

**BEFORE THE INDEPENDENT HEARING PANEL
APPOINTED BY KAIPARA DISTRICT COUNCIL**

Under the Resource Management Act 1991

And

In the matter of 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 of
the Director-General of Conservation *Tumuaki Ahurei*
Dated: 13 February 2026**

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MAY IT PLEASE THE PANEL:

INTRODUCTION

1. These submissions are made on behalf of the Director-General of Conservation *Tumuaki Ahurei* (the DGC) in respect of the application for a Private Plan Change 85 (PC85) Mangawhai East by Foundry Group Limited (formerly Cabra Mangawhai Limited) and Pro Land Matters Company (together referred to as 'the Applicant') to rezone approximately 94 hectares of land at Black Swamp and Raymond Bull Roads, Mangawhai.
2. The DGC lodged a submission on 18th August 2025 and a further submission on 7th October 2025.
3. The DGC acknowledges and appreciates changes have been made to respond to various issues. However, residual concerns remain. The following changes to PC85 are sought to protect indigenous biodiversity, with a particular focus on the approach to vulnerable avifauna and significant natural areas (SNAs).

SCOPE

4. The DGC seeks the Panel makes the following changes to PC85 to protect vulnerable avifauna:
 - a. a ban on the keeping of dogs as pets;
 - b. upgrade of Insley Causeway to manage disturbance before substantial development occurs;
 - c. removal of walkways around the Northern SNA (hereinafter referred to as the Saltmarsh SNA) to prevent disturbance associated with access;
 - d. confirm removal of 'potential future harbour access' from structure plan, and;

And to improve practical result of SNAs;

- e. retain rural zoning for the Saltmarsh SNA and the area covered by the existing conservation covenant;
- f. clearer delineation of the Southern SNA (hereinafter referred to as the Black Swamp SNA) and ensure infrastructure is placed outside it, to maximise extent and reduce disturbance; and
- g. removal of the walkway proposed along both sides of the estuary inlet, which would be directly adjacent to or within the Black Swamp SNA, to reduce disturbance.

EVIDENCE

5. The DGC will call the following witnesses to address concerns:

- Dr Antony Beauchamp (avifauna) ('AB')
- Andrew Townsend (terrestrial ecology) ('AT')
- Jane Macleod (Planning) ('JM')
- Ayla Wiles (Tara iti Ranger) ('AW').

PREVENT THE INCREASE IN RISK OF DOGS TO AVIFAUNA

6. The DGC seeks that there are covenants in place on each property banning the keeping of dogs, and that subdivision within the plan change area that does not include covenants of this kind, is a prohibited or non-complying activity.
7. The s 42A Report writer recommends that the use of covenants be extended (from a ban on cats and mustelids) to include a ban on keeping dogs (Section 42A Report, 1st December 2025, at [177].) The Council ecologist supports a ban on dogs (Mr Smith, p 21).
8. Prohibitions on keeping dogs are a recognised planning approach in Northland to protect Threatened and At-Risk (TAR) avifauna (see for example *Neil Construction Ltd v Far North District Council*, [2024] NZEnvC 142 (2024), *C Calveley v Kaipara District Council* [2014] NZEnvC 182).
9. Consistency in decision-making in relation to this issue in this locality and context, is a relevant factor (*Dye v Auckland Regional Council* [2001] 7 ELRNZ 209, [32] NZCA).

Values present

10. All parties accept the TAR avifauna values present in the areas immediately adjacent to and surrounding the Plan Change area. Accordingly, the Panel is invited to make the following findings of fact:
 - a. The Mangawhai sandspit and estuarine areas are the most important breeding site for the critically endangered tara iti, New Zealand's most endangered bird (AB, [24]).
 - b. Tara iti are a taonga species (AW, [19]).
 - c. Tara iti are Threatened-Nationally Critical. The total population constitutes 50 birds, of which only 10 are breeding females (AW, [19]; AB [23]).

- d. Approximately seven to ten tara iti pairs breed each season at the Mangawhai sandspit and estuarine areas, near the Plan Change area (AW, [43] and see Figure 1 below; AB, [24]).
- e. The breeding area of one highly productive pair of tara iti is in the immediate vicinity of the Plan Change area, and two other pairs breed very close by (AB, [27]).
- f. Tara iti nest on the ground.
- g. A significant amount of government and community resources have been and continue to be dedicated solely to conserving the tara iti species (AW, [21-42]).
- h. The remaining population of tara iti is highly fragile. The loss of a single breeding adult could have a significant impact on the continuing viability of the population, leading the species nearer to extinction. One breeding adult represents c.5% of the breeding population. Population modelling has shown that a reduction of the annual average survivorship of the adult breeding population by 5% will reduce the probability that the population will persist in 50 years, from 59 per cent to less than 20 per cent (AB, [27]).
- i. The Mangawhai estuarine area is habitat for at least ten other TAR wading birds and seabirds, that along with tara iti, breed, feed and roost in the estuarine areas (AB, [13] and Table 1).

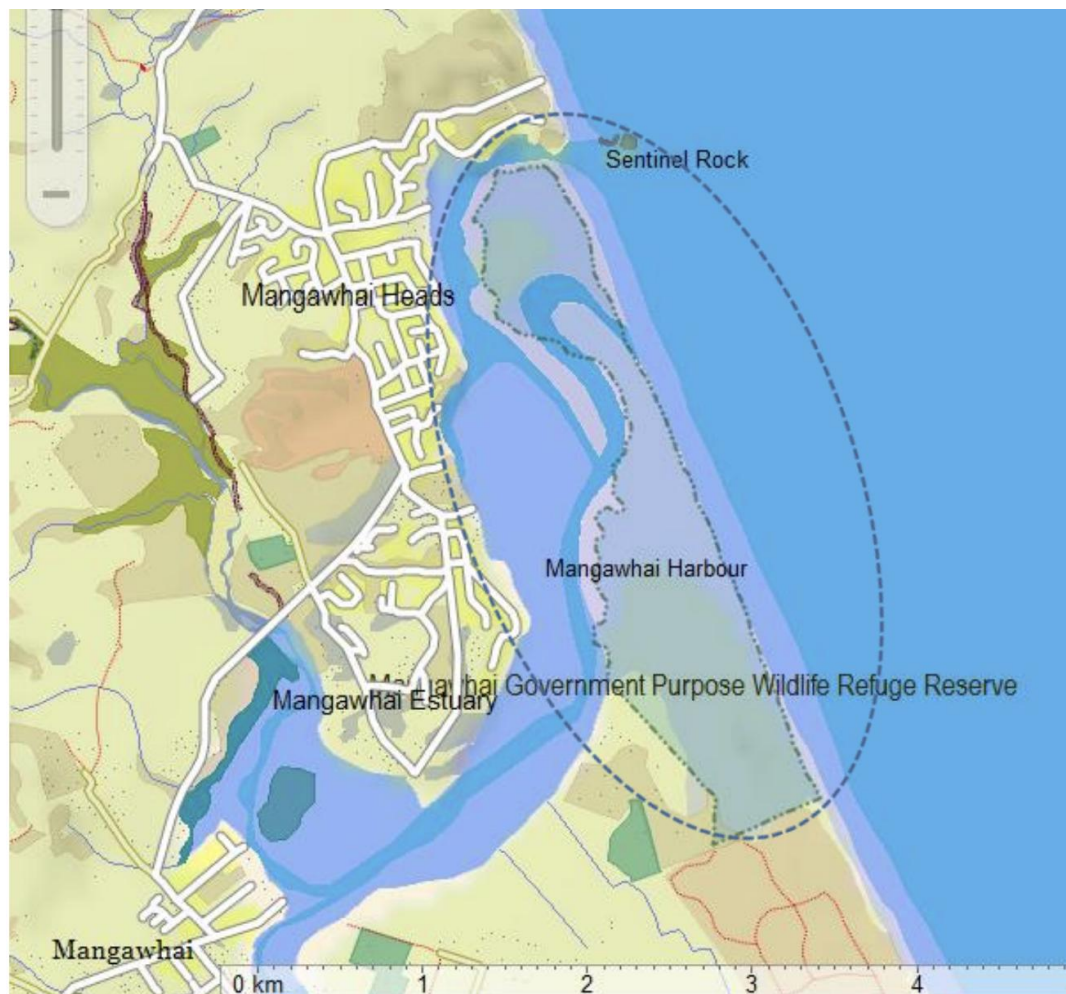


Figure 1: Showing the Mangawhai Sandspit, Mangawhai Government Purpose Wildlife Refuge Reserve – main breeding area for Tara iti.

Risk posed by dogs in general

11. The Panel is invited to make the following uncontroverted findings of fact in relation to the threat posed by dogs to tara iti and other TAR avifauna:

- a. Dog attacks and disturbance pose a serious risk to tara iti and other TAR seabird and wader species that breed, feed and roost in the Mangawhai estuarine area (AW, [48-51]).
- b. Adult tara iti are particularly susceptible to disturbance from dogs as this may reduce foraging and their reproductive productivity, and fledgling are highly vulnerable (AB, [25-26]).
- c. Research surveys clearly demonstrate that dogs disturb and harass tara iti and other TAR in the Mangawhai estuarine areas (AB, [16-22]).
- d. Tara iti defend their feeding territories and so may be less able to relocate to a new site when disturbed by dogs (AB, [18]).

- e. Both off-leash *and* on-leash dogs have been observed to disturb TAR avifauna in the Mangawhai estuarine area (AB, [19]).
 - f. Department of Conservation (DOC) rangers have direct observational evidence of a dog harassing and chasing a female tara iti on the Mangawhai estuarine area in an on-leash area (AW, [51]).
 - g. Other researchers have direct observations of dogs harassing tara iti (AB, [19]).
 - h. Notifying people that dogs must be kept on a leash by signage (and via bylaws etc.) is inadequate and does not remove the risk because DOC rangers report that non-compliance is common (AW, [51], AB, [53]).
12. The Applicant's ecologist accepts that off-leash dogs are a threat to tara iti and other TAR avifauna (MD, [EIC 87, 89, 93], [rebuttal evidence 33]).

The increased risk posed by dogs from the proposal

13. This proposal will significantly increase the number of dogs in the area and the consequent risk to tara iti and other TAR avifauna:
- a. The Plan Change will provide for c.800 new homes (s 42A Report, [62]).
 - b. Census statistics and other data show that 0.4 dogs per household is to be expected (AB [34]), JM [44]).
 - c. Thus, the proposal can be expected to result in an additional **320 dogs** living in the close vicinity of tara iti and TAR avifauna in the Mangawhai estuarine areas.
 - d. This would increase the proportion of existing dogs in Mangawhai by **c.33%**.
14. It is entirely foreseeable that owners of the c.320 new dogs would choose to walk those dogs in the harbour margins and estuarine areas, particularly given the dearth of other nearby dog-walking areas (AB, [31-33]).
15. Given the evidence adduced by DOC, it is **highly likely** that not all dog owners would leash or adequately control their dogs and there is a **real possibility** that those dogs would disturb or attack tara iti and other TAR avifauna species.
16. Accordingly, if dogs were permitted to reside in the Plan Change area that would increase the risk to tara iti and TAR avifauna significantly.

The Applicant's response

17. The Applicant has accepted predator controls are required to protect TAR avifauna including tara iti from changes brought about by the proposal (i.e. the keeping of cats and mustelids as pets is to be banned in the Plan Change area).
18. Nevertheless, the Applicant seeks to exclude dogs from that ban. Presumably the benefit of this position is to preserve marketability but the Applicant does not adduce expert evidence to explain its choice. This is surprising because a real and significant additional risk is being introduced for opaque benefits. Of note in this context is *Calveley v Kaipara District Council* [2014] NZEnvC 182 where the Environment Court determined that the benefits of effective dog prohibition conditions outweighed concerns about the marketability of the development.
19. The Applicant's ecologist's opinion is that effects to tara iti and TAR avifauna from dogs would be 'moderate to high' but opines that effects would be minimised if dogs are controlled and kept away from the estuarine areas (Mr Delaney, [87]).
20. The Applicant's proposed solution to the 'dog-problem', is to provide signage on the proposal formed coastal walkway, at the beginning and end of the walkway, requiring dogs to be kept on a leash. The walkway leads north, in the direction of the Mangawhai sandspit. However, any signs would be advisory only: they have no legal force. There are no legal or practical means to ensure compliance or enforcement with on-leash intentions under the Resource Management Act 1991 (RMA). DOC understands the Applicant accepts there would be no other legal means of controlling dogs on the proposed coastal walkway or in the wider Plan Change area (other than through a prohibitive covenant). Exacerbating the problem is that the Applicant has failed to provide a secure off-leash dog park, or any dog park, within the Plan Change area. The Applicant has suggested to DOC that residents could walk their dogs on the side of the roads as an alternative to walking in the Harbour area. That suggestion is unrealistic and unduly optimistic.
21. In any case a dog park would not address the matter at hand, which is the introduction of several hundred new dogs (and associated issues around their control or otherwise) to the area at all.
22. The Applicant's Planner's opinion is that provisions should be secured to provide "better public education" in response to anticipated population growth. However, the Planner does not identify the source of such provisions or explain what "better public education" would require in practical terms (O'Connor, [22]). In the

absence of any detail or implementation pathway, this suggestion is vague and cannot be regarded as a realistic or workable solution.

23. In *Neil Construction Ltd v Far North District Council*, [2024] NZEnvC 142 (2024), it was accepted that signage alone would be inadequate to protect avifauna values from dogs (and a prohibition on dogs was ordered).
24. The Applicant has not adduced evidence to show that all dog owners would comply with on-leash signage, nor could it. It is common knowledge that there are irresponsible dog owners and DOC has adduced clear evidence showing compliance issues exist in Mangawhai, even when there are supposed controls in place. With respect to Mr Delaney, he is not qualified to assess whether people will comply with signage/educational efforts to control dogs and so his expert assertion that signage would reduce potential effects on TAR avifauna and tara iti, to low to moderate is invalid (Mr Delaney, [91]).
25. In her Rebuttal, Ms O'Connor for the Applicant opines "...true avoidance [of effects on tara iti and other TAR species] cannot be achieved in this location" even if the plan change does not go ahead – and the plan change has benefits in terms of opportunities to "improve public education, improve habitat values, and limit the extent of effect on these species at the coastal edge" (O'Connor, [22]). The Panel is invited to give up before it has begun. This is not the correct standpoint for the Panel's assessment of risk to TAR species.
26. The argument that a risk already exists therefore the Panel should ignore a significant increase in that risk is unattractive.
27. The Applicant's proposed approach is not appropriate when the values at risk are New Zealand's most endangered avifauna species.

The law on assessing risk under the RMA

28. In considering the effects of the proposal, the Panel must consider s 3(f) of the RMA, i.e. effects include 'any potential effect of low probability which has a high potential impact'.
29. The Environment Court has described the test for potential effects as a 'credible' or 'plausible' effect (*Jack Shaw Ltd v Western Bay of Plenty DC A/19 2000* at [60]). This includes 'scientifically possible effects' (*Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 (NZEnvC) at [142]), i.e. based on 'real evidence', which may include expert opinion that is 'reliable' (*McIntyre v Christchurch City Council* [1997] NZRMA 289 (PT), 104 citing *R v Mohan* [1994] SCR 9).

30. In *R J Davidson Family Trust v Marlborough District Council*, the High Court, outlined the way in which the Environment Court is to have regard to the potential effects on the environment of allowing an activity. The High Court confirmed that the word ‘potential’ in s 3(f) denotes something other than proof and includes effects that carry a less than 50 per cent chance of eventuating (*R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 at [129]). So, in assessing future effects, the Court is not required to satisfy itself that an effect is more likely than not; simply that it is likely, even if the effect is of low probability.
31. The High Court in *R J Davidson* confirmed that an assessment of potential effects can be based on a foundation of existing facts. While those existing facts must be proven on the balance of probabilities, potential effects are not required to meet that standard of proof (*R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 at [125], [129]). Expert opinion evidence as to hypotheses that have ‘analogic evidential backing’ is more persuasive (*Clifford Bay Farms Ltd v Marlborough District Council* C131/2003 (unrep) (NZEnvC), [79] and [81]: ‘... *While those observations are analogical evidence rather than direct observation of Hector’s dolphin, the possibility of Hector’s dolphin behaving in the same way is not so remote that it can be discounted.*’)
32. Further, the more serious the potential harm, the less probability may be required to meet the relevant evidential test. What probability of occurrence should suffice in any given case will depend upon the ecological context. In *Clifford Bay Farms Ltd*, the Environment Court stated that, ‘there is no Procrustean – one size fits all – principle for risk assessment and the standard of proof of risks under the RMA’: ecological context helps form the legal response (*Clifford Bay Farms Ltd v Marlborough District Council* C131/2003 (unrep) (NZEnvC), [68]).
33. As the Supreme Court stated, ‘[c]onsistently with para (f) of the definition of “effect” in s 3, the higher the potential impact of a potential effect the less readily can it be dismissed as a remote possibility.’ (*Westfield (New Zealand) Ltd v North Shore City Council* [2025] NZSC 17 at [108] and footnote 61).
34. In *Clearwater Mussels Ltd v Marlborough DC* [2019] NZHC 961 – a case where the decision to decline consent was upheld, as the Proposal would have an adverse on the endangered King Shag– the High Court said:

[84] In summary, Clearwater argues it was unreasonable for the Court to conclude that that the Proposals would have an adverse impact on the King Shag. It further says that any effect from passing boats could be dealt with

as a condition on the consent. Clearwater suggests that the condition could have been that no vessel associated with the farm could travel within one kilometre of the breeding colony or 300 meters of the roosting site. In its submission there could be no risk of an adverse impact on the King Shag with these parameters and for the Court to conclude otherwise was unreasonable.

[85] The assessment of risk of future events is difficult generally. In this case the adverse effects are uncertain, but they may result in a significant loss to an endangered species. The Environment Court is required to take the evidence, expert and otherwise and reach a view on possible adverse effects and determine how best to deal with them within the requirements of the Act and planning documents. (Emphasis added).

35. In *Shirley Primary School v Telecom Mobile Communications Ltd*, the Environment Court found that,

[142] ... Before an hypothesis can be considered by any Court, there must be a basic minimum of evidence to support it. But in the case of any hypothesis about a high impact risk a scintilla of evidence may be all that needs to be established in the Court's mind to justify the need for rebuttal evidence. In other words that evidence, slight as it may be, is enough to raise a reasonable doubt in the mind (*Shirley Primary School v Telecom Mobile Communications Ltd* [1999] NZRMA 66, at [142]).

36. Most recently, in *Remediation NZ Ltd v Taranaki Regional Council*, the Environment Court stated that the Shirley Primary School case had “stood the test of time” and been further explained in *R J Davidson* (and the cases discussed above) (*Remediation NZ Ltd v Taranaki Regional Council* [2024] NZEnvC 213 at [459]-[460]).

37. The Applicant may point the Panel's attention to the (with respect) rather mis-used trope that the RMA is not a “no risk statute” (*Aquamarine Ltd v Southland Regional Council* C126/97 (unrep) (NZEnvC)). That quote does not give applicants the right to significantly increase the risk of significant, irreversible effects on tara iti and other TAR species. Rather, context is critical. It is important to note that the decision in the case that quote came from, was to *refuse* the applications precisely because the values at stake were too high even though the likelihood of adverse effects eventuating were low.

38. Applying the caselaw to the present context, evidence has been adduced to show the probability of dogs from the Plan Change site disturbing tara iti and TAR species is real and credible, and the impacts would be significant.

39. I have had the benefit of reading the legal submissions to be presented on behalf of Tern Point Recreation & Conservation Society Incorporated, Mangawhai Matters Incorporated, and the New Zealand Fairy Tern Charitable Trust (TPR&CSI and others). I note and adopt examples of cases where the

importance of the tara iti population has been acknowledged (Legal Submissions on behalf of TPR&CSI and others, 3.38 (b) (i) (aa)-(cc)).

40. Also relevant to the Panel's consideration is the decision: Resource Consent Application – Mangawhai Historic Wharf Trust APP.040213.01.01 Report and Decision of the Hearing Commissioners, 18 November 2020 (Mangawhai Wharf 2020). This involved an application for resource consents for a wharf structure roughly on the opposite side of the harbour to Plan Change 85.
41. The effects of the use of the proposed wharf on tara iti and their habitat was found to include increased direct effects (such as boats disturbing birds) and indirect effects (such as increasing walker and dog-walker access at low tide). It was found effects could impact cumulatively with other stressors already being experienced by vulnerable tara iti. A plausible result was a decline in population towards extinction, a risk not supported by case law such as *R J Davidson* nor able to be appropriately managed on the facts. The application was declined.

[114] "...Although we find it likely to be a low probability risk of a more than minor effect, the potential consequence of an ongoing minor effect is extinction of the NZFT. This is undoubtedly catastrophic adverse effect which could be exacerbated by the proposal and we therefore find the cumulative and accumulative adverse effects could be extremely serious and irreversible.

42. If the Panel finds any uncertainty in relation to the additional risk from dogs, then the planning framework requires a precautionary approach to be taken that favours the DGC submission as explained below.

The RMA and planning framework supports the DGC submission

43. A prohibition of dogs:

- a. Accords with s 6(c) and s7(d) of the RMA.
- b. Complies with the territorial functions in s 31(1)(b)(iii).
- c. Has regard to s 74(2)(b), and the DGC submits the Panel is entitled to consider the Mangawhai Spatial Plan 2020, the Northland Conservation Management Strategy 2014, Te Uri o Hau Kaitiakitanga o te Taiao 2011, and Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020. Te Mana o Te Taiao is a national strategy, created to fulfil New Zealand's international law obligations under Article 6 of the Convention on Biological Diversity 1992 Convention on Biological Diversity 1760 UNTS 79, 31 ILM 818 (1992)). Outcome 2 of

Te Mana o Te Taiao is to have no species at risk of extinction due to human activities (AW,17).

- d. Would give effect to Objective 1 and Policy 11(a) of New Zealand Coastal Policy Statement 2010 (NZCPS) that adverse effects on TAR species in the coast are avoided, that has been carried through to the Northland RPS and the NPRP (nearly operative) and the proposed Kaipara District Plan (JM, [120-139]).
- e. Would accord with the Reserves Act 1977 Conservation Covenant and the requirement in NZCPS Policy 11, RPS Policy 4.4.1 and NRP Policy D.2.18 that adverse effects on the part of the conservation covenanted area on site that intersects with the “coastal environment” are to be avoided (JM, [129]).
- f. Would be appropriately precautionary and therefore give effect to the requirements for precaution in Policy 3(1) of the NZCPS and Policy 3 of the National Policy Statement on Indigenous Biodiversity 2024.
- g. It is open to the Panel to require the keeping of dogs is a Prohibited Activity (perhaps with the exception of disability dogs) and the DGC would support this. Ms Macleod recommends that a ban on dogs as pets is applied but that controls regarding containment of dogs on leads are also retained in the Plan Change, to manage the situation where dogs are brought into the area (JM, [45-46]). The DGC does not consider the discretionary status proposed by the Applicant is at all appropriate given the critical indigenous biodiversity values at stake.

44. In all the circumstances, a prohibition on dogs is precautionary and appropriate.

Will it work?

- 45. Counsel for TPR&CSI and others rightly points out that any ban relies on compliance for effectiveness (Legal Submissions on behalf of TPR&CSI and others’ at (3.38 (b) (ii)-(v)).
- 46. The evidence of the DGCs experts confirms that compliance with existing rules and dog numbers is already problematic (for example, AB [16-22], [53] and AW, [51]).
- 47. Mr Smith, ecologist for the Council considers that a ban on dogs is necessary, and that other methods proposed by the Applicant such as keeping dogs on a property or lead, are not enough (JS Rebuttal, [5.17]). Mr Cleese, Planner for the Council, also agrees [JS, 10 Feb Addendum] and is sceptical whether

restricting dogs inside property or on a lead as a control measure is feasible (JC, 9 Feb Statement [3.19]).

- 48. A ban on dogs is clear-cut. It is the best tool available in the circumstances.
- 49. The DGC submits the Panel can make its decision on the reasonable basis that the rules will be complied with.¹ The alternative is to box at shadows.
- 50. The Panel's removal of the risk posed by an additional 320 or more resident dogs is a critical step in avoidance of significant effects on TAR species.
- 51. Additional measures to manage risk will also be important - these are explained below.

REMOVE SOURCES OF DISTURBANCE TO VULNERABLE AVIFAUNA

Other measures necessary to protect avifauna

- 52. A similar legal and planning rationale as above applies to further measures proposed by the DGC's experts to manage risk to avifauna, and these are examined in turn. The DGC relies on the legal and planning analysis above to support these measures, except where differing or additional approaches are discussed.

Remove coastal walkways

- 53. There is little point in banning dogs and then delivering significant human disturbance from walkers into the same habitat, bringing similar risks.
- 54. The coastal walkway near the Saltmarsh SNA would potentially deliver people to new areas of the mudflats and mean they travel alongside the foraging territory of an important breeding pair.
- 55. Dr Beauchamp points out that the coastal pathway or one nearby will lead to more people accessing the harbour at Raymond Bull Road. He points out that signage would not necessarily restrict people accessing the harbour and a walkway could lead to more movement towards the sand spit or people returning to the campsite, via mud flats. This could significantly increase disturbance of tara iti in several known territories. (AB, [55]).

¹ This is consistent with the approach when considering whether consent conditions will be complied with, for example see *Barraclough v Gisborne District Council* NZEnvC 942024. It was held the Council must assume consent conditions would be complied with in the context of erosion and control measures which could be expected to be constructed according to certified plans and resource consent conditions. Other cases include *Nelson City Council v King* DC Nelson CRI – 2008-042-144. The assumption is foundational to the granting of resource consents to manage environmental effects.

56. Ms O'Connor points out the structure plan shows a cycle and pedestrian loop and – with considerable optimism – suggests that people will complete the loop and not enter the mudflats (O'Connor, [34]). The DGC disagrees.
57. This is a real risk that people will enter the mudflats and disturb birds. Even if signage or planting could bring it down to a lower probability of harm (which we do not agree it does), the magnitude of potential harm, if it occurs, is potentially significant. There is no way to ensure access will be appropriately confined.
58. Ms O'Connor opines that vegetation clearance and earthworks needed for boardwalks within (and within a 10m setback of) wetlands are provided for as restricted discretionary activities via regulation 42 of Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NESF). It is agreed the NESF requires consent, and the matters of discretion for these activities contained in regulation 56 of the NESF include effects on “the existing and potential values of the natural inland wetland, its catchment, and the coastal environment” and also includes reference to the effects management hierarchy. But the DGC does not agree it is therefore appropriate to require the walkways in the plan change and then leave it to later consent processes to assess effects, particularly as the area concerned is likely to be predominately wetland (freshwater or mangrove).
59. The ecological evidence that is already before the Panel from the DGCs experts, indicates that the proposed walkways/boardwalks at the proposed locations would have adverse effects that are potentially significant. Therefore, it is more appropriate to remove plan change rules that require the establishment of these boardwalks.
60. There are good reasons for removing the walkway around the Black Swamp SNA as well. This SNA provides suitable habitat for TAR species – banded rail, fernbird and Australasian bittern. Dr Beauchamp's evidence indicates that both banded rail and fernbird are “secretive” species, who may abandon the SNA if disturbed by the establishment and operation of the walkway (AB, [49]), which is proposed to adjoin, and potentially partially overlap, both the northern and southern sides of the area.
61. Mr Townsend's view is that any walking tracks or fences should be located outside the boundary of the Black Swamp SNA, to preserve the small amount of indigenous vegetation remaining and to provide a buffer between the SNA and new infrastructure (AT [50]).
62. The proposed walkways, both along the coast and next to Black Swamp SNA, are not consistent with Policy 11(a) of the NZCPS, which requires avoidance of

adverse effects on TAR species, significant areas of indigenous vegetation and habitats of indigenous fauna, and areas set aside for protection under other legislation, or with the provisions that give effect to this policy in the RPS and the Partially Operative Northland Regional Plan 2024 (NRP) (JM, [96]). They are also inconsistent with NZCPS Policy 13 (and provisions that give effect to it in the RPS and NRP) in relation to effects on the coastal character values of the High Natural Character areas in and around the plan change site that are identified in the RPS (JM, [104-106]). Both walkways should be removed from PC85 (see changes proposed JM, Appendix A).

Improving the Saltmarsh SNA

63. The appropriate placement of infrastructure is important, given that the current areas of indigenous vegetation are relatively small and cannot sustain further fragmentation through the introduction of additional structures. Mr Townsend identifies an alternative location for the proposed walking track, on the landward side of the Saltmarsh SNA, where any associated effects on indigenous vegetation would be minimal (AT, [45]). Mr Delaney for the Applicant agrees that this alternative location for the walking track would be likely to have minimal impact on vegetation.² However, given the significant risk to TAR avifauna (explained above), the DGC does not support a walkway in this location at all.
64. It remains unclear whether any repair of the stop bank is proposed. Mr Townsend identifies that repair works, if undertaken, have the potential to reduce the existing hydrological connectivity between the Saltmarsh SNA and the coastal environment. Such a reduction could give rise to significant adverse effects on the ecological values presently supported within this area.
65. Mr Delaney for the applicant confirms that he is not aware of any proposal to undertake repairs to the stop bank at this location. He further notes that, should such works be pursued in the future, they would be subject to an appropriate consenting process, during which the ecological effects could be fully assessed.³ The DGC does not support the repair of the stop bank.
66. The proposed Saltmarsh SNA is smaller than the area covered by the existing Conservation Covenant. The DGC is concerned that the proposed SNA may substitute the existing covenant area, resulting in a reduced covenant area. A

² Rebuttal Statement of Evidence of Mark Pierre Delaney on behalf of the Applicants (Ecology) 09 February 2026 at [19].

³ Rebuttal Statement of Evidence of Mark Pierre Delaney on behalf of the Applicants (Ecology) 09 February 2026 at [26].

reduction would diminish the buffer potential currently provided by the Covenant, leading to a consequential loss of ecological value. (AT, [36]). Mr Delaney for the Applicant, advises that he is not aware of any proposal to remove the existing Covenant and that the buffer values presently protected by the Covenant will remain in place. The DGC emphasises the importance of the Covenant and does not support any reduction in the covenanted area.

Upgrade Insley Causeway

67. It is important that the ecological effects associated with increased use of the Insley Causeway and related disturbance to TAR birds in the harbour are managed before substantial development occurs. A precautionary approach would favour Dr Beauchamp's view that this occurs before any development to prevent the possibility that initial disturbance leads to waders deserting the area (AB, [43]). Whereas Ms Macleod is comfortable with a trigger for the causeway upgrade based on the level of development that could occur in the absence of the plan change, an approach she considers logical (JM, [48]). Whenever it is triggered, it is important that the design of the walkway carefully minimises avifauna disturbance and is for example, fenced (AB, [44] and JM, [52]).

Confirm removal of 'potential future harbour access'

68. The DGC seeks that the reference to a "potential future harbour access" is removed from the Structure Plan, noting impacts on the harbour will generally be related to the number and location of access points, and any new access by boat risks disturbance of wildlife. Concerns regarding the potential effects of a new harbour access are also raised in the Council's evidence (JS, [5.11 to 5.14]).

69. A new harbour access is not referred to in the proposed Development Area provisions. The Applicant agrees with the request to amend the Structure Plan to remove the depiction of this access (BO [19]). The DGC records that removal of this access is an important step and notes the close similarities between *Mangawhai Wharf 2020* case context and the current situation with successfully breeding birds nearby and foraging territory alongside. In that decision the Panel said:

[115] The evidence shows wider Mangawhai Harbour is extremely important for the NZFT and that the application site is an important feeding, roosting, courtship, and mating area. The proposed wharf is located within the territory of one of the most successful breeding pairs

and extends 90 m across the foreshore area close to the low water channel which is regularly utilised by the birds for fishing. We consider that use of the wharf, in this location, particularly during the breeding season, will undoubtedly increase the risk to at least one breeding pair of NZFT (and potentially up to three breeding pairs) and acknowledge that each pair represents 10 percent of the current breeding individuals.

70. Showing a wharf in this location is inappropriate and the DGC fully supports its removal.

CLARIFY AND PRESERVE VALUES OF SIGNIFICANT NATURAL AREAS

71. The DGC sought amendments to the proposed plan change to better protect the Saltmarsh SNA and the Black Swamp SNA. Some of these have been made (JM [59]) but more is required, as set out in the evidence of Ms Macleod as follows:

- a. In order to align the plan change rules with regulations in the NES Freshwater, clarify that no permitted indigenous clearance or earthworks are permitted within 'natural inland wetlands' – i.e. remove exemptions from the indigenous vegetation clearance rule (Rule DEV X-G-R2) in these areas; and amend the earthworks rule (Rule DEV X-G-R1) to remove a setback from wetlands that is more permissive than the NES and to add a note alerting plan users to the requirements of the NES (JM, [60-63]).
- b. Amend requirements for weed and pest control in the esplanade reserve area, to provide for the eradication of plant and animal pests on an ongoing basis, but in a way that takes into account the beneficial ecological functions provided by some pest species, by co-ordinating restoration planting with weed control and by timing weed control to avoid nesting periods for birds that may roosting and breeding in habitat provided by weeds (JM, [64-69]).
- c. The underlying zone for the Saltmarsh SNA and the full area of the Conservation Covenant should be retained as Rural rather than changed to Rural Lifestyle, to avoid creating additional development capacity in this ecologically sensitive location (JM, [77-79]).

CONCLUSION

72. In regard to SNAs, the Applicant's proposal requires several important changes for these to function well in practice. This is fully supported and encouraged by the policy framework.
73. With respect to vulnerable avifauna, the evidence establishes there are significant potential environmental effects resulting from this development. The Applicant has not resolved the heightened risk it introduces. The legislation, case law and planning framework all provide clear guidance on the need to manage risk carefully, particularly where it relates to threatened species. Practical solutions for ecological effects are available to the Panel, and it is submitted are a lawful, necessary and appropriate and response to the risk.

A handwritten signature in black ink that reads "Lisa Sutherland". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Lisa Sutherland
Counsel for the Director-General
13 February 2026