

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

<b>Under the</b>	Resource Management Act 1991 ( <b>RMA</b> )
<b>In the matter</b>	of Private Plan Change 85 (Mangawhai East) to the Kaipara District Plan

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**STATEMENT OF REBUTTAL EVIDENCE OF JASON GRAHAM SMITH ON BEHALF OF  
KAIPARA DISTRICT COUNCIL**

**Ecology**

**9 February 2026**

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**1. INTRODUCTION**

**1.1** My full name is Jason Graham Smith.

**1.2** I prepared a statement of evidence dated 1 December 2025 on behalf of Kaipara District Council (**Council**) in relation to the application by Foundry Group Limited and Pro Land Matters Company Limited (**Applicant**) for a private plan change to rezone land in Mangawhai East (**PPC85**). I refer to my qualifications and experience in my original statement of evidence and do not repeat them here.

**1.3** Although this matter is not being heard by the Environment Court, I confirm that I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and I agree to comply with it.

**1.4** I am authorised to make this statement on behalf of the Council.

**2. SCOPE OF EVIDENCE**

**2.1** The purpose of this statement is to respond to the evidence-in-chief filed on behalf of the Applicant, the Department of Conservation (**DoC**), and the New Zealand Fairy Tern Trust (**the Trust**).

**2.2** In particular, I will address:

- (a) points of agreement and residual concerns in the evidence of the Applicant's ecologist (Mark Delany);
- (b) the updated Development Area Provisions, provided as Appendix D to the evidence of the Applicant's Planner (Burnette O'Connor); and
- (c) respond to matters arising from the statements of evidence of:
  - (a) Ms Wiles, Mr Townsend and Mr Antony Beauchamp, on behalf of the Director-General of Conservation; and

(b) Ian Southey on behalf of the New Zealand Fairy Tern Trust.

### **3. RESPONSE TO EVIDENCE OF MARK DELANY**

- 3.1** The Evidence in Chief (**EiC**) of Mr Delany has responded to the ecology matters raised in the s 42A Report.
- 3.2** Mr Delany acknowledges the short comings in the Ecological Impact Assessment (**EclA**) for the southern plan change area (prepared by Rural Designs, and referred to in my EiC as the Southern EclA). Mr Delany agrees with my evidence that the provisions of the Northern EclA can be appropriately extended to the southern area of the plan change.
- 3.3** Mr Delany has also considered the updates to the Development Area Provisions that were recommended in Council's s 42A Report, and with one exception, agreed with those amendments.
- 3.4** The exception is in relation to the keeping of dogs within the plan change area. Where the s 42A version of the Development Area Provisions DEV X-P4(e) referred to a covenant or consent notice that would ban new dogs, the Hearing Version of the Development Area Provisions appended to the EiC of Ms O'Connor, has amended this clause to reference dogs being contained on properties and to be on-leash in public places.
- 3.5** I support the amendments made in Mr Delany's proposal and consider they should be adopted. However, the amendments, while an improvement, do not result in my concerns being fully addressed.
- 3.6** As raised in my EiC, in relation to the use of covenants generally, there is a risk of non-compliance and unclear enforcement mechanisms.
- 3.7** In relation to banning dogs from the plan change area versus allowing them but requiring them to be contained, there is a clear difference in the potential

ecological effects. If dogs are banned, there will be no new dogs introduced into the area. This is preferable from an ecological perspective as it avoids the possibility of any adverse effects on biodiversity values and in particular on rare avifauna. If dogs are allowed in the plan change area but required to be contained within the property, they could potentially escape (unsupervised) and would likely also require exercise outside of the property. Space available for such exercise within and adjacent to the plan change areas is recognised for its biodiversity values, including the foraging and nesting of the New Zealand Fairy Tern/Tara iti and Banded Rail, both of which can be disturbed by dogs and dog walkers even when dogs are on-leash.

- 3.8** If dogs are allowed in the plan change area (as sought by the Applicant) and even one dog were to escape from a property unsupervised or was let off leash by its owner and entered areas in the estuary where New Zealand Fairy Tern/Tara iti forage and nest this could have an effect on the New Zealand Fairy Tern/Tara iti given its 'Threatened – Nationally critical' endangered threat status. Even if the chance of this occurring was regarded as low (on the basis that it was assumed dog owners would comply with requirements to keep dogs confined and on-leash), in my view it would be an effect of low probability but high potential impact. For these reasons, I consider a ban on dogs in the plan change area to be more appropriate.
- 3.9** Mr Delany has also addressed the “wet pasture” areas identified in the Southern EclA. Mr Delany has not classified these areas as natural inland wetlands (or not) and is of the position that the level of detail can be left to the resource consent stage. In this particular case, given that the plan change material does not intend to show all wetlands, nor have any specific provisions relating to these specific wetlands, I agree with Mr Delany, that any natural inland wetlands can be classified and assessed at the resource consent stage.
- 3.10** Mr Delany has also provided further assessment of the effects of the walkways and shared path routes being within the ecological features and creating additional disturbance. Mr Delany is of the view that these are high-level and conceptual and indicate that these would generally be on the periphery of these features. I agree with Mr Delany and also note that the any construction and enabling activities

would require regional consents, and the protection of biodiversity values is also a matter of discretion as part of the proposed subdivision rules.<sup>1</sup> This response addresses the concerns raised in my EiC.

- 3.11** Mr Delany has also addressed the “effects beyond the PC85 area” that I had raised in my primary evidence. Regarding the potential future harbour access point, this has now been removed from the Structure Plan. The construction of a shared path along the causeway is acknowledged to require resource consents and the effects of construction and operation of the shared path to be considered as part of that process. I consider these responses address the concerns I had raised.
- 3.12** Mr Delany has also provided further assessment on the potential effects of the plan change on Fairy Tern/Tara iti. Overall, Mr Delany considers the magnitude of residual effects on Fairy Tern/Tara iti, following effects management, to be ‘Low’ (see paragraph 91 of Mr Delany’s EiC).
- 3.13** Following the EIANZ assessment framework, given the current ecological value of Fairy Tern/Tara iti is ‘Very High’, for the overall level of effect to be ‘Low’; the magnitude of that effect must be ‘Negligible’. Table 8 of the EIANZ guideline document provides a description for Negligible magnitude of effect as: *Very slight change from the existing baseline condition. Change barely distinguishable, approximating to the ‘no change’ situation; AND/OR Having negligible effect on the known population or range of the element/feature.”*
- 3.14** Even with effects management as proposed there is a residual risk of disturbance.
- 3.15** Given the low number of individuals of Fairy Tern/Tara iti that remain, in my opinion the effects of the plan change on Fairy Tern/tara iti known population would be distinguishable. I therefore consider the level of effect and magnitude of effects would be at least ‘Low’, in which case the level of effect would be Moderate. EIANZ provides an interpretation for a Moderate level of effect in bullet point 2, page 84 of the guideline document as: *Options in the ‘High and Moderate adverse’ category represent a level of effect that requires careful assessment and analysis of*

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<sup>1</sup> Subdivision rule DEV X-R1(1)(k) and matter of discretion (e).

*the individual case. Such an effect could be managed through avoidance, design, or extensive offset or compensation actions. Wherever adverse effects cannot be avoided, no net loss of biodiversity values would be appropriate.*

**3.16** Mr Delany also agrees that the Significant Natural Areas (**SNAs**) should be shown on the Structure Plan, and further updates on the Development Area Provisions. This change has been made in the Hearing version of the Development Area Provisions.

**3.17** In my EiC, I raised a series of points regarding the proposed 'cat free covenants'. To the extent the Applicant can, these concerns have now been addressed in the review of the provisions provided by Ms O'Connor. As outlined above, I consider that dogs should also be banned from the plan change area. This could be satisfactorily achieved by adding "dogs" to the Applicant's provisions banning cats and mustelids. Albeit, I have a residual concern about monitoring and enforcement of such provisions. For the avoidance of doubt, those concerns are listed in my EiC, section 8.6, as:

- (a) how DEV X-P4 1.e would be monitored;
- (b) whose responsibility it is to implement the monitoring of DEV X-P4 1.e;  
and
- (c) what are the implications if a future lot owner is found to be non-compliant with DEV X-P4 1.e.

#### **4. RESPONSE TO EVIDENCE OF BURNETTE O'CONNOR**

##### *Structure Plan and Development Area Provisions*

**4.1** I have reviewed the evidence of Burnette O'Connor, with regard to ecological matters, primarily to ensure that the recommendations made by the Applicant's ecologist (Mr Delany) have been incorporated.

**4.2** The evidence of Burnette O'Connor provides an updated Structure Plan (Appendix C) and Development Area Provisions (Appendix D, marked "Hearing Version").

- 4.3** The updates and recommendations sought by the s 42A Report, and Mr Delany have, in my view, been appropriately incorporated, notwithstanding that I have concerns regarding implementation and enforcement.

#### *Educational Signage*

- 4.4** There is an open point in both Mr Delany, and Burnette O'Connors evidence regarding educational signage. Mr Delany considers (paragraph 91) that education about the bird species of the harbour could assist in compliance with the dogs on-leash requirement. Ms O'Connor evidence (paragraph 67) states that *if education signage is deemed to be of value, then this signage requirement can be added to the Development Area Provisions*.
- 4.5** Who is to deem the signage to be of value is not specified, nor are any design requirements for the signs themselves.
- 4.6** For the avoidance of doubt, Mr Delany's statement is that educational signage *could* assist compliance. I therefore consider that the Applicant has assessed educational signs to be of value, and therefore the Development Area Provisions should be amended to include this point. My recommendation would be for DEV X-P4 be updated to include this requirement.

### **5. RESPONSE TO SUBMITTER EVIDENCE**

- 5.1** In this part of my rebuttal evidence I respond to evidence filed on behalf of submitters, that is relevant to my expertise.

#### **Department of Conservation**

##### ***Response to the Evidence of Ms Wiles***

- 5.2** Ms Wiles (Tara Iti Ranger) has prepared a statement of evidence dated 30 January 2026 addressing conservation strategies to prevent extinction, the Tara Iti Recovery Programme and evidence on operational context for Fairy Tern/Tara Iti.

**5.3** In my opinion, Ms Wiles' evidence provides useful context for understanding the ecological values associated with Fairy Tern/Tara iti.

**5.4** I confirm that I have no matters of rebuttal in relation to this evidence.

***Response to the Evidence of Mr Townsend***

**5.5** Mr Townsend has prepared a statement of ecological evidence dated 30 January 2026.

**5.6** Mr Townsend states that the planning provisions proposed by the Applicant *"largely address [his] concerns for indigenous vegetation and flora over the area of the proposed Private Plan Change 85"* (paragraph 1 of his evidence). However, I understand he has some residual concerns, including in relation to the maintenance of hydrological connections between the SNA's and the sea and the protection of the salt marsh SNA.

**5.7** At paragraph 2 of his evidence he states:

"...it is important that these provisions also consider the hydrological connections between the Significant Natural Areas (SNA) and the sea, in relation to the placement or repair of any infrastructure. Loss of the connection to the harbour for the norther SNA (e.g. by repairing the stop-bank on the southern shoreline of Mangawhai Harbour) will have significant negative effects on the ecological values present."

**5.8** I understand that the plan change itself does not authorise any such activities. The construction of any such infrastructure, that modifies the wetlands hydrological regime, would be subject to requirements to obtain regional consents. Any relevant effects would be considered at that time.

**5.9** At paragraph 3 of his evidence Mr Townsend states:

"The Saltmarsh SNA appears to be already covered by a Reserves Act 1977 conservation covenant that is larger than the proposed SNA area. It is not clear whether this covenant is intended to remain in place or the new SNA is going to replace it. For completeness, I



consider the ecological benefits of the covenant, if it were fully exercised. The potential benefit would be lost if substituted for a SNA that is smaller.”

- 5.10** As an ecologist, I agree with Mr Townsend that the covenant provides ecological benefits.
- 5.11** I have found no mention of the covenant being replaced or substituted. PPC85 relates to the re-zoning of land under the RMA. My understanding is that both the Significant Natural Area and covenant will apply, with the SNA provisions offering an additional layer of protection extended to the identified natural inland wetlands.

***Response to evidence of Mr Beauchamp***

- 5.12** Mr Beauchamp has prepared a statement of avifauna evidence dated 30 January 2026.
- 5.13** I have considered Mr Beauchamp’s evidence. I note that we are in agreement in relation to the importance of Fairy Tern/Tara iti and the need to limit their disturbance.
- 5.14** I understand Mr Beauchamp remains concerned with the effects of increased public access to the avifauna habitat, for both Australasian Bittern and Fairy Tern/Tara iti as a result of proposed walkways on esplanade reserve and private land owned by the Applicant.<sup>2</sup> Ms Macleod in her planning evidence on behalf of the Department of Conservation seeks that proposed public walkways be removed from the proposal.<sup>3</sup>
- 5.15** In response, I understand from Mr Delany’s evidence that the walkway locations are high-level and conceptual. They indicate that these would generally be on the periphery of these features.

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<sup>2</sup> Evidence of Mr Beauchamp, paragraphs 45-55.

<sup>3</sup> Evidence of Ms Macleod, paragraph 3.

**5.16** It would be my preference for any public access to be on formed access paths on the periphery of the ecological features to discourage disturbance to ‘core habitat’ within. The alternative would be as per the current situation where the public can access the estuary, mudflats and esplanade which is noted in several places in the submitters evidence as causing disturbance. I note that based on proximity to the ecological features the works to form these access ways would still require regional consents that would allow for any effects on wildlife to be assessed alongside the detailed designs.

**5.17** For the reasons set out above, I do not consider the proposed public accesses shown in PPC85 need to be deleted or removed.

*New Zealand Fairy Tern Charitable Trust*

**5.18** Mr Southey has provided a statement of evidence dated 30 January 2026 on behalf of the New Zealand Fairy Tern Charitable Trust.

**5.19** In his evidence Mr Southey addresses a number of matters including the bird species on the site and harbour, fish species, specific evidence on Fairy Tern and Bittern. I have no matters of rebuttal to raise in relation to these parts of Mr Southey’s evidence.

**5.20** In terms of his overall conclusion on the effects of the PPC85 on Bitterns Mr Southey states:

“Development of the site, as proposed, will destroy known feeding habitat for bittern, and food is a particular point of vulnerability for Bitterns. If they survive the development, disturbance by people may drive them out of the habitats they now use for feeding and they will be vulnerable to death on the roads and predation by dogs.”<sup>4</sup>

**5.21** In terms of his conclusions regarding the effects of PPC85 on Fairy Terns (and other rare birds) My Southey states:

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<sup>4</sup> Evidence of Mr Southey, paragraph 71.

*“There are already very good reasons to think too many people using Mangawhai Harbour for recreation are already proving detrimental to fairy terns but it must be admitted that other factors could produce the same results. Given the great rarity of fairy terns and their constant exposure to risk from both natural and human caused problems my opinion is that it is necessary to have a clear idea of the likely impacts of new developments.*

*...*

*The developers have not recognised or acknowledged the potential problems they might cause for some of our rarest birds, nor have they made any attempt to show that the potential problems could be mitigated or avoided”<sup>5</sup>*

**5.22** In response to these aspects of Mr Southey’s evidence:

- (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) However, 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, my preferred position is that they be banned (rather than a requirement they be securely confined within properties, and on leash). This is assessed as resulting in at least a Moderate level of effect using the EIANZ framework.
- (c) I agree with Mr Southey that, in a general sense, any change from rural to urban land creates an increase in risk to wildlife. Even with the measures proposed for PPC85 there remains an element of residual risk compared to if the plan change area remained undeveloped.

**6. CONCLUSION**

- 6.1** Many of the concerns previously raised have now been addressed through the Applicant’s evidence, including the updated Development Area Provisions,

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<sup>5</sup> Evidence of Mr Southey, paragraphs 73-74.

although I note that further update would be required to the Development Area Provisions for the educational signage.

- 6.2** The key remaining area of concern I have in relation to the plan change is regarding dogs and whether dogs are “banned”, or are allowed in the plan change area, subject to a requirement they be contained within properties and exercised on a leash (as proposed by the Applicant).
- 6.3** Provided dogs are banned meaning no new dogs are introduced to the plan change area, I consider the risk of disturbance to Threatened avifauna to be Low. However, if dogs are allowed in the plan change area (as sought by the applicant) in my 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). 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. Accordingly, even if the chance of this occurring was regarded as low, on the basis it was assumed most dog owners would comply with requirements to keep dogs confined and on-leash, in my opinion this would be an effect of low probability but high potential impact.
- 6.4** Overall, I consider a ban on dogs to be more appropriate, and necessary from an ecological perspective. In my opinion, provided dogs are banned from the plan change area, there is no ecological reason to decline the plan change.

**Jason Smith**

9 February 2026