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

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Reply Submissions on behalf Foundry Group Limited and Pro Land Matters Company

Dated 6 March 2026

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May it please the Commissioners:

Introduction

1. These reply 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. As the Commissioners are aware, 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. The DA Provisions have been further amended as addressed in this reply in response to matters arising and consequent on caucusing between the planners as directed by the Panel.

4. My reply responds to issues arising from submissions and evidence presented by submitters, including in particular Tern Point Recreation & Conservation Society Incorporated (**TPRCS**), Mangawhai Matters Incorporated (**MMI**), and The New Zealand Fairy Tern Charitable Trust (**Fairy Tern Trust**), the Department of Conservation (**DoC**) and the comments of officers and consultants for Kaipara District Council (**Council**) in the context of the s42A Reporting and closing comments.

5. My opening referred to a significant narrowing of the issues between Council and the Applicant since notification of PC85. Key remaining matters identified in that opening were:

    a. Wastewater serviceability;

b. The underlying economic assessments relating to urban capacity and demand;

c. Whether PC85 is "infrastructure ready".

d. Urban Form and considerations arising out of the National Policy Statement – Urban Development (**NPS – UD**);

e. Clause 3.6(5) of the National Policy Statement – Highly Productive Land (**NPS – HPL**); and

f. Potential effects on avifauna.

Reply

6. Mr Clease concludes that the "plan change is now supportable across most thematic topics". He goes on to say that if "sufficient confidence was available that a wastewater solution could be delivered (and NPS – HPL 3.6 (5) is not in play), then my recommendation would be that the plan change be approved".

7. A core difference between Council Officers and the Applicant remains wastewater servicing, although that matter has narrowed also.

8. I agree with Mr Clease's comments at paragraph 5 of his summary state of position:

> "All other matters are either resolved, or turn on discrete matters of merit – roundabout vs right turn bay; stormwater modelling now rather than at time of subdivision; brewery MUZ vs LDRZ; dog ban or management, boardwalks or not. Whilst important details to get right, in my view none of them are determinative of the overall recommendation regarding plan change approval."

Discrete issues

9. Before addressing the core remaining issues, I engage with the more discrete matters referred to above.

Roundabout vs right turn bay

10. You have heard opposing views from the traffic experts with respect to this consideration (Mr Hills for the Applicant and Mr van Der Westhuizen for Council). I note there is some lay submitter support for a roundabout.

11. The DA Provisions (Planning Caucusing version) identifies alternative potential wording at DEV X–P3, DEV X–LU–S13 (5)(b), DEV X–SUB–S6(3)(b), and DEV X–REQ2(1)(a).

12. In that respect I say you should rely upon the evidence of Mr Hills. That is because as identified in my opening, Mr Hills has set out why the proposed upgraded priority-controlled T-intersection he supports provides appropriate performance and safety outcomes. 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, even though he has a preference for a roundabout.

13. The Panel will need to determine which evidence it prefers. Either way:

    a. The Applicant will pay for this intersection upgrade; and

    b. The plan change can appropriately be approved.

Shared path connection between the Development Area and Mangawhai Village

14. Turning to the proposed shared path connection to the village, there is agreement that this is an appropriate transportation initiative. In addition to the clear evidence before you to this effect, it aligns with broader strategic outcomes – for example the desirability of Mangawhai being linked from a cycling perspective to the south is identified in the 2017 KDC Walking Cycling Strategy (project referred to as the Insley Street Causeway Bridge).

15. The Applicant proposes not only to create the link over the causeway. It will also establish connections to the existing shared path in the village.[1] Together this package of works provides another key step in the extension of Mangawhai's walking and cycling connections (and of course this will link with walking and cycling connections within the Development Area). The Applicant will pay for these works.

16. The remaining consideration arising from this shared path connection over the causeway is the potential for people using that connection to disrupt avifauna. That matter is addressed by DEV X–REQ6 which directly requires the design of the shared path to reduce the potential for disturbance effects on avifauna by people and dogs using the shared path. The design is to be informed by an ecologist and is to be submitted to Council for certification.

17. In my submission potential adverse effects on avifauna resulting from establishment of the shared path connection will be suitably avoided on the basis of the design approach adopted (and required by the proposed provisions).

18. I say the outcome will be a positive one, whereby the shared path connections to be created at no cost to Council significantly extend and improve on existing shared paths, creating both local and overall improvements in the shared path network.

Stormwater modelling

19. My submission with respect to stormwater modelling is brief but required given the continuing concern expressed by Mr Westwood. In short, you can and should rely upon the common expert opinion of Mr Peters and Mr Senior. They agree that the stormwater effects assessment for PC 85 is appropriate and that the provisions and proposed SMP will ensure run-off and quality impacts are addressed.

[1] See DA Provisions (Planning Caucusing version) DEV X–SUB–S6(2) and DEV X-REQ2(1)(b).

20. Mr Peters confirmed in response to questions that any potential effects by reference to dwelling floor levels on adjacent sites can be addressed through the consenting process in the context of ensuring that downstream flooding levels are not altered as a consequence of development.

21. Mr Westwood's assertion that there is a difficulty in this location because hydraulic neutrality cannot be achieved fails to engage with the point being made by Mr Peters and Mr Senior. As Mr Peters observes at paragraph 28 of his rebuttal, in this location the most appropriate approach is not necessarily hydraulic neutrality given the site sits in the lower reaches of the catchment immediately adjacent to the coast with direct discharge the best method (pass through). However such an approach does not displace the requirement for subsequent detailed assessment, which Mr Peters and Mr Senior support and have explained in their evidence.

22. In my submission there are no stormwater matters which stand in the way of approving the plan change.

Brewery MUZ vs LDRZ

23. The differing views regarding zoning of the site currently containing a brewery are addressed in the evidence before you, but might be characterised as:

    a. A concern on the Applicant's part that a spot zone would arise and further that the MUZ zone proposed would enable other activities with no guarantee that the brewery would continue;

    b. A response from Black Swamp Limited which focuses on the nature of the existing consented brewery and providing for its future operations.

24. The Panel will need to make a determination consequent on the evidence before it. There is little to add in this reply other than to make the following observations:

a. Whichever zoning the Panel determines is appropriate can be accommodated within this plan change. In other words, the findings with respect to this site has no bearing on whether the overall plan change is appropriate.

b. Care needs to be taken in placing too much stock on the existing brewery operation as a justification for MUZ. I acknowledge it is consented and has operated for a time. However I also understand that after opening in 2023, the company which owns the brewery/production side of the operation hit financial headwinds in 2024 and ceased trading.[2] Whether the brewery operation recommences is unknown, but any assessment of the appropriate zoning of the site would need to take account of the potential for other activities to establish in line with what MUZ enables.

Dog ban or management

25. There has been significant focus on the potential effect of dogs on avifauna. The Applicant's proposed approach at commencement of the hearing was controls on dogs, specifically a requirement that dogs be contained on properties and to be on a leash and public places (with cats and mustelids banned).

26. Council's reporting team, in reliance on the evidence of Mr Smith, have taken the view that banning dogs from the plan change area is the preferable outcome.

27. The position advanced by DoC with respect to this issue aligns with Council's reporting team and supporting the banning of dogs.

28. TPRCS, MMI, and the Fairy Tern Trust have concerns about potential effects upon avifauna, such that they say it is a reason why the plan change should

[2] https://hoppiness.co.nz/pacific-coast-in-liquidation

be declined.[3] I understand their position to be that if the plan change were approved, then dogs should be banned.

29. The Applicant has reflected upon this issue prior to lodging this reply. I am instructed that the Applicant now agrees that dogs should be banned and it supports plan provisions to that effect. The DA Provisions (Planning Caucusing version) has wording covering either eventuality. Therefore amendments will need to be made to those provisions to reflect the final position. Relevantly I direct you to DEV X–SUB R1(1)(i)(ii) which states:

> No keeping of dogs, except for:
>
> - Dogs that have been certified as disability assist dogs in accordance with Schedule 5 of the Dog Control Act 1996; and
>
> - Dogs used for work by a Government agency.

30. DEV X-P4(1)(e) would be amended to require covenants and/or restrictive consent notices to be imposed at the time of subdivision on all land within the Development Area banning (inter-alia) the keeping of dogs other than in accordance with the exceptions identified above. The implication is:

    a. Existing landowners on sites which have not progressed development through subdivision may continue to have dogs present. That allows for both domestic dogs and rural working dogs so long as subdivision is not undertaken.

    b. There are enduring exceptions for disability assist dogs, or dogs used for work by a government agency (which would cover for example police dogs and dogs used by DoC).

31. In my submission this amendment appropriately responds to potential effects on avifauna from dogs and avoids the potential for future adverse effects arising from development whereby absent such a control additional numbers of dogs might be anticipated.

[3] I note the somewhat hypocritical position that a witness for TPRCS acknowledged the Tern Point development does not ban dogs, that residents have dogs, and further that they have a boat shed and boat ramp, all in close proximity to the Mangawhai sandspit.

32. The development area provisions include requirements for signage on walkways with respect to dogs. As currently worded the requirement is that the signage would state that dogs must be on a lead at all times. The Panel can determine whether that wording should be amended to state that dogs are banned, noting the Tern Point residents would retain their ability to have dogs present and currently the website for the Riverside Holiday Park expressly states it is "Pet Friendly" with numerous images of dogs shown on that website.

Coastal Walkway

33. Construction of walkways, in particular coastal walkways proximate to the Northern SNA, is the subject of concern on the part of DoC and some submitters.

34. Walkways are identified on an indicative basis in the structure plan and the DA Provisions (Planning Caucusing version) require construction of a defined walkway along the coastal esplanade reserve. The basis for constructing such a walkway is addressed in the evidence for the Applicant including that these facilities will provide recreation opportunities and access to the coast albeit in a managed way (in the sense that this access is channelised by the formed walkway).

35. Ecological considerations related to construction of such a walkway are addressed by Mr Delaney. He concludes that provision for these walkways as proposed can appropriately be made because in his view it is likely they can be constructed in a sensitive way which is acceptable, but in addition noting that any proposed walkways in these locations will require resource consents and thus there are appropriate mechanisms in place for assessing effects in due course as to whether they should be consented.

36. Mr Smith effectively aligns with Mr Delaney in that regard.

37. I say that the Panel can determine whether provision is made for the construction of walkways through the plan change, noting further consents will be required. In that context there are a mix of matters relevant. Access to the coast is generally desirable and something provided for by the

NZCPS. This is not determinative, because the NZCPS also includes provisions addressing ecological matters. Given competing considerations I say a detailed assessment in the context of a resource consent application is the appropriate method to resolve a way forward. That is particularly so where the walkways are not a necessary part of the plan change from a connectivity point of view, where there are options as to where and how any walkway might be located and designed with a view to managing and avoiding effects, and taking account of the current position where people access the coast through a variety of informal paths and locations (which raises a question as to whether a more formalised position would be a better solution).

38. Any dogs which might use the walkways (if they are consented and constructed) will be by definition "existing" due to the dog ban now proposed. Absent construction of walkways, "existing" dogs will continue to access the coast as they currently do.

39. Therefore I submit that it is appropriate the plan provisions provide for walkways, understanding that they will be the subject of resource consent applications. If the Panel were to form an alternative view, then provisions relating to these walkways could be deleted without threatening the appropriateness of the plan change overall.

NZCPS

40. The legal submissions of Mr Matheson KC raise the NZCPS as a potential issue.

41. Primarily the concern identified relates to protection of indigenous biodiversity, and in particular relates to the Fairy Tern. I say the Applicant's evidence, coupled with the decision to now ban dogs, results in a position aligned with the evidence of Mr Smith and in most respects aligned with the evidence on behalf of DoC - namely that protection of indigenous biodiversity is now appropriately provided for and effects on Fairy Tern are avoided.

Wastewater Capacity

42. The ability to service the site from a wastewater perspective is a key issue in the context of this plan change.

43. The Applicant has advanced evidence addressing why there is capacity available, and further why it can appropriately be anticipated that capacity can be extended in the future if required. With respect to the latter point the Applicants witnesses maintain their position. As indicated during my opening, it is common for nominal plan enabled development capacity in urban areas to significantly exceed infrastructure capacity. That is because nominal plan enabled capacity does not reflect a real-world measure, nor does it reflect what the NPS – UD requires as a yardstick.

44. My opening addressed this issue in detail directing you toward feasible and reasonably expected to be realised development capacity is the appropriate consideration.

45. Related to the required real-world assessment, was the submission by me supported by evidence from the Applicant that in this case adopting a real-world assessment resulted in the conclusion that capacity was in fact available. You will recall there is a difference of opinion between Mr Thompson and Mr Foy. The Applicant directly engaged with assumptions made by Mr Foy with respect to a development known as Mangawhai Central.

46. Mr Foy (and thus Council in reliance upon his view) originally took the approach that Mangawhai Central would yield 1500 dwellings. The summary statement of Mr Thompson identified that the likely yield of Mangawhai Central was only approximately 785 dwellings with the implication (along with subtracting 500 plan enabled dwellings and PC 84 which will be serviced by on-site wastewater) that was wastewater treatment 'headroom' of 3600 HUEs, a revised feasible and reasonably expected to be realised development capacity of 2620, leaving 980 for PC 85 to use.

47. Mr Foy's summary statement of position presented on 18 February 2026 includes a table at paragraph 12 identifying areas of agreement and disagreement. With respect to Mangawhai Central Mr Foy now accepts that will generate demand of approximately 785 HUE subject to evidence confirming that position.

48. Attached to this reply is a letter from Ms O'Connor to Strategic Property NZ[4] dated 26 February 2026. The letter identifies the issue, attaches a calculation of built out demand for Mangawhai Central by Aspire engineers, and asks for a response as to whether this reflects the development for all of Mangawhai Central. The Aspire calculation identifies a total number of residential HUE of 784, and a total HUE of 889 when the business and service zone are added (a proportion of this commercial is already connected – I understand approximately 40 HUE).[5] As identified in the footnote, if the BUPA development proceeds then the number of HUEs reduces in comparison to a private dwelling alternative.

49. The email response from Strategic Property dated 3 March 2026 (also attached) confirms a total of 785 HUEs, if Stage 4 were developed as 113 vacant lots. However it then points out that the sale to BUPA has gone ahead, and therefore a lesser number of total HUEs will eventuate due to construction of a retirement village.

50. The implication of above is that there is confirmation that Mangawhai Central will not result in demand of approximately 1500 HUE. The residential outcome as identified by Strategic Property is approximately 760 HUE (assuming a 200 unit BUPA development). The total including commercial, minus what commercial is already connected is 824 HUE.

51. In a similar vein to the above, the Metlifecare development referenced by Mr Foy and Mr Thompson assumes 160 HUE. The Metlifecare website

[4] Consultants engaged by the developers of Mangawhai Central.

[5] Note the calculation assumes a BUPA 150 Villa retirement village or in the alternative around 113 lots if the retirement village did not proceed. The Development Contributions Policy calculates a retirement living unit at 0.44 HUE. Therefore the BUPA development at that size equates to 66 HUE. If the BUPA development were 200 units, then that would be 88 HUE.

confirms the development is for approximately 160 villas, and a 45 bed hospital level care home. If the retirement living unit rate of 0.44 HUE is applied, the villas proposed equate to 70 HUE and I understand approximately 50 HUE for the care facility (meaning 120 HUE not 160).

52. The fundamental point is that on a real-world assessment the HUE demand from these greenfield developments is significantly less than originally assessed by Mr Foy.

53. However Mr Foy goes on to suggest a problem remains by reference to small vacant residential lots and infill. The total for vacant lots is 593 and 1497 for infill. Mr Thompson applied a 50% adjustment to these figures to represent a more realistic development rate. An outcome of such an adjustment is that there is capacity for development enabled by PC 85.

54. With respect to infill, Mr Foy asserts that development of vacant residential lots is likely to approach 100% over time. In my submission that ignores the real world reality that various limitations will apply to some of those lots which will discourage ultimate development.

55. The more significant area of disagreement relates to infill capacity. Mr Foy's summary statement of position refers on page 4 to clarifying what types of properties are included in his infill capacity. He suggests plan enabled infill capacity is nearly 2800 dwellings and on that basis states he has already applied an approximate 50% discount.

56. This new clarification raised questions as to how these outcomes were derived in the context of a real-world analysis. Mr Evans was asked to undertake a parcel level review of potential development capacity as a consequence. His memorandum is **attached**. The key observations to be made are:

    a. Of 3017 properties, only 746 exceed 1200 m² in size.

    b. The operative and proposed District Plan rules have a minimum net lot size of 600 m² for Mangawhai.

57. So where does that leave us?

58. As you know, subdivision needs resource consent. Mr Evans identifies as a factual matter there are approximately 746 properties which meet the minimum size for subdivision. Adopting the adjustments which Mr Foy and Mr Thompson are respectively suggesting, results in 373 properties that might feasibly and realistically be subdivided. Notwithstanding a small number of those properties will be larger, there is no real world prospect that 1497 HUEs will eventuate from those 373 properties.

59. The preceding analysis and the earlier evidence before you on this point is detailed but incorporates various assumptions. That is inevitable if you are to engage with the issue. I think it is fair to say that you cannot be exact about the numbers involved down to the last HUE. What can be said is that it is clear that the original assessment for Mangawhai Central significantly overestimated the demand which would eventuate from it. It also appears likely that the allowance for Metlifecare has not taken account of the lesser demand generated by the elderly.

60. Going beyond the above, Mr Foy and Mr Thompson then effectively agree that the key issue is the likely requirements for servicing of small vacant lots and infill. Of those, the typology with bigger potential implications is infill. Now understanding to a better degree what Mr Foy appears to have done, and with reference to Mr Evans factual assessment of the number of properties available over 1200m² size, the ultimate divergence would seem to be the starting point rather than the degree of adjustment.

61. Mr Foy suggests in his summary statement plan enabled infill capacity to be nearly 2800 dwellings. He then applies a 50% downwards adjustment. Mr Thompson applies the same adjustment to the lesser number of 1497 dwellings as a starting point. The memorandum from Mr Evans effectively identifies as summarised above that there are 373 properties exceeding 1200 m² that might feasibly and realistically be subdivided. Without being precise, in my submission that results in a likely dwelling yield closer to Mr Thompson's number of 749 although likely to exceed that somewhat given some of the properties will yield more than two dwellings. However in my submission the number is unlikely to exceed 900 giving headroom in the order of 600 HUEs in the context of the infill assessment.

62. Adopting the vacant lot adjustment in line with Mr Thompson's evidence results in further headroom of 296 HUE.

63. The overall position is available headroom close to the maximum HUE buildout for this plan change (approximately 896 HUE is available reassessing anticipated vacant lots and infill). In the context of development over time, and the ability to place staging triggers in the development provisions if necessary, I say that sufficient capacity is available for this plan change to be approved.

64. The final observation I would make before leaving this topic relates to the ultimate growth trajectory anticipated for Mangawhai.[6] That trajectory will result in a need to find solutions beyond 6500 HUE in due course.

Demand – NPS-HPL – Urban Form

65. The position with respect to demand and the associated relevance of the NPS – HPL has been addressed in detail in my opening submission.

66. I do not repeat those matters here, but they remain relevant. I would note given questions asked during the hearing that in my submission it is clear that KDC is a Tier 3 authority in the context of the NPS – UD. That was a consideration canvassed in my opening.

67. The Panel have a decision to make as to whether they align with the evidence of Mr Thompson respect to demand or the position advanced by the Council reporting team and Mr Foy. In my view Mr Thompson's assessment acknowledges important factors which bite in a real-world scenario – he takes account of the upcoming extension to the motorway to Northland bringing Mangawhai closer to Auckland and main population centres. He takes account of the construction of a supermarket in the town which brings convenience for families and residents. He takes account of the burgeoning increase in retail and hospitality offerings which are

[6] The summary statement of Mr Cantrell refers to a projected capacity requirement for approximately 7230 connections. This does not reflect current feasible and realistic growth.

attractive to those considering moving to a smaller location. He also notes the recent construction of a school and the town.

68. All of the matters above are relevant to a future assessment of demand. Reliance on backward looking statistics does not take account of these matters. Furthermore any recent statistics are muddied by the effects of Covid and associated disruption. Mr Thompson includes analysis he has undertaken indicating higher demand.

69. I note Mr Matheson KC suggested in his submissions that there were concerns about the ability of the Applicants to develop the land and a proposition unsupported by evidence that they were simply undertaking the plan change in order to on sell it. The Applicants do not agree with that assertion and are clear in their evidence to you that their intention is to progress development of the land. In a related vein, the Applicant's say that they control a large proportion of the plan change site and further will progress development steps as required irrespective of whether every landowner has signed a development agreement with them. That might result in a degree of "free riding" from some land owners, but that is a matter which the Applicant's will have to deal with in order to progress.

70. There is evidence before you from the Applicant that establishes the urban form proposed is appropriate. That is essentially agreed with by Council officers (leaving to one side concerns about wastewater servicing). The Applicant has also identified a pathway through the NPS-HPL. In that respect I remind you of my submissions in opening regarding the proper approach to assessing the required development capacity. This assessment must relate to what is feasible and reasonably expected to be realised.

71. I note in that context that Mr Matheson KC suggests the plan change is contrary to the long-term planning for the land is set out in the Spatial Plan 2020 and goes so far as to suggest that the Spatial Plan should be considered a Future Development Strategy.

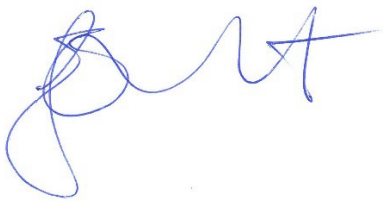
72. I disagree that it is a Future Development Strategy. However I do note that urban development on this land is anticipated in the future as I identified in my opening - the Spatial Plan identifies the land as proposed rural

residential lifestyle area and also industrial land (FIG2-1 – Mangawhai Spatial Plan). Living and employment are outcomes anticipated for this land.

73. Concerns about infrastructure and development coordination and integration are answered by the evidence of behalf Applicant and by the manner in which the plan change has been advanced including the amended development area provisions.

74. The Applicant maintains its submission that 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 providing new commercial opportunities to those living within and outside the PC85 area.

75. 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.



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Jeremy Brabant

Counsel for Foundry Group Limited and Pro Land Matters Company

Dated 6 March 2026

Attachments:

- Mangawhai East Development Area Provisions (Planners Caucus Version).
- Letter from Ms O'Connor to Strategic Property NZ dated 26 February 2026 re Mangawhai Central. Email response from Strategic Property dated 3 March 2026.
- Mangawhai East Existing Residential Lot Analysis – Jason Evans.