BEFORE THE HEARING PANEL APPOINTED BY KAIPARA DISTRICT COUNCIL

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

AND

IN THE MATTER OF of Private Plan Change 85 (Mangawhai East) to the Operative Kaipara District Plan

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OPENING LEGAL SUBMISSIONS BY COUNSEL FOR KAIPARA DISTRICT COUNCIL

DATED 13 FEBRUARY 2026

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MAY IT PLEASE THE HEARING PANEL:

1. INTRODUCTION

1.1 I have been asked to present these legal submissions by Kaipara District Council (**Council**) staff, and the author of the section 42A Report for Private Plan Change 85 Mangawhai East (**PPC85**), Mr Jonathan Clease.

1.2 As the Hearing Panel will be aware, PPC85:

(a) is a plan change request seeking changes to the Operative Kaipara District Plan (**Operative District Plan**) by Foundry Group Limited and Pro Land Matters Company (**the Applicant**). It was accepted by the Council under clause 25(2)(b) of Schedule 1 of the Resource Management Act 1991 (**RMA**);[1] and

(b) seeks to re-zone approximately 94 hectares of rural zoned land in Mangawhai East located on Black Swamp Road, to a Development Area. The significance, in planning terms, of PPC85 being a proposed Development Area is that PPC85 seeks to create a stand-alone Chapter in the Operative District Plan with bespoke provisions and a Structure Plan.[2]

(c) Key features of PPC85 include:

(i) Re-zoning of the site to a combination of Rural Lifestyle (24.69 ha), Large Lot Residential (6.35 ha), Low Density Residential (45.52 ha), Medium Density Residential (12.56 ha), Neighbourhood Centre (2.65 ha) and Mixed Use zones (2.24 ha).[3]

1 The Council's decision to "accept" PPC85 was made on 25 June 2025.
2 For completeness it is noted that this approach is similar to the approach taken for Mangawhai Hills and Mangawhai Central.
3 The Plan Change Request, 5.1 Description of the Proposed Zoning.

(ii) The Structure Plan for PPC85 identifies key roading and pedestrian links, areas of landscape enhancement, public walkways and shared paths within the plan change area, as well as a shared path over the causeway to provide a connection to Mangawhai Village.[4]

(iii) The estimated housing yield of PPC85 is approximately 800 lots. Combined with the commercial development that is enabled, PPC85 is anticipated to generate approximately 989 Equivalent Housing Units (**HUEs**) of wastewater. No onsite wastewater solution is proposed. The applicant instead proposes that PPC85 would be serviced by the Mangawhai Community Wastewater Scheme (**MCWWS**) that is owned and operated by the Council.[5] Potable water supply is proposed to be provided by way of rainwater tanks, with the option of this being supplemented by non-potable water from a bore. Water for firefighting is proposed to be provided by way of a private collective supply servicing the commercial and potentially the Medium Density Residential areas.[6]

1.3 PPC85 has been comprehensively assessed in the section 42A Report prepared by the Council's reporting planner, Mr Clease, the evidence-in-chief provided in support of the section 42A Report, supplementary evidence responding to new or updated national direction, and in the rebuttal evidence by the section 42A team.

1.4 In his section 42A Report dated 1 December 2025, Mr Clease recommended that PPC85 be declined. This was primarily due to the lack

4 Section 42A Report, paragraphs 60-63.
5 Evidence-in-chief of Mr Cantrell, paragraph 3.2.
6 The Plan Change Request, 12.4.7 Infrastructure Servicing Effects Assessment.

of wastewater capacity to service the plan change, and due to PPC85 not meeting requirements in clause 3.6 of the National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**) for the rezoning of highly productive land to urban zones. In addition, Mr Clease noted in the section 42A Report various "secondary issues" relating to the delivery of the shared use path to Mangawhai Village, geotechnical, ecological and urban design concerns that while they appeared "capable of resolution" had not been resovled. These added to his recommendation to decline.[7]

1.5 Since the section 42A Report was issued Central Government has amended the NPS-HPL so that requirements in clause 3.6 of the NPS-HPL that previously had to be satisfied to re-zone LUC 3 land in the site to urban zones no longer apply. Accordingly, there is no longer a "barrier" under the NPS-HPL to the urban zonings sought under PPC85.[8]

1.6 In addition, as a result of further information being provided and amendments to the PPC85 provisions by the applicant through its evidence-in-chief, there has been a significant narrowing of issues. In particular, the concerns outlined in the section 42A Report in relation to natural hazard risk have been resolved. Transport effects and ecology effects have been addressed to the point where the key remaining areas of disagreement between the applicant and the section 42A team are limited to:

(a) In relation to transport effects, whether the intersection at Insley Street/Black Swamp Road/Tomarata Road should be upgraded to a right-turn bay or a roundabout; and

(b) In relation to ecological effects, whether consent notices on future records of title in the plan change area should ban dogs,

7 Section 42A Report, paragraph 507.
8 Rebuttal evidence of Mr Cathcart, paragraphs 3.2-3.3 and the Rebuttal evidence of Mr Clease, paragraph 3.4.

or require them to be contained within a property and exercised on a leash in public places.[9]

1.7 In relation to the expert evidence put forward on behalf of submitters on PPC85, key areas of disagreement between the submitters and the section 42A team are limited to:

(a) In relation to ecological effects, whether the proposed walkways in ecologically sensitive areas shown on the structure plan should be removed, as sought by the Director-General of Conservation.[10] In addition, it is understood that the New Zealand Fairy Tern Charitable Trust has broad concerns in relation to the effects of PPC85 on avifauna, compared to if the plan change area was left undeveloped.[11]

(b) In relation to flooding, Mr Westwood remains concerned that development enabled by PPC85 may result in flooding effects on the properties at 1-7 Windsor Way.[12]

(c) In relation to zoning, the Riverside Holiday Park seeks that its site retain its current rural zoning [13] Mr Clease remains of the view that, in the event PPC85 is approved, the Rural Lifestyle Zoning proposed for the site is more appropriate.[14] For completeness, if is noted that Black Swamp Limited seek that its site at 25 Black Swamp Road be rezoned to Low Density Residential Zone and Mixed Use Zone (rather than Rural Lifestyle Zone as proposed under PPC85).[15] Mr Clease supports this, subject to a finding by the Hearing Panel that the relief

9 Rebuttal evidence of Mr Clease, Section 3.
10 Evidence-in-chief of Ms Macleod, page 2.
11 Evidence-in-chief of Mr Southey, paragraphs 70-74.
12 Rebuttal evidence of Mr Westood, page 3.
13 For the reasons set out in the evidence-in-chief of Mr Ross.
14 Rebuttal evidence of Mr Clease, paragraphs 3.26-3.27.
15 For the reasons set out in the evidence-in-chief of Mr Hood.

sought by Black Swamp Limited is within scope.[16] The matter of scope is addressed in Part 7 of these legal submissions.

1.8 In addition, there are some relatively minor areas of disagreement in relation to amendments to the plan provisions and structure plan.[17]

1.9 The key remaining outstanding areas of disagreement between the applicant and the section 42A team now relate to: whether there is sufficient development capacity enabled in Mangawhai under the National Policy Statement on Urban Development 2020 (**NPS-UD**), and whether there is a wastewater servicing solution for the plan change.

1.10 By way of high level summary, the position of the section 42A team on these two matters is that:

(a) PPC85 is not needed to provide sufficient development capacity in Mangawhai under the NPS-UD. While there is no barrier under the NPS-UD to providing more capacity than the minimum required, PPC85 will not provide any additional development capacity as wastewater infrastructure to service the plan change area is not available.[18]

(b) Where a re-zoning of land is proposed, case law summarised in *Foreworld Developments Limited v Napier City Council*[19] establishes it is bad resource management practice and contrary to the purpose of the Act to rezone land for development where the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it. In relation to wastewater servicing, the Council does not agree to PPC85 being serviced by the Council owned and operated MCWWS for the reasons comprehensively outlined in the

16 Rebuttal evidence of Mr Clease, paragraph 3.25.
17 Rebuttal evidence of Mr Clease, paragraphs 4.22-4.44.
18 Rebuttal evidence of Mr Clease, paragraphs 4.1-4.11.
19 Decision No. W 008/2005.

evidence of Mr Bennetts. The applicant has not provided any evidence of an intention to service PPC85 using a private wastewater scheme, or evidence showing that this is feasible.

(c) Accordingly, there is no evidence before the Hearing Panel establishing that PPC85 can be provided with the wastewater servicing required to allow the development enabled under the plan change to take place. In my submission, for the reasons set out in Part 6 of these submissions, it would be bad resource management practice and contrary to established case law to re-zone land for approximately 800 houses, a Neighbourhood Centre and Mixed Use Zone, generating 989 HUES of wastewater in such circumstances.

1.11 Overall, the section 42A team recommend that PPC85 be declined, for the reasons set out in these legal submissions, and in the section 42A Report, as modified by the supplementary evidence and rebuttal evidence on behalf of the section 42A team.

1.12 These submissions address the following matters:

(a) The legal framework under the RMA for the Council's decision on PPC85;

(b) Issues that have been resolved or narrowed since the section 42A Report was issued;

(c) The applicability of the NPS-HPL, as amended by the National Policy Statement for Highly Productive Land Amendment 2025, to PPC85;

(d) The applicability of the NPS-UD to Mangawhai and the Hearing Pannel's decision-making on PPC85;

(e) The relevant legal requirements that must be satisfied in relation to the provision of wastewater for PPC85; and

(f) Whether there is scope for the Hearing Panel to grant the relief sought by Black Swamp Limited to re-zone 25 Black Swamp Road to Low Density Residential Zone and Mixed Use Zone (rather than Rural Lifestyle Zone as proposed under PPC85).

2. THE LEGAL FRAMEWORK FOR THE DECISION ON PPC85

2.1 The Hearing Panel has been delegated the power to make a recommendation on PPC85 to the Council, and the Council will then make a decision.[20]

2.2 The Council's decision-making on PPC85 sits within a comprehensive framework established under the RMA. While these provisions are no-doubt well-known to the Hearing Panel, it is useful to set them out.

The relevance of PPC85 being a plan change request

2.3 As I have already noted, PPC85:

(a) is a plan change request that was lodged with the Council by the applicant under clause 21 of Schedule 1 of the RMA; and

(b) was "accepted" by the Council under clause 25(2)(b) of the RMA on 25 June 2025.

2.4 In terms of the requirements that apply to plan change requests that are accepted by the Council the:

20 Decision of the Council appointing Hearing Commissioners dated 26 November 2025.

(a) process for submissions and hearing is set out in clause 29 of Schedule 1 of the RMA. It is, subject to some modifications, the normal process under Part 1 of Schedule 1 of the RMA; and

(b) Council is required to make a decision on PPC85 and submissions under clause 10 of Schedule 1. The statutory framework that applies to that Council's decision is the same as for any plan change under the RMA.

The statutory framework for the Panel's recommendation and the Council's decision on PPC85

2.5 These submissions now address the statutory framework for the Hearing Panel's recommendation and the Council's decision on PPC85.

2.6 Under section 74(1) of the RMA, the Council must change its district plan *in accordance with*:

(a) Its functions under section 31; and

(b) The provisions of Part 2; and

(c) A Ministerial direction (not applicable here); and

(d) Its obligations to prepare a section 32 assessment and have particular regard to it; and

(e) A national policy statement, a New Zealand coastal policy statement, and a national planning standard; and

(f) Any regulations.

2.7 When changing a district plan, the Council *must have regard to*:[21]

21 Section 74(2).

(a) Any proposed regional policy statement (not applicable because the Northland Regional Policy Statement is operative); and

(b) Any proposed regional plan (here the Proposed Northland Regional Plan); and

(c) Any management plans and strategies prepared under other Acts; and

(d) Any relevant entry on the New Zealand Heritage List required by the Heritage New Zealand Pouhere Taonga Act 2014[22]; and

(e) Any fisheries regulations to the extent that their content has a bearing on resource management issues in the district; and

(f) The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities; and

(g) Any emissions reduction plan made in accordance with section 5ZI of the Climate Change Response Act 2002 (in this case, New Zealand's Second Emissions Reduction Plan, 2026-2030); and

(h) Any national adaptation plan made in accordance with section 5ZS of the Climate Change Response Act 2002 (in this case the National Adaptation Plan 2022).

2.8 The Council must also *take into account* any relevant planning document recognised by an Iwi authority.[23]

22 Noting that there are none identified in this case.
23 Section 74(2A).

2.9 Finally, Council *must not have regard to* trade competition or the effects of trade competition when changing a district plan.[24]

Content of a district plan

2.10 Under section 75(3), a district plan *must give effect to*:

(a) Any national policy statement; and

(b) Any New Zealand coastal policy statement; and

(c) A national planning standard; and

(d) Any regional policy statement.

2.11 The Supreme Court in *King Salmon*[25] found the words "give effect to" mean "implement". On the face of it, this is a strong directive, creating a firm obligation on planning authorities.

2.12 A district plan *must not be inconsistent with*:[26]

(a) A water conservation order; or

(b) A regional plan for any matter specified in section 30(1).

2.13 Finally, under section 75(1), district plan policies *must* implement objectives while any rules *must* implement the policies. Section 76(1) requires rules to achieve the objectives and policies of the plan. In making a rule, Council *must have regard to* the actual or potential effect on the environment of activities, including any adverse effect.[27]

24 Section 74(3).
25 *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38 at [77].
26 RMA, s 75(4).
27 Section 76(3) RMA.

Section 32 Evaluation

2.14 PPC85 was lodged with a section 32 assessment prepared by consultants on behalf of the applicant.[28]

2.15 Under section 32(1), an evaluation must:

(a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and

(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by:

(i) identifying other reasonably practicable options for achieving the objectives; and

(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

(iii) summarising the reasons for deciding on the provisions; and

(c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

2.16 Each objective must be examined during the evaluation, but it is not necessary that each objective individually be the most appropriate way of achieving the purpose of the Act. The High Court has held that it may

28 The Private Plan Change Request, Part 13.

be through their interrelationship and interaction that the purpose of the Act is able to be achieved.[29]

2.17 Under Section 32(2) an assessment of the efficiency and effectiveness of the provisions (policies, rules or other methods) under subsection (1)(b)(ii) must:

(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—

(i) economic growth that are anticipated to be provided or reduced; and

(ii) employment that are anticipated to be provided or reduced; and

(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and

(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

Section 32AA further evaluation

2.18 Under section 32AA, a further evaluation is required only for changes made after the evaluation report was completed at notification. A further evaluation must be undertaken in accordance with section 32(1) to (4) and must be undertaken at a level of detail that corresponds to the scale and significance of the changes.

29 *Rational Transport Society Inc v New Zealand Transport Agency* [2012] NZRMA 298 HC at [46].

Part 2

2.19 The role Part 2 plays in decision-making processes for plan changes was refined by the Supreme Court in *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*[30] ("*King Salmon*").

2.20 The Supreme Court held that in the absence of invalidity, incomplete coverage or uncertainty of meaning in the relevant higher order statutory planning documents, there is no need to refer back to Part 2 of the RMA when determining a plan change.[31] This is because the higher order planning document is assumed to already give effect to Part 2. However, if one or more of these three caveats apply, reference to Part 2 may be justified and it may be appropriate to apply the overall balancing exercise.[32]

2.21 Simply because a higher order planning instrument is operative does not remove the possibility of any of the three caveats applying.

The Council's Decision

2.22 The Council is required under clause 10 of Schedule 1 to give a decision on PPC85 and submissions, including reasons for its decisions.

2.23 When giving reasons, the Council may address submissions by grouping them according to the provisions or subject matter.[33] The Council is not required to address each individual submission.[34]

30 King Salmon, above note 9.
31 At [85] and [88].
32 At [88].
33 Schedule 1, Cl 10(2).
34 Schedule 1, Cl 10(3).

3. ISSUES THAT HAVE BEEN RESOLVED OR NARROWED SINCE THE SECTION 42A REPORT WAS ISSUED

3.1 In this part of the legal submissions I summarise for the Hearing Panel the issues raised in the section 42A Report that have since been resolved or narrowed as a result of further information being provided, or amendments to the PPC85 provisions made by the applicant through its evidence-in-chief.

Natural hazard risks – geotechnical and coastal

3.2 In relation to geotechnical natural hazard risk, the section 42A Report concluded that there were no geotechnical risks that would prevent the rezoning of the northern area of the site. However, Mr Clease concluded that, relying on the evidence of Mr Sands, there was insufficent geotechnical information available to support the rezoning of the southern area of the site for urban development.[35]

3.3 In relation to the southern area, Mr Sands has considered the further information and recommendations provided in the evidence-in-chief and rebuttal evidence of Mr Pomfret. Mr Sands concludes that provided the applicant undertakes the deeper geotechnical investigations recommended in the section 42A Report and agreed to by Mr Pomfret, any remaining issues can be resolved at the resource consent and engineering design stages. Overall, in Mr Sand's opinion, there is no geotechnical related reason to decline the re-zoning.[36]

3.4 In relation to natural hazard risk from coastal hazards, the section 42A Report concluded that the PPC85 provisions, combined with the more detailed assessment at the subdivision consent stage are appropriate for managing coastal hazard risk. Overall, it was considered that there was

35 Section 42A Report paragraph 93. The extent of the Northern and Southern Areas are shown on Attachment 1 to the evidence-in-chief of Mr Sands.

36 Rebuttal evidence of Mr Sands, paragraph 4.1.

no coastal hazard-related reason that would prevent the site from being re-zoned.[37]

3.5 This position remains unchanged. Mr Blackburn has considered the evidence-in-chief and supplementary evidence of Mr Davis (for the applicant). Overall, the opinions of the two witnesses are highly aligned.[38] In Mr Blackburn's opinion, there are no coastal hazards related reasons to decline PPC85.[39]

Stormwater and flooding

3.6 In relation to stormwater and flooding, the section 42A Report concluded that stormwater quality and quantity outcomes are able to be appropriately managed.[40] In particular, Mr Senior concluded in his evidence-in-chief that the proposed Stormwater Management Plan for PPC85 provides a sound and "best practice" framework for managing stormwater runoff, flooding, and water quality within the development area.[41]

3.7 There is a difference of opinion between Mr Senior and Mr Westwood for the Windsor Way submitters regarding whether site specific stormwater modelling and design solutions should be resolved now at the plan change stage, due to the risk of flooding of downstream properties, or whether they are matters that can be left to the time of subdivision consent.[42]

3.8 In relation to this, Mr Senior considers that Mr Westwood's concern that the proposal will displace flood storage or increase downstream flood risk is unsupported by the catchment context. However, in any case the SMP

37 Section 42A Report, paragraph 105.
38 Mr Blackburn identifies one area of disagreement between himself and Mr Davis in relation to the Storm Tide Level. However, he notes this discrepancy does not affect conclusions regarding coastal flooding risk in a way that would render the proposal unsuitable. See the Rebuttal evidence of Mr Blackburn, paragraphs 3.2-3.8.
39 Rebuttal evidence of Mr Blackburn, paragraph 4.1.
40 Section 42A Report, paragraph 165.
41 Evidence-in-chief of Mr Senior, paragraph 3.1.
42 Rebuttal evidence of Mr Clease, paragraph 3.8.

establishes enforceable criteria that must be met at the time of subdivision to demonstrate mitigation of potential downstream stormwater impacts.[43] Mr Clease considers that the PPC85 provisions provide a suitably robust framework to enable a more detailed modelling solution to be undertaken (if required) as part of the subdivision consent process. Overall, Mr Clease is of the opinion, relying on the evidence of Mr Senior, that there is no stormwater/flood hazard reason to decline the plan change.[44]

Transport effects

3.9 In relation to transport effects, the section 42A Report concluded that, relying on Mr van der Westhuizen's evidence, the road network can be upgraded to accommodate the additional demand generated by the proposed re-zoning of the site. However, the provision of a shared use path across the causeway to Mangawhai Village is critical to the success of the plan change from a transport perspective. In addition, the section 42A Report noted Mr van der Westhuizen's recommendation that the Black Swamp Road/Insley Street/Tomarata Road Intersection be upgraded to a roundabout rather than a right turn bay on safety grounds.[45]

3.10 In relation to these two key transportation related matters:

(a) The importance of the shared use path across the causeway is accepted by Mr Hills.[46] Ms O'Connor has agreed to amendments to the plan provisions proposed by Mr Clease that make subdivision or development of more than 50 residential units in the plan change area without the shared use path across the causeway being in place a non-complying activity.[47] In addition, Mr Clease has recommended further changes to the planning

43 Rebuttal evidence of Mr Senior, paragraphs 4.3-4.5.
44 Rebuttal evidence of Mr Cleaes, paragraph 3.9.
45 Section 42A Report, paragraph 503.
46 Evidence-in-chief of Mr Hills, paragraph 61.
47 Rebuttal evidence of Mr Clease, paragraph 3.10.

provisions relating to the "implementation mechanics" of the intersection upgrade, in response to matters raised by Mr Ross, on behalf of the Riverside Holiday Park.[48]

(b) In relation to the need for a round versus a right-turn-bay at the Insley Street/Black Swamp Road/Tomarata Road Intersection there remains a difference of opinion between Mr van der Westhuizen and Mr Hills. Mr van der Westhuizen continues to prefer a roundabout on the basis that it will provide a more robust solution for resolving safety issues. Mr Hills disagrees and considers that a T intersection provides similar safety outcomes.[49] While Mr van der Westhuizen's professional opinion is that he is strongly in favour of a roundabout, he concludes that the absence of a roundabout would not, in and of itself, be a sufficient transportation related reason to decline PPC85. However, if a T intersection is used, in his opinion it is critical that the detailed design of the T intersection incorporates appropriate safety treatments, such as those outlined in his evidence.[50]

3.11 Otherwise, it is understood that all other transport related matters raised by Mr van der Westhuizen have been addressed by the applicant.[51].

Ecological effects

3.12 In relation to ecological effects, the section 42A Report raised a large number of matters including issues relating to: the robustness of the ecological assessment provided for the southern part of the site; the absence of an assessment of effects of infrastructure and facilities

48 Rebuttal evidence of Mr Clease, paragraph 3.17.
49 Evidence of Mr Hills paragraph 39.
50 Rebuttal evidence of Mr van der Westhuizen, paragraph 4.3.
51 Rebuttal evidence of Mr van der Westhuizen, paragraphs 4.1 and 4.2.

proposed for beyond the site's boundaries; the need to identify SNAs on the Structure Plan; and proposed changes to the rules framework[52]

3.13 Overall, the section 42A Report concluded that further information was required to reach a final conclusion on ecological effects, and in particular the potential for the plan change to generate effects on threated bird species beyond the plan change site in the coastal environment.[53]

3.14 As outlined in the rebuttal evidence of Mr Smith, the applicant has responded to the matters raised in the section 42A report and Mr Smith's evidence-in-chief. The applicant has largely adopted the recommended amendments to the plan change provisions and Structure Plan proposed in the section 42 A Report.[54]

3.15 The key remaining area of disagreement between the section 42A team and the applicant is whether consent notices on future records of title in the plan change area should ban dogs, or require them to be contained within a property and exercised on a leash in public places.[55]

3.16 In relation to this, Mr Smith considers that provided no new dogs are introduced to the plan change area, the risk of disturbance to Threatened avifauna is Low. However, if dogs are allowed in the plan change area (as sought by the applicant) in his view there is a risk that dogs will enter areas in the estuary where New Zealand Fairy Tern/Tara iti forage and nest (either because they escape, or if they are let off their leash when exercising). In his opinion, if even one dog was to do this it could have a notable effect on the New Zealand Fairy Tern/Tara iti given its critically endangered status.[56]

3.17 In relation to the evidence on ecological effects filed on behalf of submitters, the evidence on behalf of the Director-General of

52 Section 42A Report, paragraphs 185 – 186.
53 Section 42A Report, paragraph 188.
54 Rebuttal evidence of Mr Smith, 3.1-3.4.
55 Rebuttal evidence of Mr Clease, paragraphs 3.19-3.22.
56 Rebuttal evidence of Mr Smith, paragraph 6.3.

Conservation is that the proposed walkways in ecologically sensitive areas shown on the structure plan should be removed.[57] Mr Smith considers that the proposed walkways shown on the structure plan do not need to be removed, as they will require regional consents, and this will allow for effects on wildlife to be considered as part of detailed design.[58] This is also the applicant's position.[59]

3.18 Lastly, it is understood that the New Zealand Fairy Tern Charitable Trust has broad concerns in relation to the effects of PPC85 on avifauna, compared to if the plan change area was left undeveloped.[60] In response to this, Mr Smith notes that while he agrees with Mr Southey that, in a general sense, any change from rural to urban land creates an increase in risk to wildlife:

(a) The plan change itself is primarily located on pasture/farmland, and SNAs are proposed to be protected. The plan change itself does not authorise the construction of any walkways, or destruction of any sensitive habitat. Any such activities will be required to obtain resource consent in the future, with their effects being subject to assessment.

(b) He agrees that the change in land use is likely to lead to an increase in the potential for disturbance for native avifauna utilising adjacent habitats through an increase in pedestrians and dogs. In relation to dogs, Mr Smith's preferred position (as set out above) is that they be banned (rather than a requirement they be securely confined within properties, and on leash).[61]

57 Evidence-in-chief of Ms Macleod, page 2.
58 Rebuttal evidence of Mr Smith, paragraph 5.16.
59 Evidence-in-chief of Mr Delaney, paragraph 80.
60 Evidence-in-chief of Mr Southey, paragraphs 70-74.
61 Rebuttal evidence of Mr Smith, paragraph 5.22.

3.19 Overall, Mr Smith considers that provided dogs are banned from the plan change area, there is no ecological reason to decline the plan change.[62]

Potable and fire-fighting water supplies

3.20 In relation to the ability to provide potable water and fire fighting supplies in the plan change area, this is agreed as outlined in Ms Parlane's evidence.[63]

3.21 Ms Parlane remains of the view, as set out in her evidence-in-chief, that she does not support the use of bore water for non-potable supply inside dwellings. However, this is not needed as an adequate supply of potable water can be provided by appropriately sized rainwater tanks.[64]

Issues raised by submitters relating to zoning of their sites

3.22 In relation to issues raised by submitters relating to the zoning of their sites:

(a) the Riverside Holiday Park seeks that its site retain its current rural zoning [65] Mr Clease remains of the view that, in the event PPC85 is approved, the Rural Lifestyle Zoning proposed for the site is more appropriate.[66]

(b) Black Swamp Limited seeks that its site at 25 Black Swamp Road be rezoned to Low Density Residential Zone, Rural Lifestyle Zone, and Mixed Use Zone (rather than just Rural Lifestyle Zone as proposed under PPC85).[67] The matter of scope is addressed in Part 7 of these legal submissions.

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62 Rebuttal evidence of Mr Smith, paragraph 6.4.
63 Evidence-in-chief of Ms Parlane, paragraphs 10.1-10.4.
64 Rebuttal evidence of Ms Parlane, paragraphs 3.2-3.5, and paragraphs 4.1-4.2.
65 For the reasons set out in the evidence-in-chief of Mr Ross.
66 Rebuttal evidence of Mr Clease, paragraphs 3.26-3.27.
67 For the reasons set out in the evidence-in-chief of Mr Hood.

4. THE APPLICABILITY OF THE NPS-HPL TO PPC85

4.1 The Hearing Panel in its recommendation will need to make a finding whether PPC85 gives effect to the NPS-HPL, as amended by the National Policy Statement for Highly Productive Land Amendments 2025 (**2025 Amendments**).

4.2 In my respectful submission, for the reasons that follow, PPC85 does give effect to the NPS-HPL, as amended by the 2025 Amendments.

4.3 The NPS-HPL came into force on 17 October 2022[68] with the aim of ensuring "highly productive land" is protected for use in land-based primary production, both now and for future generations.[69]

4.4 Under the NPS-HPL "highly productive land" is defined as:

> …land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore cases to be highly productive land)

4.5 As at the time of this hearing, the Northland Regional Council has not yet notified changes to its Regional Policy Statement to give effect to the NPS-HPL. This means that the "transitional" definition of highly productive land in clause 3.5(7) applies. The transitional definition, as amended by the 2025 Amendments, provides as follows:[70]

> Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this

68 NPSHPL, clause 1.2.
69 NPSHPL, Objective 1.
70 The 2025 Amendments have added clause 3.5(7)(b)(iii) to the definition. However, this is nor relevant to PPC85.

National Policy Statement as if references to highly productive land were references to land:

(a) is

(i) zoned general rural or rural production at the commencement date; and

(ii) LUC 1, 2 or 3 land; but

(b) is not:

(i) identified for future urban development at the commencement date; or

(ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle at the commencement date; or

(iii) subject to a resource consent application for subdivision, use or development on LUC 3 land for any activity other than rural lifestyle, where that consent has been lodged at or after the commencement date.

4.6 As outlined in the evidence-in-chief of Mr Cathcart and in the section 42A Report by Mr Clease, the position as at 1 December 2025 was that:

(a) Approximately 83% of the plan change area is identified as LUC 3 land in the New Zealand Land Resource Inventory, and comes

within the definition of highly productive land under clause 3.5(7) of the NPS-HPL.[71]

(b) Parts of the site that are highly productive land under the NPS-HPL are proposed to be rezoned to a variety of urban zones under the NPS-HPL. Parts of the site that are highly productive land under the NPS-HPL are also proposed to be zoned Rural Lifestyle zone.[72] For the parts of the site containing highly productive land proposed to be re-zoned to urban zonings, at the time of the section 42A Report, they were required to satisfy requirements in clause 3.6 of the NPS-HPL. For the parts of the site proposed to be re-zoned to Rural Lifestyle zone, at the time of the section 42A Report, they were required to satisfy requirements in clauses 3.7 and 3.10 of the NPS-HPL.[73]

(c) As outlined in the section 42A Report, Mr Clease found that:

(i) The proposed re-zoning to urban zones under PPC85 did not meet the requirements of the first two limbs of clause 3.6(4) of the NPS-HPL because: it was not needed to provide "sufficient development capacity" in Mangawhai (relying on the evidence of Mr Foy); and even if there was a short fall in development capacity in his opinion there were other locations where capacity could be provided not on highly productive land.[74]

(ii) In relation to the proposed re-zoning of highly productive land (located in the north western corner of the site) to Rural Lifestyle zone, the requirements in clause 3.10 of the NPS-HPL were satisfied, for the

71 Evidence-in-chief of Mr Cathcart, paragraphs 5.1 and 5.2.
72 A map of the site showing the proposed zonings and the extent of LUC3 land is attached to Mr Cathcart's evidence, as **Attachment A**.
73 Section 42A Report, paragraphs 373 and 397.
74 Section 42A Report, paragraph 393.

reasons set out in Mr Cathcart's evidence. Namely that (in summary), this part of the site is subject to long-term constraints on its productive potential due to the lack of access to irrigation, ownership being fragmented, and the soil not generally meeting LUC 3 criteria, with the areas that do being in isolated pockets.[75]

4.7 The 2025 Amendments to the NPS-HPL by central government came into force on 15 January 2026. The 2025 Amendments do not change the objective, policies, or definitions in the NPS-HPL that apply to PPC85.[76] Accordingly, LUC 3 land within the site remains "highly productive land" under the NPS-HPL.

4.8 The 2025 Amendments add a new clause 3.6(6) to the NPS-HPL that states: "*Clauses 3.6(1), 3.6(2), 3.6(3) and 3.6(4) do not apply to the urban rezoning of LUC 3 Land*".

4.9 Clause 3.6 of the NPS-HPL does not also state that "*clause 3.6(5) does not apply the urban re-zoning of LUC 3 land*." Clause 3.6(5) imposes an obligation to minimize the extent of any highly productive land that is re-zoned to urban zones and states:

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

4.10 However, in my submission, clause 3.6(5) of the NPS-HPL, and an associated requirement for the Hearing Panel to assess whether any re-zoning of LUC 3 land to urban zonings under PPC85 is the "minimum necessary" to provide sufficient development capacity in Mangawhai, is

75 Section 42A Report, paragraphs 398-400 and the evidence-in-chief of Mr Cathcart at paragraph 6.10.

76 For completeness it is noted an amendment has been made to the transitional definition of highly productive land by adding clause 3.5(7)(b)(iii) relating to subdivision and land use consents. However, this is not relevant to PPC85.

not engaged. My interpretation of clause 3.6 of the NPS-HPL, reading that clause as a whole, is that clauses 3.6(1)-(4) contain a series of conjunctive tests. Clause 3.6(5) adds a further and final conjunctive test to any proposals that manage to pass through 3.6(1)-(4). Given the tests in 3.6(1)-(4) are no longer relevant for LUC3 land, proposals to urbanise LUC 3 never enter the gateway of 3.6(1)-(4), and therefore do not require assessment under clause 3.6(5). This is also Mr Clease's interpretation.[77] I note that such an interpretation is consistent with the intention expressed by Central Government in making the 2025 Amendments that the amendments were "*to remove restrictions on urban re-zoning proposals on LUC 3 [land]*"[78]

4.11 The position under the NPS-HPL in relation to the re-zoning of highly productive land to Rural Lifestyle is unchanged, with the requirements in clauses 3.7 and 3.10 continuing to apply.

4.12 Overall, Mr Clease considers that the removal of LUC 3 land from falling within the ambit of clause 3.6 of the NPS-HPL removes a key policy barrier for declining re-zoning parts of the site identified as LUC 3 to urban zonings, and one of the key reasons in the section 42A Report for him recommending PPC85 be declined. The position in relation to the re-zoning of parts of the site that are highly productive land to Rural Lifestyle is unchanged by the 2025 Amendments. Mr Clease remains of the view, relying on the evidence of Mr Cathcart that the relevant requirements in clauses 3.7 and 3.10 of the NPS-HPL are met.[79]

4.13 For completeness, in relation to soils, I note that, as outlined by Mr Clease in his supplementary evidence, Policy 5.1.1(f) in the NRPS is also relevant. It seeks that subdivision, use and development should be located, designed and built in a planned and co-ordinated manner which:

77 Supplementary evidence of Mr Clease, paragraphs 9.8 and 9.9.
78 See the Regulatory Impact Statement for the NPS-HPL Amendments, paragraph 136.
79 Supplementary Evidence of Mr Clease, paragraph 9.1-9.10.

Ensures that plan changes and subdivision to / in a primary production zone, do not materially reduce the potential for soil-based primary production on land with highly versatile soils,[80] or if they do, the net public benefit exceeds the reduced potential for soil-based primary production activities.

4.14 This means that the Hearing Pannel also needs to consider the effects of the proposed urbanisation of LUC 3 soils and the degree to which PPC85 gives effect to the NRPS. In Mr Clease's view, the analysis required under policy 5.1.1(f) of the NRPS is similar to that required under clause 3.6(4)(c) of the NPS-HPL. Mr Clease considers that the NRPS policy tests on the urbanisation of HPL (as defined in the NRPS policy) are able to be met, for the same reasons as identified in his section 42A Report in relation to clause 3.6(4)(c) of the NPS-HPL.[81]

4.15 The applicant agrees with the position set out above.[82]

4.16 Accordingly, in my respectful submission, based on the evidence before the Hearing Panel, PPC85 gives effect to the amended NPS-HPL and the NRPS. Overall, there are no costs associated with the loss of highly productive land, or other soil based reasons, sufficient to decline the urban re-zoning of a large part of the site, or the development of part of the site for rural lifestyle purposes.

5. THE APPLICABILITY OF THE NPS-UD TO MANGAWHAI AND THE HEARING PANNEL'S DECISION-MAKING ON PPC85

5.1 The Hearing Panel, in its recommendation, needs to make a finding on whether Mangawhai comes within the definition of "urban environment" under the NPS-UD. If so, PPC85 is required to give effect to the NPS-UD, including requirements in the NPS-UD to provide sufficient development capacity.

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80 Highly versatile soils as referenced in the NRPS are Land Use Capability Classes 1c1, 2e1, 2w1, 2w2, 2s1, 3e1, 3e5, 3s1,3s2, 3s4 - as mapped in the New Zealand Land Resource Inventory.

81 Supplementary evidence of Mr Cleaes, paragraphs 9.12-9.13.

82 See the Supplementary evidence of Mr Hunt.

Whether Mangawhai is an "urban environment" under the NPS-UD

5.2 In my respectful submission, the evidence before the Hearing Panel establishes that Mangawhai comes within the definition of "urban environment" under the NPS-UD. There is no contrary evidence.

5.3 The NPS-UD came into force on 20 August 2020, and was amended in May 2022 (in response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021).

5.4 It applies to:

(a) all local authorities that have all or part of an "urban environment" within their district or region; and

(b) "planning decisions" (including, as here, decisions on a plan change to an operative plan) by any local authority that affect an urban environment.[83]

5.5 Certain areas of New Zealand are urban environments under the NPS-UD by virtue of being identified as tier 1 or tier 2 urban environments in the NPS-UD.[84] Mangawhai is not identified in the NPS-UD as a tier 1 or tier 2 urban environment. However, Mangawhai would be a tier 3 urban environment if it comes within the definition of "urban environment" under the NPS-UD.

5.6 If the Hearing Panel finds that Mangawhai is a tier 3 urban environment, then the consequence of this is that:

83 NPS-UD, clause 1.3.
84 As listed in Appendix: Tier 1 and tier 2 urban environments and local authorities.

(a) PPC85 must give effect to objectives and policies in the NPS-UD that apply to tier 3 urban environments; and

(b) The Kaipara District would be required to comply with obligations in the NPDS-UD on tier 3 local authorities.[85]

5.7 "Urban environment" is defined under the NPS-UD as:

> "Urban environment means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:
> a) Is intended to be, predominantly urban in character; and
> b) Is, or is intended to be part of a housing and labour market of at least 10,000 people."

5.8 In my submission, the definition of "urban environment" has the following key features:

(a) First, both limb (a) and limb (b) of the definition must be met.

(b) Second, the use of the word "intended" in both limbs of the definition is significant. "Intended" is not defined in the NPS-UD. In the absence of a specific definition, the law requires words used in planning documents under the RMA to be given their plain meaning, in light of their context: *Powell v Dunedin City Council* [2004] 3 NZLR 721.[86] The Collins English Dictionary defines "intended" as "planned or future". Accordingly, in my submission, an area will come within the definition of urban environment under the NPS-UD if there is evidence that it is <u>both</u> planned to be "predominantly urban in character" and is or is planned or projected to be "part of a housing and labour market of at least 10,000 people" at some point in the future.

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85 These include: meeting obligations on Tier 3 local authorities to provide sufficient development capacity (Part 3, Subpart 1); undertaking specified monitoring of land supply etc (Part 3, Subpart 3); specify "development outcomes" for zones in "urban environments" (Part 3, Subpart 7) and remove rules specifying minimum parking requirements from the District Plan (Part 3, Subpart 8).

86 Paragraph [35].

(c) In terms of "when" that point in the future is, the NPS-UD does not specify a date or timeframe for the assessment of when it is "intended" that an area be predominantly urban in character" and "part of a housing and labour market of at least 10,000 people". However, the NPS-UD includes obligations on local authorities subject to the NPS-UD to plan for the "long term" - defined as meaning "between 10-30 years".

(d) Lastly, in terms of the two limbs of the definition, I note there appears to be a degree of flexibility about limb (b) and the area which can be considered part of the same housing and labour market. This requirement could, conceivably be met if there was evidence that a number of separate towns and villages formed part of one combined housing and labour market of 10,000 or more people. However, the areas that count towards this combined housing and labour market of at least 10,000 people have to be predominantly urban in character under limb (a) of the definition. So, while an agglomeration of towns or villages could meet limb (b) of the definition, rural or rural residential population would not count towards this contribution as they do not satisfy the requirement in (a) of the definition of being "predominantly urban".

5.9 For completeness, with respect to whether or not Mangawhai is an urban environment, I note that:

(a) The Hearing Panel appointed by the Council for Private Plan Change 78: Mangawhai Central made a finding in its recommendation that Mangawhai is an "urban environment" under the NPS-UD.[87]

87 See the Hearing Panel's Recommendation on Private Plan Change 78, dated 12 March 2021, paragraphs 37-58. The Hearing Panel's Recommendation was adopted as the Council's decision on 28 April 2021.

(b) The Hearing Panel appointed by the Council for Private Plan Change 83: The Rise Limited made a finding that Mangawhai is an "urban environment" under the NPS-UD.[88]

(c) The Hearing Panel appointed by the Council for Private Plan Change 84: Mangawhai Hills made a finding that Mangawhai is an "urban environment" under the NPS-UD.[89]

5.10 In terms of the evidence before this Hearings Panel on whether Mangawhai comes within the definition of "urban environment" under the NPS-UD:

(a) Mr Clease considers that Mangawhai comes within the definition of urban environment under the NPS-UD. In relation to this, Mr Clease notes that he considers Mangawhai to be "predominantly urban in character". While it does not currently have a population of 10,000 people he considers it likely this threshold will be reached over the medium term/next 10 years. Lastly, Mr Clease notes that, relying on Mr Foy's evidence, there is zoned and realisable capacity for a further 5,100 houses meaning the population will readily exceed 10,000 people once this is taken up.[90]

(b) Ms O'Connor has indicated that she agrees with Mr Clease's assessment that Mangawhai is an urban environment.[91]

(c) There is no contrary evidence before the Hearing Pannel i.e. evidence expressing the view that Mangawhai is not an urban environment.

88 See paragraph 42 of the Hearing Pannel's recommendation dated 20 May 2024. The Hearing Pannel's recommendation was adopted as the Council's decision on 26 June 2024.
89 See paragraph of the Hearing Pannel's recommendation dated 8 July 2024. The Hearing Pannel's recommendation was adopted as the Council's decision on 28 August 2024.
90 Section 42A Report, paragraphs 230-234.
91 Evidence-in-chief of Ms O'Connor, paragraph 106.

5.11 In light of the above, in my respectful submission, the evidence before this Hearings Panel establishes that Mangawhai is an urban environment, as defined under the NPS-UD. The consequence of this is that PPC85 is required to give effect to certain objectives and policies in the NPS-UD, and in particular Policies 2 and 8 of the NPS-UD relating to development capacity. This is addressed further below.

The requirements in the NPS-UD on Tier 3 local authorities to provide sufficient development capacity

5.12 If the Hearings Panel makes a finding that Mangawhai is an urban environment and the NPS-UD applies, PPC85 must "give effect" to the NPS-UD.

5.13 In relation to this, a key area of disagreement between the applicant and the section 42A team, is whether PPC85 is needed to provide sufficient development capacity in Mangawhai.

5.14 In relation to this Policy 2 of the NPS-UD provides that:

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

5.15 Policy 8 of the NPS-UD provides that:

"**Policy 8**: Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if development capacity is:

(a) Unanticipated by RMA planning documents; or

(b) Out-of-sequence with planned land release."

5.16 Mr Foy, the economist and housing supply expert called on behalf of the section 42A team, has comprehensively assessed development capacity in Mangawhai.

5.17 Mr Foy concludes that there is at least sufficient development capacity enabled in Mangawhai to meet expected demand for housing in the short term, medium term and long term on the basis that:

(a) There is capacity in Mangawhai for a further 4,880 dwellings in the next 10 years, and a further 5,098 dwellings in the long term.

(b) Projected demand (based on Council projections adopted from Infometrics) indicate growth of 2,500 dwellings over the next 30 years (including holiday homes and the NPS-UD competitiveness margin[92]). Accordingly, in My Foy's assessment there is already sufficient development capacity enabled in Mangawhai to meet twice the projected demand for housing over the next 30 years.[93]

5.18 Mr Thompson the economist and housing supply expert called on behalf of the applicant disagrees with Mr Foy's assessment. Mr Thompson considers that:

(a) Total dwelling capacity in Mangawhai is 3,422 dwellings in the medium term (compared to the 4,880 dwellings assessed by Mr Foy). Key differences in opinion between Mr Thompson and Mr Foy are a difference in opinion regarding the number of infill dwellings. In Mr Thompson's assessment this is only 405 infill dwellings (compared to Mr Foy's 1,497) due to his opinion that only 5-15% of infill capacity is realised in rural towns. In addition, Mr Thompson also assesses development capacity at

92 In relation to the competitiveness margin it is understood that this is optional for tier 3 local authorities. Accordingly, Mr Foy's inclusion of this margin is conservative.

93 Evidence-in-Chief of Mr Foy, paragraphs 2.6 -2.7 and 4.21.

Mangawhai Central lower than Mr Foy at 672 residential sites (compared to Mr Foy's 1,500), based on correspondence he states he has seen from the developer.[94]

(b) In terms of demand for dwellings, Mr Thompson does not use Infometrics or Statistics New Zealand projections for growth. He has prepared his own projections that anticipate exponential growth based on his opinion that growth in small rural towns accelerates as population increases and amenities are added. Mr Thompson predicts growth in new dwellings in Mangawhai increasing from approximately 180 per annum at present, to 270 per year in 2035, 400 per year by 2045 and 650 per year by the Long Term.[95]

(c) As a result, it is understood that Mr Thompson considers that PPC85 is required to provide sufficient development capacity in Mangawhai.[96]

5.19 Mr Foy has considered the matters raised by Mr Thompson, and remains of the view that additional development capacity is not required in Mangawhai to accommodate demand for the next 30 years.[97] In particular, key points made by Mr Foy are:

(a) In relation to the residential capacity assumed at Mangawhai Central, the developer's plans (i.e. the 672 lots referred to by Mr Thompson) may change. It is prudent for the Council to assume the full development yield of 1,500 lots enabled by PC78 could eventuate.[98]

(b) There is no basis for assuming infill capacity in Mangawhai will be limited to 405 dwellings, based on a "ceiling" of only 5-15%

94 Evidence-in-chief of Mr Thompson, page 14.
95 Evidence-in-chief of Mr Thompson, paragraph 13, and paragraph 4.15 of the Rebuttal evidence of Mr Foy.
96 Evidence-in-chief of Mr Thompson, paragraph 10.
97 Rebuttal Evidence of Mr Foy, paragraph 7.1.
98 Rebuttal evidence of Mr Foy, paragraphs 3.8-3.9.

of infill being realised, as outlined by Mr Thompson. Mr Foy considers infill capacity of 1,497 dwellings to be conservative and notes that his company has assessed plan enabled capacity of 2,762 dwellings as part of other work his company has undertaken.[99]

(c) The NES-DMRU has the potential to significantly increase dwelling capacity in Mangawhai, above what he has assessed. Mr Foy has not fully assessed this additional potential, but estimates it to be at least "many hundreds of additional dwellings" with these being additional to the capacity figures provided in his evidence-in-chief.[100]

(d) In relation to Mr Thompson's claimed starting point for his "exponential" growth projections for Mangawhai of 180 dwellings per year in demand, Mr Foy notes that this figure is the post covid peak for Mangawhai in 2021. He disputes the appropriateness of this as the starting point for growth projections, noting that a more appropriate starting point could be growth of 50-100 dwellings per year, as occurred in 2024 or 2025.[101]

(e) For various reasons, there is no basis for Mr Thompson's claims that growth in rural towns is exponential, and additive rather than distributive. Overall, Mr Foy continues to prefer the projections by Infometrics, to Mr Thompson's growth projections.[102]

5.20 In light of these differences in opinion, the Hearings Panel will need to decide who's evidence it prefers. In my respectful opinion, the evidence of Mr Foy should be preferred. Mr Foy's assessment of development capacity is comprehensive and rigorous. It relies on orthodox

99 Rebuttal evidence of Mr Foy, paragraphs 3.10-3.14.
100 Rebuttal evidence of Mr Foy, paragraph 3.26.
101 Rebuttal evidence of Mr Foy, paragraph 4.3.
102 Rebuttal evidence of Mr Foy, paragraph 4.20.

methodologies and growth projections from Infometrics (based on data from Statistics New Zealand). In contrast, key aspects of Mr Thompson's assessment apply methodologies (for example an assumed maximum cap on residential infill in small towns and exponential growth) that are novel, and not well-substantiated.

5.21 For completeness, I note that while the majority of the evidence on development capacity (from the applicant and the section 42A team) has focused on sufficiency of development capacity in Mangawhai for housing, the NPS-UD also requires there to be at least sufficient development capacity to meet demand for business land over the short, medium and long term. The evidence of Mr Foy is that the 5.0ha of land that is proposed would be zoned for commercial use under PPC85 is not needed to provide sufficient development capacity of business land in Mangawhai,[103] and is larger than is required to provide convenience retail for the residential population of the plan change area.[104] However, overall, provided the commercial land that is proposed in PPPC85 can be serviced, Mr Foy does not have an issue, from an economics perspective, with more land than is required being zoned for commercial use.[105]

5.22 Even if the Hearing Panel were to prefer the evidence of the applicant, and conclude that the Council has not provided sufficient development capacity of both housing and business land in Mangawhai (under Policy 2 of the NPS-UD), or that approving PPC85 would add significantly to development capacity (under Policy 8 of the NPS-UD), in my submission approving PPC85 will not provide additional development capacity and would be misconceived. For PPC85 to provide additional development capacity, the definition of "development capacity" in the NPS-UD (and real world experience) requires not just that the land is zoned for housing or business use, but that there is "adequate development infrastructure"[106] (in this case wastewater servicing) to enable the development of the land for its intended use.

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103 Evidence-in-chief of Mr Foy, paragraphs 8.13-8.16.
104 Rebuttal evidence of Mr Foy, paragraphs 6.1-6.3.
105 Rebuttal evidence of Mr Foy, paragraph 6.5.
106 See the definition of development capacity in the NPS-UD.

5.23 In my respectful submission, approving PPC85 would not provide any additional development capacity (in terms of Policy 2 or 8 of the NPS-UD), as there is no evidence before the Hearing Panel establishing that PPC85 can be provided with the wastewater servicing required to allow the development enabled under the plan change to take place. This is addressed further in Part 6 of these submissions.

5.24 Rather, if there is insufficient development capacity in Mangawhai (which is not accepted), then the correct course of action is for the Council to (a) notify the Minister for the Environment and for the Council to then (b) consider other options for increasing development capacity, as outlined in *Clause 3.7 When there is insufficient development capacity*. Taking this approach, the Council could identify a range of options for providing additional development capacity in Mangawhai, including potentially on sites that can be serviced by private wastewater schemes, and are not subject to the capacity constraints in the MCWWS (which are discussed further in Part 6 of these submissions).

6. THE RELEVANT LEGAL REQUIREMENTS THAT MUST BE SATISFIED IN RELATION TO WASTEWATER FOR PPC85

6.1 As outlined at the start of these legal submissions, the key remaining area of disagreement between the applicant and the section 42A team[107] is whether there is a wastewater solution for the plan change.

6.2 For the reasons that follow, it is respectfully submitted that there is no evidence before the Hearing Panel establishing that PPC85 can be provided with the wastewater servicing required to allow the development enabled under the plan change to take place. It is further submitted that it would be the bad resource management practice and contrary to established case law to re-zone land for approximately 800

107 In addition to whether PPC85 is needed to provide sufficient development capacity in Mangawhai.

houses, a Neighbourhood Centre and Mixed Use Zone, generating 989 HUES of wastewater, in such circumstances.

Relevant case law in relation to requirements for infrastructure servicing

6.3 Case law relating to the requirements for infrastructure servicing that must be satisfied before land is re-zoned under the RMA is well known, and is usefully summarised by the Environment Court in in *Foreworld Developments Limited v Napier City Council*[108].

6.4 In *Foreworld*, the Environment Court stated, including by reference to other decisions of the Court (my emphasis):

> [*15]* ***It is bad resource management practice and contrary to the purpose of the Resource Management Act - to promote the sustainable management of natural and physical resources; to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it.*** *In McIntyre v Tasman District Council (W 83/94) the Court said:*
>
> > *We agree with Mr Robinson that in this case the extension of services such as the sewage system and roading should be carried out in a co-ordinated progression. We hold that if developments proceed on an ad hoc basis they cannot be sustainably managed by the Council- an aspect which is not commensurate with section 5 of the Act.*
> >
> > *There are similar comments in decisions such as Prospectus Nominees v Queenstown-Lakes District Council (C 74/97), Bell v Central Otago District Council (C 4/97) and confirmation that the approach is correct in the High Court decision of Coleman v Tasman District Council [1999] NZRMA 39.*

108 Decision No. W 008/2005.

6.5 In light of the above, in my respectful submission:

(a) There is no requirement for the Hearing Panel to be satisfied that all of the wastewater infrastructure necessary to service PPC85 and other "live zoned" residential land in Mangawhai exists at present; however

(b) The Hearing Panel needs to be satisfied that where the infrastructure does not already exist, providing it is feasible and that there is a commitment to providing it, whether from the Council or the developer.

Why the relevant legal requirements for wastewater servicing are not met

The Council's wastewater planning and why the Council does not agree to servicing PPC85

6.6 As outlined above, PPC85 has been assessed as generating 989 HUEs of wastewater. No onsite wastewater solution is proposed. The applicant instead proposes that PPC85 would be serviced by the MCWWS that is owned and operated by the Council.

6.7 However, the Council does not agree to PPC85 being serviced by the MCWWS for the reasons comprehensively outlined in the evidence of Mr Bennetts, the General Manager, Service Delivery, at Kaipara District Council.[109]

6.8 As explained by Mr Bennetts:

(a) The Council as part of its wastewater planning has identified the extent of areas to be serviced by the MCWWS. This includes recently re-zoned land at Mangawhai Central, the Rise and the

109 Mr Bennett's responsibilities include management and delivery of wastewater infrastructure, as outlined at paragraph 1.2 of his evidence-in-chief.

southern one third of Mangawhai Hills. However, the Council's wastewater planning does not extend to servicing the extent of the plan change area covered by PPC85.[110]

(b) Overall, there is relatively good alignment between the Council's wastewater planning and planned future upgrades to the MCWWS to increase capacity, and the residential capacity currently enabled in Mangawhai. The Council is planning a series of staged upgrades to the MCWWS that will increase the capacity of the MCWWS to around 5,500 connections through upgrades to the Mangawhai Wastewater Treatment Plant, (**WWTP**), conveyance network, and by providing for further disposal of effluent by subsurface drip irrigation at the Mangawhai Golf Club (**MGC**). The Council will then look to further increase this capacity to a total of 6,500 connections through above ground disposal at the MGC.[111]

(c) The Council considers this is sufficient to provide for development capacity currently enabled in Mangawhai. It provides for (approximately) a doubling of the capacity of the MCWWS from it current capacity of around 2,900 HUEs. This additional wastewater capacity broadly aligns with the additional dwelling capacity Mr Foy estimates to be available within the existing urban zoned parts of the Township. However, it is not sufficient to provide for the additional 989 HUES of wastewater generated by PPC85, as well. Accordingly, the Council does not agree to PPC85 being serviced.[112]

(d) Servicing PPC85 as well would require the Council to identify and plan for further upgrades to the MCWWS, over and above those it has already identified. This includes the need to identify, consent, and build an entirely new treated wastewater

110 Evidence-in-chief of Mr Bennetts, paragraph 4.3(a).
111 Evidence-in-chief of Mr Bennetts, 4.3(b) and (c).
112 Evidence-in-chief of Mr Bennetts, paragraph 3.2.

disposal solution. As explained by Mr Bennetts, the Council as an organisation is unable to commit to this, given the impending transfer of the Council's responsibilities for wastewater to the planned new Water CCO and possible re-organisation of local government in Northland.[113]

The applicant's arguments why the Council's refusal to service PPC85 is not reasonable – and the Council's response

6.9 The applicant in its evidence has sought to challenge the reasonableness of the Council's refusal, as the owner and operator of the MCWWS, to agree to service PPC85. Key challenges have included:

(a) In relation to providing further wastewater disposal capacity to increase the capacity of the MCWWS beyond 6,500 connections, Mr Fairgray and Mr White indicate they consider there are a range of further options to provide for further effluent disposal, and that there is sufficient time for those to be addressed.[114]

(b) The Council will receive significant revenue to "spend on wastewater infrastructure in Mangawhai" between now and a threshold of 6,500 connections being reached. This is calculated by Mr Fairgray as being a total of $185,961,600, based on the current development contribution for wastewater in Mangawhai of $51,656 per HUE.[115]

(c) Accordingly, overall, they do not consider effluent disposal to be a constraint for servicing PPC85.[116]

113 Evidence-in-chief of Mr Bennetts, paragraph 3.3.
114 Evidence-in-chief of Mr Fairgray at paragraphs 39 -40 and the evidence-in-chief of Mr White at paragraphs 45-47.
115 Evidence-in-chief of Mr Fairgray, paragraphs 41-46.
116 Evidence-in-chief of Mr Fairgray, paragraph 40.

6.10 In my submission it is notable that while Mr Fairgray and Mr White have given evidence in a generic sense that there are "other options" for effluent disposal beyond the MGC, they have not provided any evidence to the Hearing Pannel assessing the feasibility of these options. The only evidence before the Hearing Panel in relation to the feasibility of expanding the capacity of the MCWWS to beyond 6,500 connections is from Mr Cantrell. Mr Cantrell, comprehensively addresses these matters and concludes that:

(a) The upgrades required to pump stations and the rising main to enable PPC85 to be serviced are relatively straightforward from a technical perspective.

(b) Upgrades to the Mangawhai WWTP to service more than 6,500 connections is likely to require significant and expensive ground works and be technically challenging. However, overall, there is a relatively high level of confidence these upgrades can be achieved (subject to funding).

(c) In relation to effluent disposal, in Mr Cantrell's view, there is a relatively high level of confidence that the MCWWS can be expanded to service up to 6,500 connections based on effluent disposal at Brown Road Farm and the further effluent disposal planned by Council for the MGC.

(d) However, in Mr Cantrell's opinion, increasing the capacity of the MCWWS beyond 6,500 connections requires identification of a further effluent disposal option. In this case this is likely to be either a long-sea outfall, or additional discharge to land requiring the acquisition of some 120-150ha of farmland with suitable locational and geotechnical characteristics. Based on his technical experience and knowledge of Mangawhai, he considers that both of these options are likely to face significant technical and non-technical hurdles such that they are

potentially not feasible. Overall, Mr Cantrell is of the view that the ability to deliver an additional effluent disposal option in Mangawhai that is required to service more than 6,500 connections is highly speculative, and cannot be relied on. [117]

6.11 In relation to funding of any further wastewater disposal solution beyond Brown Road Farm and the MGC and Mr Fairgray's evidence that the Council will receive a total of $185,961,600 in development contributions for wastewater between now and 6,500 connections to the MCWWS being reached:

(a) As a matter of law, the Council is required to set and take development contributions in accordance with the provisions of the Local Government Act 2002 (**LGA**) and its Development Contributions Policy. The Council is required to update its Development Contributions Policy at least every three years, and the development contribution that is charged may change as a result. Overall, in my submission, how much money the Council will collect in development contributions for wastewater between now and the MCWWS reaching 6,500 connections is uncertain, and speculative.

(b) The more important point is that at present there is no financial commitment in the LTP to investigate or fund an effluent disposal option beyond the MGC. Nor is the Council able to commit to this due to the pending creation of the new Water CCO for Northland.[118]

Overall position in relation to wastewater servicing in Mangawhai and why relevant legal requirements are not met

6.12 In my submission, the evidence before the Hearings Panel establishes that the Council is undertaking its wastewater planning in a responsible

117 Rebuttal evidence of Mr Cantrell, paragraphs 4.1-4.5.
118 Evidence-in-chief of Mr Bennetts, paragraph 6.3.

way. Planned upgrades to the MCWWS are broadly aligned with the residential capacity that has been enabled in Mangawhai, and are considered sufficient to provide for more than 30 years of growth (based on the Council's projections).

6.13 The Council's wastewater planning does not extend to servicing PPC85. Servicing PPC85 as well would require another effluent disposal solution (either an ocean outfall or effluent disposal field) to be identified, funded and constructed. The only evidence before the Hearing Panel in relation to this is from Mr Cantrell. As outlined above, Mr Cantrell considers the ability to deliver such an option to be highly speculative, such that it cannot be relied on. Accordingly, if the Council were to agree to service PPC85 as well, this creates the risk, identified by Mr Bennetts, that the Council zones more land for development in Mangawhai than can be serviced. In Mr Bennett's opinion, this would be a very poor outcome from a wastewater planning perspective and could be reasonably expected to expose the council to criticism from existing property owners who have purchased urban-zoned land in good faith and that by the time they come to build find that they cannot due to a lack of reticulated capacity.[119]

6.14 However, irrespective of one's views on the appropriateness of the Council's wastewater planning, there is an important wider point. The Hearing Panel does not have jurisdiction to require the Council in its capacity as the owner and operator of the MCWWS to service PPC85. In particular:

(a) The role of Hearing Panel is limited to making a recommendation to the Council on whether PPC85 (a plan change request under the RMA seeking to re-zone land), and submissions on the plan change, are declined or approved.

119 Rebuttal evidence of Mr Bennetts, paragraphs 4.4(b)-(c).

(b) Decisions regarding whether the Council agrees to service particular areas for development are made in the Council's capacity as asset owner, and are subject to public consultation and funding being secured through the LTP.

6.15 Accordingly, in my submission, in light of the evidence from Mr Bennetts that the Counci does not agree to service PPC85, the Hearing Pannel must assess PPC85 on the basis that it will not be connected to the MCWWS.

6.16 Circumstances in which a local authority or CCO does not agree to service an area for development are not unknown. In those circumstances it is open to an applicant to provide evidence to the Hearing Panel that an alternative private servicing solution is feasible and can be provided. However, in relation to wastewater servicing, there is no evidence from the applicant establishing that it is technically feasible to provide a private reticulated wastewater solution to service PPC85, and that it is committed to doing so.

6.17 In light of the above, there is no evidence before the Hearing Panel establishing that PPC85 can be provided with the wastewater servicing required to allow the development enabled under the plan change to take place. In my submission, it would be bad resource management practice and contrary to established case law to re-zone land for development in such circumstances, for the reasons set out in the legal submissions and in the relevant evidence on behalf of the section 42A team.

7. WHETHER THERE IS SCOPE TO GRANT THE RELIEF SOUGHT IN SUBMISSION NO. 48 BY BLACK SWAMP LIMITED

7.1 Submission No. 48 by Black Swamp Limited (**BSL**) seeks that BSL's property at 25 Black Swamp Road, that is proposed to be zoned Rural Lifestyle Zone under PPC85, instead be zoned Low Density Residential Zone, apart from land around the existing brewery. BSL's submission

seeks that the land around the brewery be zoned either Mixed Use Zone, Neighbourhood Centre Zone, or a Commercial Zone.[120]

7.2 Counsel understand from the evidence of Mr Hood that this position has since been refined. BSL is now seeking that the site be re-zoned as shown on the plan **attached** to Mr Hood's evidence as follows:

(a) Mixed Use Zone around the brewery - 0.54 hectares in area.

(b) Low Density Residential Zone – 4.854 hectares.

(c) Rural Lifestyle Zone – 5.24 hectares.

7.3 As outlined in the section 42A Report, the relief sought gives rise to an issue of whether the relief sought in the submission is within scope and can be granted by the Hearing Panel, should it wish to on the merits.[121]

7.4 In my respectful submission, for the reasons that follow, the relief sought by BSL is within scope.

Case law on scope

7.5 Case law provides that for the Hearings Panel to have jurisdiction to make changes to PC85 in response to submissions:

(a) The changes must be within the scope of a submission; and

(b) The submission must be "on" PP85.

7.6 With respect to whether proposed changes are within the scope of a submission, the test is whether the proposed changes were "reasonably and fairly raised" in a submission on the plan change: *Countdown*

120 Submission 48, paragraphs 3.7 and 3.10.
121 Section 42A Report, paragraph 337.

Properties (Northlands) Limited v Dunedin City Council[122]. Case law sets out a number of key principles in relation to this:

(a) This will usually be a question of degree to be judged by the terms of the plan change and the content of the submissions;[123]

(b) The question of scope should be approached in a realistic workable fashion rather than from the perspective of legal niceties;[124]

(c) Another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought;[125]

(d) To take a legalistic view and hold that a decision-maker could only accept or reject the relief sought in any given submission would be unreal;[126] and

(e) The whole relief package detailed in submissions should be considered when determining scope.[127]

7.7 The leading authority[128] on whether a submission is "on" a plan change is the High Court decision in *Clearwater Resort Ltd v Christchurch City Council*,[129] which sets out a two limb test:

(a) First, whether the submission addresses the changes to the pre-existing status quo advanced by the plan change; and

122 [1994] NZRMA 145 at 166.
123 At 166.
124 Royal Forest and Bird Protection Society Inc v Northland District Council [1997] NZRMA 408 (HC) at 413.
125 Westfield (NZ) Ltd v Hamilton CC [2004] 10 ELRNZ (HC) 254 at [73]. This decision related to whether an appeal provided scope for the changes made by the Environment Court.
126 General Distributors v Waipa District Council (2008) 15 ELRNZ 59 (HC) at 72.
127 Shaw v Selwyn District Council [2001] 2 NZLR 277 (HC).
128 As confirmed by the High Court in Turners & Growers Ltd v Far North District Council [2017] NZHC 764.
129 Clearwater Resort Ltd v Christchurch City Council AP 34/02, 14 March 2013, Young J.

(b) Second, whether there is a real risk that people affected by the plan change (if modified in response to the submission), would be denied an effective opportunity to participate in the plan change process.

7.8 A submission can only fairly be "on" a proposed plan if it meets both these limbs. The *Clearwater* test has been adopted in a number of High Court decisions. In *Option 5 Inc v Marlborough District Council*[130] the High Court stated that the first limb may not be of particular assistance in many cases, but the second limb of the test will be of vital importance in many cases and may be the determining factor in some cases.[131]

7.9 The *Clearwater* test was applied by Kos J in *Palmerston North City Council v Motor Machinists*.[132]

7.10 In relation to the first limb of the Clearwater test Kos J:

(a) Described the first limb in the *Clearwater* test as the dominant consideration, namely whether the submission addresses the proposed plan change itself. This was said to involve two aspects: the degree of alteration to the status quo proposed by the notified plan change; and whether the submission addressed that alteration. Or, as Kos J said, to put it another way, whether the submission reasonably falls within the ambit of the plan change. [133]

(b) In relation to the first limb (whether the submission addresses the plan change) Kos J also observed that the section 32 evaluation report in support of a plan change involves a comparative evaluation of the efficiency, effectiveness and appropriateness of options. Accordingly, for variations advanced in submission to be “on” the plan change, they should

130 Option 5 Inc v Marlborough District Council CIV 2009-406-144 28 September 2009, HC Blenheim.
131 At [29].
132 Palmerston North City Council v Motor Machinists [2013] NZHC 1290.
133 At [80] to [81].

be assessed in the section 32 assessment. If a change advanced in a submission is not a matter that was addressed, or should have been addressed, in the section 32 evaluation, then in his Honour's view, the change is unlikely to be meet the first limb of the test in *Clearwater*.[134]

7.11 In relation to the second limb of the *Clearwater* test Kos J in *Motor Machinists* stated:

(a) The second limb in *Clearwater* concerns procedural fairness. It is whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission (so called "submissional side-winds") have been denied an opportunity to respond to those proposed changes.[135]

(b) In particular, the specific concern is whether the amendment to the plan change sought in a submission, if confirmed, would change who the Council considers to be likely to be directly affected by the proposed plan, noting that directly affected persons are required to be served with notice of the plan change under clause 5(1A)(a) of the RMA. In relation to this his Honour stated:

"A core purpose of the statutory plan change process is to ensure that persons potentially affected, and in particular those "directly affected", by the proposed plan change are adequately informed of what is proposed. And that they may then elect to make a submission, under clauses 6 and 8, thereby enabling them to participate in the hearing process. <u>It would be a remarkable proposition that a plan change might so morph that a person not directly affected at one stage (so as to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by</u>

134 At [76].
135 At [83].

dint of a third party submission not directly notified as it would have been had it been included in the original instrument. It is that unfairness that militates the second limb of the Clearwater test."[136] (my emphasis)

Whether the relief sought by BSL is within scope

7.12 In my submission, for the reasons that follow, the re-zoning of the site sought by BSL is within scope.

Whether the relief sought is "reasonably and fairly raised" in submissions

7.13 In my respectful submission, the relief sought by BSL is fairly and reasonably raised in the submission.

7.14 The submission by BSL clearly states that it seeks the site be re-zoned Low Density Residential Zone, apart from for the proportion of the site around the brewery where the submission seeks either Mixed Use Zone, Neighbourhood Centre Zone, or a Commercial Zone.

7.15 The relief now sought by BSL at the hearing (as outlined in the plan attached to Mr Hood's evidence) is consistent with this. Albeit, BSL are no longer pursuing Low Density Residential Zone for part of its site. It is proposed that this part of the site would instead be zoned Rural Lifestyle Zone, as proposed under PPC85 as notified.

Whether the relief sought is in a submission "on" the Plan Change

7.16 Given this, the issue then becomes whether the relief sought is "on" PPC85 in terms of the two limb test set out in *Clearwater,* and confirmed in *Motor Machinists*.

The first limb of the Test in Clearwater

136 Paragraph [77].

7.17 As set out above, the first limb of this test is whether the submission addresses the changes to the pre-existing status quo advanced by PPC85, or reasonably falls within the "ambit" of the plan change.

7.18 In my respectful submission, the relief sought by BSL does relate to the changes to the pre-existing status quo advanced by PPC85, and reasonably falls within the "ambit" of the plan change because :

(a) In terms of the change to the pre-existing status quo advanced by PPC85, PPC85 seeks to amend the rural zoning of the plan change area in the Operative District Plan and change this to a development area with Rural Lifestyle, Large Lot Residential, Low Density Residential, Medium Density Residential, and Mixed Use zones.

(b) The relief sought in BSL's submission does not change or go beyond this in that it does not seek to enlarge the area covered by the plan change. Nor does it seek to introduce a new category of zoning, or effects. Rather, BSL's submission seeks that low density residential zoning, which under PPC85 as notified applies to 45 hectares and approximately half the plan change area, apply to an additional 4.8 hectares. In relation to the Mixed Use Zoning sought by BSL, under PPC85 as notified, this applied to approximately 2.24 hectares of land. The submission by BSL seeks that this be increased within the plan change area by applying this zone to an additional 0.54 hectares.

The Second Limb of the Test in Clearwater

7.19 Lastly, the second limb of the test in *Clearwater* involves questions of procedural fairness. In particular, in my submission, it involves consider of whether there are parties who the Council considered directly affected by the plan change and were served with notice of the plan change under

clause 5(1A) of Schedule 1 of the RMA but decided not to submit, who might have changed their minds if they had known that (in this case) part of the BSL land would be zoned Low Density Residential Zone and a part of the site zoned Mixed Use Zone, rather than Rural zone.

7.20 Or to put it another way, is there a real risk that parties affected by the plan change (if modified in response to the BSL submission), would be denied an effective opportunity to participate in the plan change process.

7.21 **Attached** to these legal submissions as **Attachment A** is a map provided by Mr Waanders at the Council showing all of the properties who were served notice of PPC85 under clause 5(1A) of Schedule 1 of the RMA. This includes all of the properties around the BSL site.

7.22 Mr Clease has prepared a map attached to the section 42A Report identifying properties who have lodged submissions on PPC85. A copy of this map is attached to the submissions as **Attachment B**.

7.23 From considering this map, and discussions with Mr Clease I note that:

(a) The BSL property is shown as S48;

(b) In terms of the neighbouring properties: Riverside Holiday Park has lodged a submission and is shown as S32; the owners of Lots 1-7 have lodged a submission and are shown as S56. Other adjoining landowners, or landowners in close proximity have also lodged submissions and are shown on Mr Clease's Plan "Inset 45 Black Swamp Road and 45 Windsor Way".

7.24 In terms of the relief sought by BSL, in my submission, taking a conservative view, it is possible that the change to more intensive zonings sought by BSL (i.e. Low Density Residential Zone and Mixed Use Zone, rather than Rural Life Style Zone in PPC85 as notified) could have affected the views of neighbours of BSL and caused them to "change their minds"

and submit. Albeit, a change from Rural Life Style Zone to Low Density Residential Zone, is perhaps less stark than other changes in zoning. In terms of the effects of the Mixed Use Zone, it is understood the effects of the Brewery are already authorised under an existing resource consent.

7.25 However, in the present case, no such potential prejudice arises. It is understood that all of the neighbouring properties affected by the changes in zoning sought in BSL's submission have filed submissions and are involved in PPC85.

7.26 Accordingly, in my submission the requirements identified in case law are satisfied, and the relief sought by BSL is within scope.

7.27 If the Hearing Panel agrees with these legal submissions that the changes sought in BSL's submission are within scope, that is, of course, not the end of the matter. The Hearing Panel will need to undertake an assessment of the merits of the proposed rezoning.

7.28 In relation to this, it is understood that Mr Clease is broadly comfortable with the changes sought by BSL to the zoning of the site, compared to the zoning as notified under PPC85. Albeit, overall, Mr Clease is of the view that PPC85 should be declined, on the basis of wastewater constraints.[137]

8. CONCLUSION

8.1 The section 42A team recommend that PPC85 be declined for the reasons set out in the section 42A report, evidence on behalf of the section 42A team, and in these legal submissions.

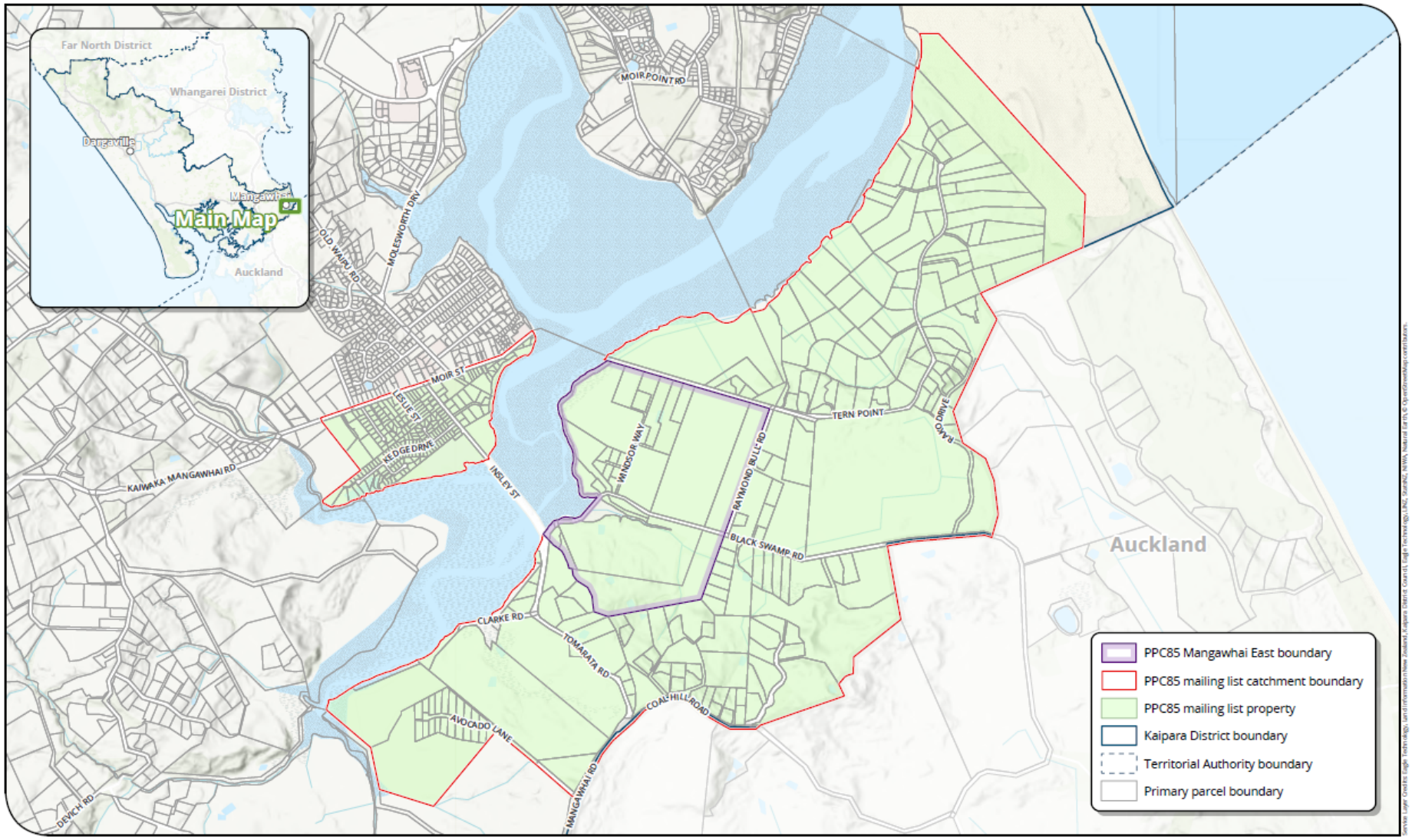
137 Section 42A Report, paragraphs 328-337 and the Rebuttal evidence of Mr Clease, paragraph 3.25.

Warren Bangma

Counsel for the Kaipara District Council

13 February 2026

Attachment A – Map showing properties served with notice of PPC85 under clause 5(1A) of Schedule 1 of the RMA



KAIPARA DISTRICT
Kaipara te Oranganui • Two Oceans Two Harbours

PPC85 Mailing List Catchment and Properties

0 1,000
Metres
Scale: 1:25,000@ A4 June 12 2025
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Attachment B – Map showing parties who have lodged submissions on PPC85