise the spatial extent of urban rezoning on highly productive land. In full cl 3.6(5) provides:

(5) Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.

92. The legal submissions lodged on behalf of Council conclude that cl 3.6(5) is not engaged and the clause should be interpreted as a further and final conjunctive test of those matters contained in clause 3.6(1) – (4).⁴⁰ The thrust of Mr Bangma's position is that this interpretation is consistent with the Government's clear intention to remove barriers to the urban rezoning of LUC 3 land.

93. Mr Matheson KC on behalf of MMI, TPRCS and the Fairy Tern Trust takes a different position, submitting that the absence of express reference to cl 3.6(5) in cl 3.6(6) is not a mistake, does not undermine the effect of the recent amendments and the application of cl 3.6(5) is consistent with the objective⁴¹ of the NPS-HPL.⁴² Mr Matheson KC's position is that while cl 3.6(6) "reduce[s] the severity of threshold tests" applicable to LUC 3 land by removing the requirement to apply clauses 3.6(1) – (4), the 'lesser' test of meeting the "minimum necessary" requirement in cl 3.6(5) remains.

94. The position advanced by Mr Bangma provides an answer to the

residential, general residential, medium density residential, large lot residential, and high density residential.

⁴⁰ Council's Opening Legal Submissions at [4.10].

⁴¹ NPS-HPL 2.1 **Objective:** Highly productive land is protected for use in land-based primary production, both now and for future generations.

⁴² The Residents' Legal Submissions at [3.22].

interpretation of cl 3.6(5).

95. However, if the Panel were to agree clause 3.6(5) was engaged, I say:

- a. It is open to an applicant seeking urban rezoning to demonstrate that land is necessary to provide the “required development capacity”.
- b. As clause 3.6(5) is an available method sitting underneath the NPS – HPL objective and policies, you must assume it is a method which gives effect to those higher-order provisions. Accordingly you must also assume that a proposal which satisfies clause 3.6(5) satisfies that objective and associated policies. While clause 3.1(1) states nothing in Part 3 limits the general obligation under the Act to give effect to the objective and policies of the NPS, that does not alter my submission above. In addition Policy 5 expressly acknowledges particular provision made for urban rezoning in the NPS.
- c. Turning to the wording of the clause, “the required development capacity” is a reference to “sufficient development capacity” which is to be determined in a manner consistent with the provisions of the NPS – UD. Thus my legal submissions above regarding interpretation of this term are relevant.
- d. I also say given the context of achieving a well-functioning urban environment, the “minimum necessary” spatial extent of any zoning does not translate to a need to compromise urban design outcomes in the pursuit of as small a zoned area as possible. Any analysis of what constitutes the “minimum necessary” “while achieving a well-functioning urban environment” will include appropriate allowance for urban design to achieve a well-functioning outcome which would include allowance for (potentially) a range of dwelling forms, provision for open space, protection of ecologically sensitive areas and so forth.
- e. PC85 satisfies cl 3.6(5) in reliance on the evidence of Mr Thompson as to required (sufficient) development capacity, and other expert

witnesses addressing why the proposal contributes to achievement of a well-functioning urban environment.

96. Finally I make two other observations. First, there is evidence before the Panel that the productive capacity of the Site's LUC 3 land is highly compromised due to physical soil characteristics and land fragmentation. Therefore, from an effects perspective, the spatial extent of the loss of highly productive land with long-term values for land-based primary production is minimised, on the basis that it is land which is not otherwise capable of providing for land based primary production beyond pastoral grazing which is proposed to be rezoned.
97. Second, in response to a proposition that PC85 is contrary to the NPS-HPL, I say that cannot be so if Mr Bangma's proposition is correct, or if the proposal satisfies clause 3.6(5) if that clause is engaged. Even if it satisfied clause 3.6(5) only in part, I submit given the poor quality of the land in question would be open to you to find that part of the PC85 proposal advancing urban rezoning was inconsistent with the NPS-HPL but not "contrary to" that instrument.

The Proposed Rural Lifestyle Rezoning

98. I turn now to consider the proposed rezoning of the Site's northwestern corner from rural to rural lifestyle zone.
99. Clause 3.7 of the NPS-HPL provides:

(1) Territorial authorities must avoid rezoning of highly productive land as rural lifestyle, except as provided in clause 3.10.

100. I make two observations:

- a. There is an avoidance directive; and
- b. The avoidance directive does not apply if there is an exemption pathway in cl 3.10.

101. The witnesses on behalf of the Applicant and Council agree that there is an exemption pathway.

102. In summary:

a. The Applicant's evidence demonstrates that all criteria set out in cl 3.10 are satisfied:

- i. The proposed rural lifestyle areas are characterised by very poor and saline soils, high water tables, coastal inundation risk, failed past attempts at viticulture and significant non-reversible land fragmentation.⁴³
- ii. Pastoral grazing has been identified as the highest and best productive use, with economic modelling demonstrating such use would not be considered economic and would lead to a net substantial loss.⁴⁴
- iii. Mr Hunt's evidence⁴⁵ concludes that the areas of the Site proposed to be rezoned rural lifestyle are largely unproductive, significantly constrained and not economically viable for at least 30 years from an agricultural perspective.
- iv. The loss of productive capacity to rural lifestyle use is approximately 8.04ha and represents only 0.024% of the Kaipara District.⁴⁶
- v. In reliance on the evidence of Mr Hunt, Ms O'Connor concludes the pathway in cl 3.10 is made out.⁴⁷

b. Council's experts agree that cl 3.10 is satisfied:

- i. Mr Cathcart's evidence concludes that the requirements in

⁴³ Hunt EiC at [33].

⁴⁴ Hunt EiC at [34].

⁴⁵ Hunt Supplementary Evidence at [12]

⁴⁶ Hunt EiC at [36].

⁴⁷ O'Connor EiC at [116] – [117].

cl 3.10 are met.⁴⁸ That position remains unchanged as a consequence of the recent amendments.⁴⁹

- ii. Mr Cleese, relying on the evidence of Mr Cathcart concludes that cl 3.10 is met.⁵⁰

103. Mr Matheson KC states that insufficient weight has been placed on cl 3.10(1)(c) and in particular the importance of considering the environmental costs, including the tangible and intangible values, associated with the loss of the highly productive land. In this case, those environmental costs he refers to relate to the effects on avifauna.⁵¹

104. The Applicant maintains its position (as established in the evidence of Mr Delaney) that the provisions of the Development Area are appropriate to avoid or where appropriate mitigate potential ecological effects, including those on avifauna.

105. In my submission:

- a. The evidence before you clearly demonstrates the exemption under cl 3.10 applies; and
- b. As noted above in the context of the urban rezoning, the avoidance directions contained in cl 3.7 and Policy 6⁵² are only engaged if an exemption does not apply.

106. I submit that PC85 is consistent with and gives effect to the NPS-HPL.

Potential effects on avifauna

107. TPRCS, MMI, the Fairy Tern Trust and the Department of Conservation also raise potential effects on avifauna.

⁴⁸ Appendix 12 s 42A Report - Cathcart Evidence at [6.10] – [6.11].

⁴⁹ Cathcart Supplementary Evidence at [4.5] – [4.6].

⁵⁰ Cleese Supplementary Evidence at [9.1] – [9.10].

⁵¹ The Residents' Legal Submissions at [3.25].

⁵² The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement.

108. The two core matters arising are:

- a. The increased risk of dogs to avifauna; and
- b. Human disturbance to avifauna habitat.

Dog Risk

109. The Applicant is cognisant of the national importance of threatened and at risk threatened species (particularly Tara iti) and the need for appropriate protections to be put in place.

110. There is a difference of opinion between Council, Submitters and the Applicant with respect to the most appropriate method of managing potential effects of dogs on avifauna.

111. The Applicant proposes plan provisions which require covenants and/or restrictive consent notices at the time of subdivision on all land within the Development Area banning the keeping of cats and mustelids and requiring and to be on a leash and public places.

112. Mr Delaney's evidence states that operational effects associated with the proposed coastal walkway can be mitigated by signage requiring dogs to be leashed along the walkway.⁵³ While offleash dogs could result in a moderate-high level of ecological effect on birds,⁵⁴ Mr Delaney concludes the magnitude of effects on avifauna can be mitigated to low.⁵⁵ Mitigation measures suggested by Mr Delaney and accepted by the Applicant include:⁵⁶

- a. Installation of signage requiring dogs to be kept on a leash (including on the approaches to the causeway);
- b. Educational signs about avifauna; and

⁵³ Delaney EiC at [79].

⁵⁴ Delaney EiC at [87].

⁵⁵ Delaney EiC at [79] and [87].

⁵⁶ Delaney EiC at [87].

- c. A barrier separating the path from the estuary.

113. In response to matters arising from the s 42A Report, Mr Delaney:

- a. Accepted Mr Cleese's recommendations to extend the proposed exclusion of cats to include mustelids⁵⁷ (noting the Northland Regional Pest Management Plan does not allow mustelids to be kept as pets in any event); and
- b. Stated he was not opposed to the exclusion of dogs, but considered that alternative management approaches (signage, leashing) may also be appropriate.⁵⁸

114. In response to submitter expert evidence,⁵⁹ Mr Delaney reiterated he was not opposed to the exclusion of dogs but that the proposed site-specific provisions requiring dogs to be controlled and contained is appropriate mitigation.⁶⁰

115. In reliance on Mr Delaney's evidence, Ms O'Connor's planning evidence concludes that while from an ecological perspective a total ban on the keeping of dogs as pets is the preferred outcome, her opinion is that the effects can be appropriately managed by the application of suitable Development Area provisions.

116. I submit that:

- a. The Applicant's position remains that effects associated with an increased risk of dogs to avifauna can be appropriately managed through provisions;
- b. The proposed mitigation measures and controls contained within the Development Area provisions are the most appropriate to achieve the purpose of the RMA and strike a balance between

⁵⁷ Delaney EiC at [121].

⁵⁸ Delaney EiC at [122].

⁵⁹ Fairy Tern Trust (Mr Southey); DOC (Dr Beauchamp).

⁶⁰ Delaney Rebuttal Evidence at [33].

enabling residential growth (and associated recreational activities) and the protection of at risk and threatened avifauna and their habitat.

117. However, if the Panel accepts the proposed mitigation measures and controls contained within the Development Area provisions regarding dogs will not be sufficient, and specifically that fully considered only a ban on dogs would achieve the necessary avoidance directives engaged with respect to Fairy tern, then I submit the most appropriate solution is for the Panel to impose a ban on the keeping of dogs within the Development Area. As indicated by Council and DOC a dog ban would appropriately respond to the dog risk issue. I say there is no basis for a finding that potential effects on avifauna even with a dog ban necessitate PC 85 be declined.

Increase in Human Presence and Disturbance of the Coast

118. Evidence lodged on behalf of DOC asserts that the use of the proposed walkways (even without dogs) could result in high levels of disturbance on avifauna.⁶¹ I understand that submitter concerns arise in relation to both the location, construction and operation of future walkways.

119. In response, I say:

- a. The Mangawhai Harbour is already of great public interest and accessed (including informal access) via existing routes.
- b. Access to the coast is proposed to occur via identified coastal walkways.
- c. From an effects management perspective, the preferred outcome is to have known, identified and formed access to the coast which avoids disturbance of vegetation, habitat and fauna. That remains the case notwithstanding an increase in people in a particular location.

⁶¹ Beauchamp EIC at [48] – [49].

- d. Any formation/construction of walkways through or adjacent to the coastal marine area will require resource consent by reference to the relevant regional rules and the relevant provisions of the higher-level policies (e.g. NZCPS, NPS-I).
- e. The evidence of Mr Delaney notes that the potential ecological effects of constructing a walkway along the Esplanade reserve includes vegetation removal and disturbance of fauna habitat. However, construction effects can be mitigated by measures such as management plans, strategic routing of the path to minimise vegetation removal and habitat loss and undertaking increased planting such that the magnitude of effect is expected to be mitigated to low.⁶²
- f. The operational effects of coastal walkways relate to the potential disturbance of fauna including avifauna. Mr Delaney considers that such effects can be mitigated by signage requiring dogs to be leashed along walkways and any effects are able to be mitigated to low.⁶³
- g. The construction of infrastructure and walkways within the CMA will require resource consent and will therefore be subject to further detailed assessment as part of a future consenting exercise.⁶⁴ Any such consent application will be determined on its merits. If a future walkway is determined not to be appropriate from an effects perspective, consent can be declined.

120. Overall, I submit that avifauna effects can be appropriately avoided and where relevant mitigated through the Development Area provisions.

⁶² Delaney EiC at [77].

⁶³ Delaney EiC at [79].

⁶⁴ Delaney Rebuttal Evidence at [13].

Other Issues – Analysis

NZCPS

121. It is evident from the legal submission of Mr Matheson KC, that there is a difference of opinion about whether PC 85 gives effect to the NZCPS. That essentially revolves around the degree of potential effect on avifauna, specifically the Fairy Tern. To a lesser extent urban form (by reference to Objective 6 and Policy 6) is also raised.
122. The Applicant says the expert evidence in support of PC 85 establishes both that ecological effects including potential effects on Fairy Tern are appropriately avoided, and that the plan change proposal does appropriately integrate with Mangawhai thereby representing development in an appropriate place and within appropriate limits thus suitably consolidating the existing settlement.
123. Accordingly the Applicant's position is that the NZCPS is given effect to.

Transport Effects

124. With reference to the evidence and rebuttal of Mr Hills and the rebuttal evidence of Mr van der Westhuizen, transport effects have been agreed between experts as appropriately addressed other than differing views as to the required form of intersection upgrade for the Black Swamp Road/Insley Street/Tomarata Road Intersection.
125. Mr Hills has set out why the proposed upgraded priority-controlled T-intersection he supports provides appropriate performance and safety outcomes. Accordingly, he concludes a roundabout is not necessary. In my submission you should rely upon Mr Hills. In that regard, I note that while retaining a preference for a roundabout, Mr van der Westhuizen has accepted that the absence of a roundabout would not from a transportation perspective be a sufficient reason to decline PC 85.
126. Mr van der Westhuizen's acceptance of the upgraded priority-controlled T-intersection is subject to detailed design that incorporates appropriate

safety treatments / measures (see paragraph 3.12 of his rebuttal evidence). Mr Hills has confirmed that he agrees with those suggested measures, and records these are detailed design measures which are typically considered at engineering approval stage.

127. The importance of establishment of a shared use path across the causeway has been agreed, and plan provisions have been prepared to ensure that outcome is achieved.

Natural Hazard Risk

128. Coastal hazard risk has been assessed by Mr Davis and Mr Blackburn, and they agree there are no coastal hazard -related risks or reasons to decline PC85. That conclusion relies upon site context and proposed plan provisions which mitigate coastal hazard -related risk.

129. Geotechnical matters were, in the initial section 42 A Report, the subject of a split position where Mr Cleese relying on the evidence of Mr Sands was comfortable with the northern area of the site but sought further information with respect to the southern area.

130. The rebuttal evidence of Mr Pomfret has confirmed additional on-site investigation and subsequent analysis has been undertaken for the south of the Site. There is now agreement between the reporting officers and the Applicant's experts that there are no geotechnical related reasons to decline PC 85.

Stormwater and Flooding

131. There is agreement between the section 42 A reporting team and the Applicant's experts that stormwater quality and potential flooding effects can be appropriately managed.⁶⁵

132. The approach by the Applicant's experts and Mr Senior takes account of the context of this proposal and the position of the Site within the

⁶⁵ Section 42 A Report, at [165].

catchment. Accordingly they agree site-specific stormwater modelling and design solutions do not need to be resolved now at the plan change stage. Rather there is acknowledgement that the proposed Stormwater Management Plan establishes a suitable framework for managing stormwater and flooding effects within the development area.

133. It follows that the position adopted by Mr Westwood for certain Windsor Way submitters is not agreed with. That opposing position has been directly responded to by Mr Peters and Mr Senior, and I say you should rely upon their professional opinions.

Other Matters

134. A wide range of assessments on various potential effects has been undertaken, including:

- a. Heritage and archaeology;
- b. Land contamination;
- c. Rural productivity;
- d. Soil quality;

135. Given the non-contentious nature of those matters, I do not propose to address them further, other than to generally note that there is agreement they have been suitably addressed. For heritage and archaeological matters any potential adverse effects can be appropriately avoided or mitigated through the proposed avoidance of existing midden, provisions in the Development Area and the use of accidental discovery protocols. For potential effects arising from land contamination, these can be appropriately managed and remediated. As noted in Mr Davies' evidence,⁶⁶ his site investigations did not identify actual or potential contamination issues that would make the proposed rezoning unsuitable.

⁶⁶ Davies EiC at [29].

Zoning of submitter sites

136. The Riverside Holiday Park submits that its site should remain zoned rural, supported by the evidence of Mr Ross. Ms O'Connor disagrees, aligning with the opinion of Mr Cleese that a Rural Lifestyle Zone is more appropriate.
137. Black Swamp Limited (**BSL**) have sought rezoning of its site at 25 Black Swamp Road to Low Density Residential Zone, Rural Lifestyle Zone, and Mixed Use Zone. PC85 proposed the entirety of this land be zoned Rural Lifestyle Zone. Ms O'Connor agrees the zonings sought by BSL are appropriate except for the Mixed Use Zone suggested for the 'brewery' site. Ms O'Connor and Mr Evans⁶⁷ explain why they disagree with a Mixed Use zone in their rebuttal.
138. The Panel will need to make findings with respect to the two matters above on the evidence before it. In addition a potential issue of scope arises with respect to the BSL proposition – I am aware that Mr Bangma has addressed this consideration in detail in his legal submission and I am content to adopt his submissions in that regard. Thus the Applicant agrees there is scope for the Panel to consider the outcomes sought by BSL.

Other Submitters

139. Various issues raised by submitters have been engaged with on a thematic basis in this submission, and directly by the evidence in support of PC 85. Once submitters have completed presentation of their full position to the Panel, I will respond as necessary in reply.

Conclusion

140. In my submission, PC85 will deliver positive outcomes for Mangawhai, specifically by enabling a range of housing and lifestyle options, ensuring ecological protection and enhancement of inland and coastal habitats, and

⁶⁷ O'Connor Rebuttal at [6] – [16]; Evans Rebuttal at [26] – [32].

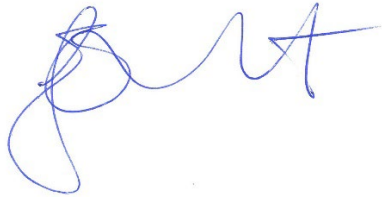
providing new commercial opportunities to those living within and outside the PC85 area.

141. The Site presents an excellent opportunity to enable additional housing in an integrated manner which ensures that any potential adverse effects on the environment are appropriately avoided, remedied, or mitigated.

142. I submit that:

- a. The PC85 provisions proposed by the Applicant appropriately give effect to all applicable higher order planning instruments (including all national policy statements and national environmental standards, and regional policy statement), and are not inconsistent with any directive objectives, policies or constraints from such higher order instruments. The rules which will apply will appropriately implement the policies.
- b. In terms of s 32 of the RMA, PC85 is the most appropriate means of achieving the purpose of the RMA, and the proposed provisions are the most appropriate ways to achieve the objectives of the KDP.
- c. Approving PC85 would result in amendments to the KDP that accord with the Council's functions under s 31 of the RMA.
- d. Approving PC85 would be consistent with and promote sustainable management of resources, as required by s 5 of the RMA, because:
 - i. Potential adverse effects are appropriately avoided, remedied or mitigated;
 - ii. The proposed PC85 provisions will enable efficient use of land on the Site and its natural and physical resources, which can be undertaken in a manner that ensures appropriate integration of development outcomes and infrastructure provision; and

- iii. PC85 will enable communities to provide for their social, economic, and cultural wellbeing and for their health and safety.



Jeremy Brabant

Counsel for Foundry Group Limited and Pro Land Matters Company

Dated 16 February 2026