

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

UNDER

The Resource Management Act 1991 (“the Act”)

IN THE MATTER OF

An appeal under Clause 14(1) of Schedule 1 of the Act
to a decision by Kaipara District Council on Proposed
Plan Change 85 – Mangawhai East

BETWEEN

Black Swamp Limited
Appellant/Submitter

AND

Kaipara District Council
Respondent

Notice of Appeal
to the Environment Court Proposed Plan Change 85 – Mangawhai East by
Black Swamp Limited



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Auckland Office
By Arrangement

To: The Registrar
Environment Court
Auckland

1. We, Black Swamp Limited, appeal against a decision by Kaipara District Council on Proposed Plan Change 85 – Mangawhai East (“**PPC85**”).
2. We made a submission on PPC85 (Submission s48).
3. We are not a trade competitor for the purposes of section 308D of the Act.
4. We received notice of the Decision on or about 11 June 2026.
5. The Decision was made by Independent Commissioners on behalf of Kaipara District Council.
6. The part of the Decision we are appealing against is:
 - 6.1 that part of the decision concerning our property at 25 Black Swamp Road, Mangawhai; and
 - 6.2 the decision declining PPC85 in its entirety.
7. The reasons for the appeal are as follows:
 - 7.1 PPC85 was heard by independent hearing commissioners, whose recommendation, accepted by Council, was that PPC85 should be declined;
 - 7.2 Whilst the commissioners found that most of the areas in contention were resolved between the parties (particularly the Applicant and Council) before the hearing, or could have been resolved with appropriate provisions in PPC85, the issues associated with the provision of wastewater services were the principle issues in contention between the parties, especially between the Applicant and the Council. The commissioners determined that these issues could not be satisfactorily resolved, and consequently recommended that PPC85 be declined on that basis;
 - 7.3 Our property at 25 Black Swamp Road, was included in PPC85 and it was proposed in PPC85 that it all be zoned Rural Lifestyle Zone (RLZ).

- 7.4 Our submission sought a Mixed Use Zoning (or similar) over that part of our property where a brewery has been legally established and operating, with the balance of our property being zoned as Low Density Residential (LDRZ).
- 7.5 The decision did not support the rezoning of our property as mixed use, based on their view that such a zoning could undermine the vitality of the Mixed Centre proposed on Black Swamp Road, as part of the plan change. However, there was no evidentiary basis for the commissioners to make this finding.
- 7.6 In making their decision to refuse a mixed use zoning, the commissioners determined that the site's existing resource consent (RM210463) would protect its activity and operation on the site, however, they did not understand the nature of that consent and the constraints of any existing use rights. In particular, operation of the brewery under the Operative District Plan is, arguably, a permitted activity, so that the resource consent authorised (only), the construction of the building. In other words, the activity of the brewery itself is not a creature of the resource consent, but rather of the permitted activity provisions of the Operative District Plan, that cannot be preserved by the existing resource consent.
- 7.7 In reaching their decision, the commissioners failed to consider the fundamental "mismatch" resulting from the existing brewery operation continuing with an underlying residential zoning (as proposed by PPC85) and the opportunities/constraints inherent with that.
- 7.8 The commissioners failed to make a decision on our requested zoning of the balance of our property, for which Low Density Residential Zone was sought. That zoning remains possible and appropriate notwithstanding the commissioner's decision to refuse PPC85, had they considered and been satisfied that sufficient wastewater capacity is available for our property.

8. We seek the following relief:

- 8.1 the rezoning of our property to Low Density Residential and Mixed Use Zone (or similar zones); and/or

- 8.2 the rezoning of our property to a bespoke zoning and/or precinct that recognises the nature and context of the existing commercial activity, future possibilities and residential potential;
- 8.3 such other zoning provisions as may be necessary and appropriate to recognise low density residential activity, the existing brewery and the framework within which that is legally established;
- 8.4 such other consequential relief as may be appropriate.

9. We attach the following documents to this notice:

- (a) a copy of our submission.
- (b) a copy of the relevant part of the decision.
- (c) a list of names and addresses of persons to be served with a copy of this notice.

Date: 22 July 2026

A handwritten signature in blue ink, appearing to read 'J C Dawson', is written over a light blue rectangular background.

J C Dawson – Counsel for Black Swamp Limited

Address for Service of the Appellant:

c/ Mr Julian Dawson – Barrister
email: julian@juliandawson.co.nz
phone: 0274200223
post: PO Box 531, Whangarei 0140

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (see form 38).

***How to obtain copies of documents relating to appeal**

The copy of this notice served on you does not have attached a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Attachment One

A copy of our submission (without attachments)

Attachment Two

A copy of the relevant part of the decision

Attachment Three

Names and addresses of persons to be served

Name	Email address
Kaipara District Council	planchanges@kaipara.govt.nz
Foundry Group Limited and Pro Land Matters Company (Applicant)	c/ Jeremy Brabant – Barrister jeremy@brabant.co.nz