

**BEFORE THE KAIPARA DISTRICT COUNCIL'S HEARING PANEL**

**IN THE MATTER OF** the Resource Management Act 1991 (**the Act**)

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

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**REBUTTAL STATEMENT OF EVIDENCE OF BURNETTE ANNE O'CONNOR ON**

**BEHALF OF THE APPLICANTS**

**(Planning)**

**09 February 2026**

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## INTRODUCTION

1. My full name is Burnette Anne O'Connor.
2. I have previously prepared a statement of evidence dated 18 December 2025 on behalf of Foundry Group Limited (formerly Cabra Mangawhai Limited) and Pro Land Matters Company regarding an application for Private Plan Change 85 (**PC85**) under the Operative Kaipara District Plan 2013. I also prepared a Supplementary statement of evidence to address the changes in National Direction dated 30 January 2026.
3. This rebuttal evidence responds to matters raised in expert evidence on behalf of submitters. Specifically,
  - The expert evidence of Mr Hood for Black Swamp Limited with respect to zoning and related matters;
  - The expert evidence provided on behalf of Department of Conservation;
  - The expert evidence of Mr Ross on behalf of Riverside Holiday Park; and
  - The expert evidence provided on behalf of New Zealand Fairy Tern Charitable Trust.
  - For completeness I have also addressed the lay evidence prepared by Pamela and Allen Collinge that I understand will be tabled at the hearing.

## QUALIFICATIONS AND EXPERIENCE

4. I confirm I have the qualifications and experience set out at paragraphs 1-5 of my statement of evidence dated 18 December 2025 (**statement of evidence**).

## EXPERT WITNESS CODE OF CONDUCT

5. I repeat the confirmation provided in my statement of evidence that I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. This evidence has been prepared in accordance with that Code. I confirm that the issues addressed in this rebuttal evidence are within my area of expertise, and I have not omitted to consider material facts that might alter or detract from the opinions that I express.



## BLACK SWAMP LIMITED

6. Mr Hood's evidence seeks an amended zoning pattern for the Black Swamp Limited ("BSL") landholding. I concur with the aspect of the evidence that seeks Low Density Residential zoning to align with the extent of the consented earthworks. I agree that this was the intended outcome in response to the s42A report and as addressed in my Statement of Evidence. Consequently, the zoning extent has been modified through discussion with Mr Hood and the applicants' experts. A revised zoning map is appended as **Attachment A** and the related changes to the Structure Plan are appended as **Attachment B**.
7. I note that BSL also seek Mixed Use zoning in the location of the established brewery. In my opinion the brewery is consented, and as I understand it, operational. It can operate in accordance with that consent. The proposed zoning pattern put forward in Mr Hood's evidence spatially in my opinion results in a spot zoning.
8. I have reviewed the s32 analysis provided with Mr Hood's evidence. I acknowledge that it is tailored towards the Mixed Use zoning sought for the brewery site. The options with respect to the brewery land, in my opinion, are:
  - a. Retain the existing rural zone.
  - b. Rezone the land to Rural Lifestyle.
  - c. Rezone the land to Low Density Residential.
  - d. Rezone the land to Business Mixed Use.
9. As outlined in Mr Hood's analysis both the Residential Low Density zone and the Business Mixed Use zone, as proposed in the Development Area provisions appended to my evidence, would require Discretionary activity resource consent for extensions to the brewery, assuming any extension or complementary activity would involve a building greater than 200m<sup>2</sup> floor area, which is a standard for commercial activities proposed in the Mixed Use zone. Commercial buildings exceeding 200m<sup>2</sup> gross floor area are a Discretionary activity.
10. The proposed Business Mixed Use zone would enable larger scale visitor accommodation activities, as well as larger scale educational and care centres and



community facilities for up to 50 persons to be assessed as a Restricted Discretionary activity. The proposed Business Mixed Use also enabled comprehensively designed residential development as a Restricted Discretionary activity.

11. The receiving environment to the brewery site includes a number of existing dwellings and the Riverside Holiday Park. In my opinion the more appropriate interface to these existing dwellings is the proposed Low Density Residential zone. Whilst the existing environment includes the brewery and its established activities, I consider that it is most appropriate to assess future activities in the context of the residential environment rather than creating a spot zoning for the brewery.
12. The proposed Development Area provisions will provide an appropriate framework for the continued operation of the brewery and for reasonable expansion of that activity, or complementary activities, whilst taking into account the existing and planned future residential environment. I also consider the potential for comprehensively designed residential development that is enabled in the Mixed Use zone would likely not be appropriate as a 'spot zone' outcome amongst the Residential Low Density development. It would not be connected to the proposed Neighbourhood Centre and would be more detached from the proposed walkway connections proposed to align with the proposed SNA and coastal margin areas.
13. The s32 analysis prepared by Mr Hood does not detail what the future anticipated land use is and whether that is expected to be any different from what is currently there. Even if it did, there is no certainty that current intentions will endure.
14. At paragraph 8.1 Mr Hood states that it is effective for the zone pattern to recognise the brewery as part of the Development Area's structure. On this point I note that the brewery location is clearly indicated on the Structure Plan that forms part of the Development Area. In my opinion that is appropriate recognition of the location and presence of the brewery.
15. In relation to efficiency Mr Hood states that a Mixed Use zoning will lower transaction costs over time and reduce the need for repeated discretionary consent applications. I note that both the Mixed Use and the Residential Low Density zone will likely require resource consent for future activities on that land. If the future uses were residential then resource consent may not be required with the proposed Residential Low Density zoning, but residential uses would require resource consent in the Mixed Use zone.



All new buildings require resource consent in the Mixed Use zone as a Restricted Discretionary activity.

16. In my opinion the best overall environmental outcomes (and most appropriate in a s32 sense) will be achieved through applying the Residential Low Density zone and thus enabling assessment of future proposals associated with the brewery to be undertaken in the context of the future planned residential environment.

#### **DEPARTMENT OF CONSERVATION**

17. I have read the expert evidence provided on behalf of the Department of Conservation (“DOC”). In relation to ecological matters, I rely on the rebuttal evidence of Mr Delaney.
18. In response to the evidence provided by Ms MacLeod I note the primary areas where there is a difference of planning opinion relate to:
  - a. Whether a total ban on the keeping of dogs, as pets, is justified from an ecological perspective
  - b. The appropriateness of the coastal walkway proposed around the existing esplanade reserve adjacent to the harbour.
  - c. The extent of rural zoning to apply to the wetland area that is protected by Conservation Covenant.
  - d. Development Area provisions.
19. With respect to seeking a total ban on dogs as pets within the PC85 Development Area I understand that from a pure ecological perspective this is the preferable outcome. However, in my opinion the application of any additional rules, standards in a plan change need to be justifiable in the context of the existing environment and the benefits of the provision need to outweigh the costs.
20. The DOC submission relates to the keeping of dogs as pets but then appears to seek a total ban on dogs<sup>1</sup>. At paragraph 43 Ms MacLeod also states that *“A dog ban would be a more effective measure than the proposed approach of using signage on the*

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<sup>1</sup> Evidence of Ms MacLeod, paragraphs 43 – 46.



*proposed coastal walkway indicating that dogs must be kept on a lead, and requiring dogs to be kept within private properties or on leads when within the plan change area, because it would provide greater certainty that there would be no additional dogs kept in the area”.*

21. Whilst I understand the logic, it is important to acknowledge the existing use of the harbour area by people walking dogs, the existing informal track along the esplanade reserve area, where people can walk dogs if they wish to and also dogs on neighbouring sites not within the plan change area.
22. As Mangawhai grows, with or without PC85 there will be increased pressure on the harbour, harbour access points and the adjacent esplanade reserves. This means that there is likely to be general increase in use of the area over time associated with wider population growth. In my opinion, it would be a better outcome to secure provisions now for better public education in the area, defined access points and measures that increase avifauna habitat at the coastal edge. The proposed coastal walkway provisions require dense native planting to complement the existing vegetation, provide a greater setback separation from the avifauna habitat in the harbour and secure a defined walking path that ensures access is confined to that defined area, rather than ad hoc.
23. In my, opinion the proposed provisions secure the best outcome. I understand the principle of avoidance but banning dogs within the PC85 Development Area will not ensure avoidance of dogs roaming or dogs being present both in the harbour and estuarine areas, or along the existing and proposed esplanade areas. In my opinion true avoidance, as discussed in paragraph 44 of Ms MacLeod’s evidence cannot be achieved in this location, even without retaining the existing and proposed District plan rural zoning. A ‘do-nothing’ approach will not avoid adverse effects on threatened avifauna species and PC85 provides an opportunity for now, and into the future, to do something that will improve public education, improve habitat values and limit the extent of effect on these species at the coastal edge.
24. Whilst it is really a sociological assessment, more people who are proud of their local environment often police such outcomes such as dogs on leads etc. where signage requires that outcome.



25. Based on my opinion regarding the dog ban sought, I do not agree that non-complying activity status should apply to subdivision applications that do not include a total ban on dogs, cats and mustelids. I also do not agree that a dog ban is required for PC85 to give effect to the Northland RPS with respect to the High Natural Character area identified in the RPS relating to the Black Swamp HNC within the site (the SNA area) and the HNC area identified around the coastal edge<sup>2</sup>.
26. With respect to delivery of the proposed walking and cycling connections the Subdivision rules DEV X R1 refers to walkways and pedestrian / cycle improvements and pedestrian walkways and cycleways.
27. I agree that DEV X-SUB-S6 wording could be clarified to consistently use the term Shared Path, and to state across, or adjacent to the Insley Street causeway. I also agree that it would be clearer to indicate on the Structure Plan, the existing shared path that the Insley Street shared path needs to connect to. I will present an updated set of Development Area provisions and an updated Structure Plan prior to the hearing.
28. In response to the matter that the Insley Street shared path needs to be designed to reduce the potential for disturbance of birds by people and dogs using them, I have suggested adding to the Standard a cross reference to a Special Information Requirement that the design of the shared path needs to be supported by an ecological assessment confirming that the proposed design will achieve the required outcomes with respect to minimising the potential for disturbance of avifauna.
29. I do not agree with the wording proposed by Ms MacLeod because the development can take place in conjunction with delivery of the shared path. The important factor is that the shared path is delivered prior to people living in more than 50 homes in the PPC area. I do not consider that the wording 'not take place' is sufficiently clear in resource management terms. I would expect delivery of the shared path to be secured as a s224 condition on the subdivision consent and therefore it would be delivered ahead of future housing. In my opinion this is the more appropriate outcome for securing a subdivision resource consent standard.
30. At paragraphs 60 and 62- of her evidence Ms MacLeod rightly identifies that the provisions need to be consistent with the NESF. I have reviewed Ms MacLeod's

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<sup>2</sup> Evidence of Ms MacLeod, paragraph 100.



suggested changes at Appendix A to her statement. For the reasons discussed, I do not agree with the changes she proposes. Specifically the NESF does enable vegetation removal in and adjacent to natural inland wetlands, as well as earthworks and the diversion and discharge of water as I detail at paragraphs 35 and 36 below.

31. With respect to ongoing weed and pest control on esplanade reserve areas, the intention of the proposed Development Areas provisions is that these areas will vest with council and therefore the longer-term maintenance would rest with council and not the developer. In my experience this is standard practice and it would not be appropriate to have to establish a resident's group, or similar, to continue the maintenance into the longer-term future. It is however reasonable that the land for esplanade and other reserve is vested in a good and clean state, and this also, is standard practice in my experience.
32. The point regarding the timing of weed and pest control is acknowledged and I would expect these matters to be secured through the weed and pest control plan. Standard DEV X SUB-S3 is proposed to be further amended as set out in her track changes to the proposed Development Area provisions appended to Ms MacLeods evidence. I agree with the intent to require detail of weed and pest control to be submitted for approval in conjunction with the relevant subdivision application. To that end I agree with the suggested wording for DEV X SUB S3 e. but I do not agree with the other changes suggested to that provision relating to deletion of provisions about the detail of the coastal walkway. I also do not consider a Management Plan is the appropriate mechanism because the land is council land and it will not be incumbent on the developer to maintain that public asset on an ongoing basis.
33. With respect to the difference between the covenant area applying the salt marsh and the proposed SNA extent I agree with Ms MacLeod<sup>3</sup> that the risk of the covenant being uplifted is minimal. I agree with Mr Delaney that the mapped extent of the SNA is correct based on the requirements of the NPS IB and Northland RPS directives. The fact the Conservation Covenant covers a wider area and creates a buffer to the mapped SNA is appropriate and is a matter for the landowner to manage.

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<sup>3</sup> Evidence of Ms MacLeod, paragraph 76.



34. I do not agree with Ms MacLeod's statement that the coastal walkway end point will increase the possibility of or create a natural choice for people to continue the walk in the harbour at low tide. The Structure Plan shows pedestrian and cycle improvement along Raymond Bull Road frontage to connect to the existing unformed road and the proposed coastal walkway. I consider it as likely people from the PC85 area would seek to complete the loop.
35. With respect to the appropriateness of the walkways addressed at paragraph 93 of Ms MacLeods evidence, I note that these areas are currently able to be accessed, there are adjacent farming, rural land use activities and also that boardwalks in wetland areas are provided for as Restricted Discretionary activities in the NESF, refer to Regulation 42 and the definition of wetland utility structure. Regulation 42 of the NES states that the construction of wetland utility structures and associated vegetation clearance and earthworks within and within a 10 m setback from a natural inland wetland is a restricted discretionary activity, as is the taking, use, damming, or diversion of water; or the discharge of water, within 100m setback of a natural inland wetland, subject to the circumstances specified in Regulation 42 (3) and (3A).
36. A wetland utility structure is defined in the NESF as follows:

*wetland utility structure—*

- (a) means a structure placed in or adjacent to a wetland whose purpose, in relation to the wetland, is recreation, education, conservation, restoration, or monitoring; and
- (b) for example, includes the following structures that are placed in or adjacent to a wetland for a purpose described in paragraph (a):
- (i) jetties:
  - (ii) boardwalks and bridges connecting them:
  - (iii) walking tracks and bridges connecting them:
  - (iv) signs:
  - (v) bird-watching hides:
  - (vi) monitoring devices:
  - (vii) maimai

37. The relevant matters of discretion are stated at Regulation 56 and include

- (a) the extent to which the nature, scale, timing, intensity, and location of the activity may have adverse effects on—
- (i) the existing and potential values of the natural inland wetland, its catchment, and the coastal environment; and



*(ii) the extent of the natural inland wetland; and*

*(iii) the seasonal and annual hydrological regime of the natural inland wetland; and*

*(iv) the passage of fish in the natural inland wetland or another water body:*

*(b) whether there are practicable alternatives to undertaking the activity that would avoid those adverse effects:*

*(c) the extent to which those adverse effects will be managed to avoid the loss of the extent of the natural inland wetland and its values:*

*(d) other measures to minimise or remedy those adverse effects:*

*(e) how any of those adverse effects that are more than minor may be offset or compensated for if they cannot be avoided, minimised, or remedied:*

*(ea) the extent to which the effects of the activity will be managed through applying the effects management hierarchy:*

*(f) the risk of flooding upstream or downstream of the natural inland wetland, and the measures to avoid, minimise, or remedy that risk:*

*(g) the social, economic, environmental, and cultural benefits (if any) that are likely to result from the proposed activity (including the extent to which the activity may protect, maintain, or enhance ecosystems).*

38. In my opinion, the above criteria are sufficiently robust to ensure the necessary assessment of ecological effects associated with the design of any proposed walkway in these locations can and will be properly and appropriately assessed at resource consent stage.

39. I acknowledge that the ecological concerns raised with respect to the walkways, however urban design principles and creation of a quality well-functioning urban environment are also considerations when seeking to zone land for urban purposes. In my opinion if the plan change were approved then people would seek to walk along the coastal esplanade reserve regardless. It is already vested public land. Other areas where esplanade reserve will have to be legally vested at the time of subdivision would similarly be a focal point for people to enjoy and appreciate the amenity of their living environment.



40. The extent of vegetation removal and or earthworks required within or close to the SNA wetlands is appropriately, in my opinion, a matter of detail to be addressed at resource consent stage. Given, the NESF provisions above I do not see any conflict with the Structure Plan and development area provisions with the NESF.
41. I do not agree with the evidence seeking that the walkways and related Development Area provisions be removed from the Structure Plan and proposed provisions.
42. For the reason stated above I remain of the view that the PC85 zoning layout and Development Area provisions, as amended, give effect to all relevant National Policy Statements including the New Zealand Coastal Policy Statement and the NPS for Indigenous Biodiversity, and the Northland Regional Policy Statement. The provisions are consistent with the relevant NES including the NESF, as I have detailed above. Further amendments to the Development Area provisions have been made to provide further clarity.
43. For the reasons I have stated above I consider that the plan change does give appropriate effect to the Northland Conservation Management Strategy (“**CMS**”).
44. With respect to the asserted need identified in paragraph 171 of Ms MacLeods evidence I do not think there is any need to amend the proposed Rural Lifestyle zone back to Rural under the salt marsh. In my opinion the existing Conservation Covenant and the proposed SNA extent are appropriate and adequate to ensure the ongoing protection of that area.
45. I have adopted those suggested changes to the Development Area provisions I concur with. An updated set of provisions will be circulated prior to the hearing.

**RIVERSIDE HOLIDAY PARK 2007 LIMITED**

46. I have read Mr Ross’ evidence, and I have recommended further changes to the Development Area provisions to ensure it is clear that the requirement for the Insley Street shared path connection relates to subdivision and land use that would result in more than 50 Household Unit Equivalents.
47. I appreciate the issue Mr Ross raises at paragraph 4.5 (d) of his evidence. The intention is that there will be both an agreement between the two main land developers and an Infrastructure Agreement, however, also accept that these outcomes are not locked



in. I have suggested further amendments to the provisions to ensure that the delivery of the Insley Street connection is secured at the time of the first development consent. This will motivate that consent to include as much development as practicable and would be granted on the condition that there would be no s224 issued for subdivision of more than 50 sites or no more than 50 dwellings able to be occupied until the connection is delivered. This latter outcome would necessitate a condition requiring a restrictive covenant in favour of Kaipara District Council to be entered into that would be satisfied and then extinguished upon the completion of the Insley Street shared path connection.

48. The upgrade to Black Swamp Road to enable safe connection to the Isley Street path is shown on the Structure Plan as a combination of the proposed internal road network and the last portion to the west of where the road in the southern portion of the PC area connects to Black Swamp Road. Based on Mr Ross' evidence I do not consider further changes are required, but I am willing to engage further on this point with the other planning experts if necessary.
49. I rely on the rebuttal evidence of Mr Hills and do not think there is a traffic planning, safety or other effects-based reason to require a roundabout to be delivered at the Tomarata - Insley Street connection.
50. I have addressed delivery of the proposed coastal walkway above and in my opinion the need to create / deliver a quality well-functioning urban environment is a relevant and important consideration. Therefore, in my view so long as the design and construction of the walkway addresses the ecology and use aspects of the esplanade then an overall better outcome will be achieved by delivering the walkway, than not.

#### **NEW ZEALAND FAIRY TERN CHARITABLE TRUST**

51. I rely on the expert evidence of Mr Delaney with respect to the evidence provided on behalf of New Zealand Fairy Tern Charitable Trust.
52. To the extent relevant, my comments above in relation to the DOC evidence also apply to the NZFT evidence provided by Mr Southey. Primarily my comments in relation to the DOC evidence address matters raised at paragraphs 27 – 47 and paragraphs' 57 – 74, of Mr Southey's evidence.




**PAMELA AND ALLEN COLLINGE – 56 BLACK SWAMP ROAD (LOT 2 DP 177202)**

53. I rely on the evidence of the applicant's witnesses in responding to the matters raised in the Collinge submission and consider the provisions proposed will appropriately achieve the required outcomes with respect to hazards risk and earthworks.

**CONCLUSION**

54. Subject to signalled further changes to the Structure Plan and Development Area provisions I remain of the opinion that PC85 can be approved and that the provisions are the best way to achieve the objectives.
55. I consider PC85 gives effect to all relevant NPS and the Northland Regional Policy Statement and is not at odds with the relevant NES.

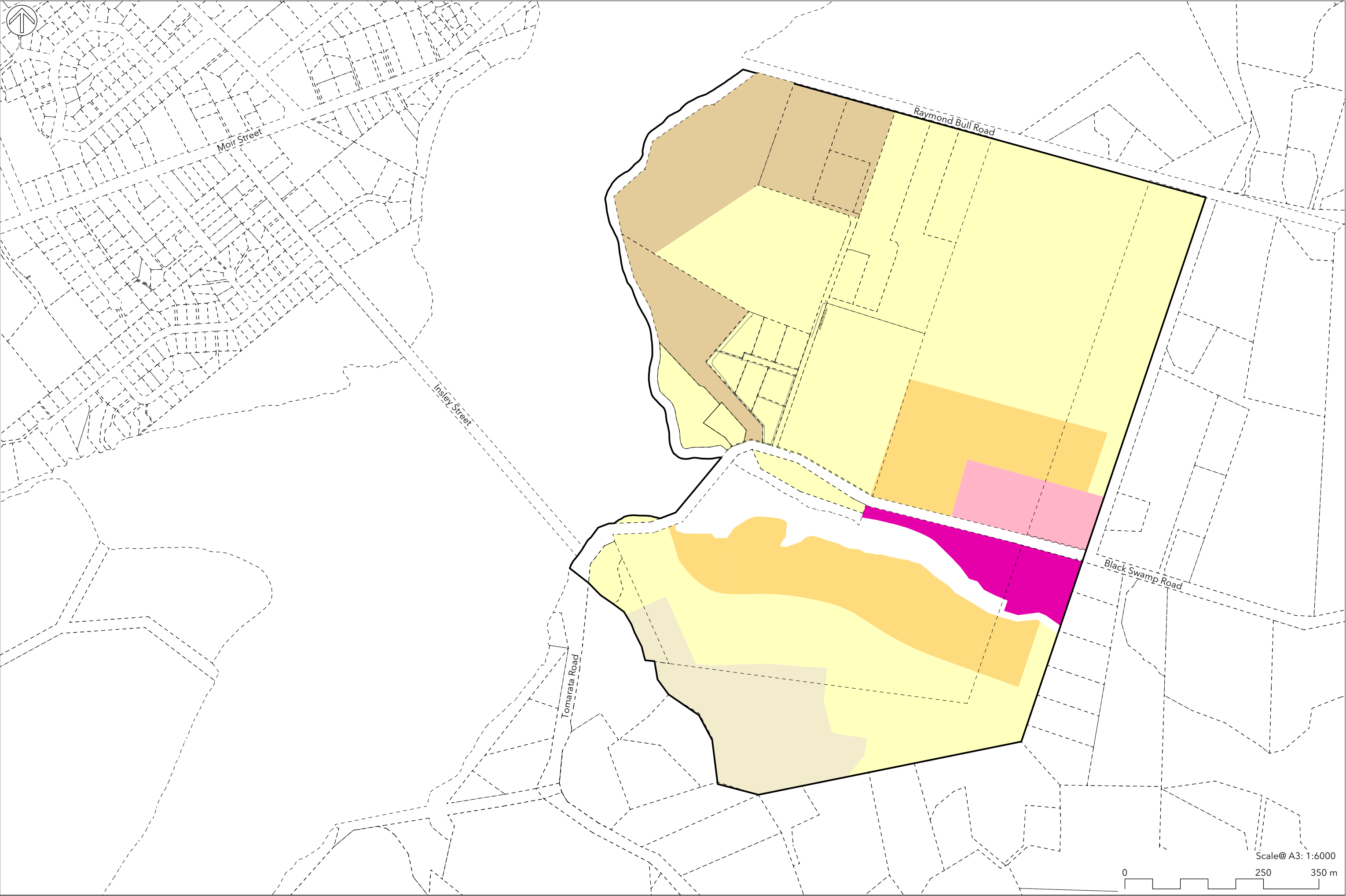


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**Burnette O'Connor**

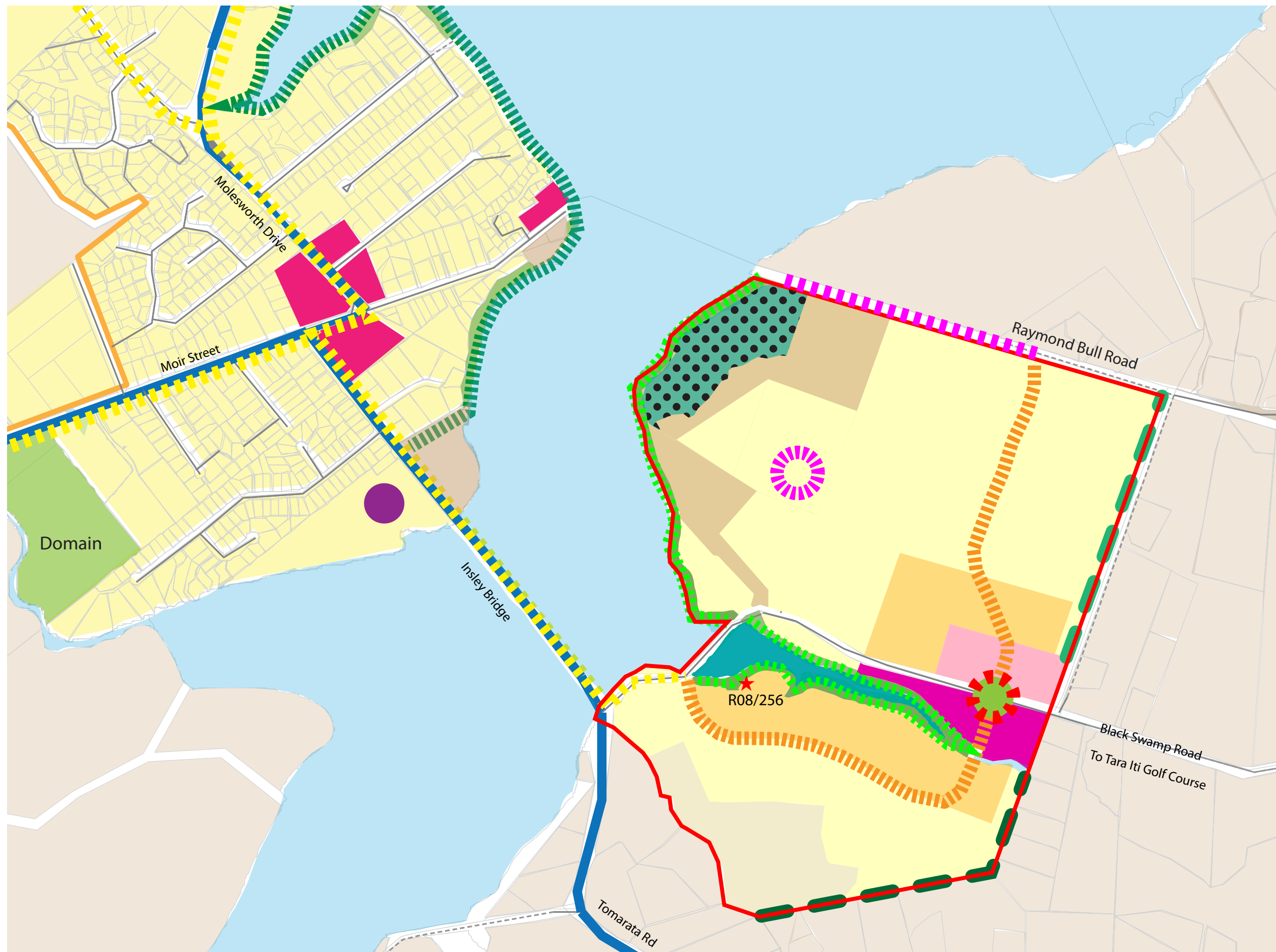
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






















	Neighbourhood Centre Zone		Large Lot Residential		Medium Density Residential
	Mixed Use Zone		Low Density Residential		Rural Lifestyle Zone





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|---|--|
|    | Plan Change area                                       |
|    | Rural Lifestyle Zone                                   |
|    | Large Lot Residential Zone                             |
|    | Low Density Residential Zone                           |
|    | Medium Density Residential Zone                        |
|    | Mixed Use Zone   |
|    | Neighbourhood Centre Zone                              |
|    | Mangawhai Beach school                                 |
|    | Proposed estuary reserve connecting to coastal reserve |
|    | Black Swamp Brewery                                    |
|    | Gateway roundabout entry point                         |
|    | SNA  |
|    | Existing and proposed all tides walkway                |
|    | Existing and proposed cycle way connection             |
|   | Coastal fringe enhancement and public walkway          |
|  | Indicative road  |
|  | Pedestrian/cycle improvement                           |
|  | Rural edge enhancement                                 |
|  | Landscape edge enhancement                             |
|  | Area of Saltmarsh covenant to remain                   |
|  | Midden R08/256   |

Note: Base plan sourced from KDC GIS

## STRUCTURE PLAN