

**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 JONATHAN GUY CLEAVE ON BEHALF OF  
KAIPARA DISTRICT COUNCIL**

**Planning**

**9 February 2026**

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**1. INTRODUCTION**

**1.1** My full name is Jonathan Guy Cleese.

**1.2** I prepared the s42A report 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 (**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 and submitters.

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

- (a) Areas where there is either agreement; or where the remaining areas of disagreement are matters of detail or are not determinative of the overall plan change recommendation;
- (b) The remaining key area of difference. The primary concern is the ability of the site to be serviced for reticulated wastewater and the interplay that this matter has with the National Policy Statement on Urban Development (**NPS-UD**) and the associated assessment of housing demand and capacity;

- (c) The updated Development Area Provisions (provided as Appendix D to the evidence of the Applicant's Planner, Ms O'Connor).

### **3. MATTERS THAT HAVE BEEN RESOLVED OR WHERE DIFFERENCES HAVE NARROWED**

**3.1** The matters that I considered resolved at the time of my s42A report were set out in paragraph 506 of that report. I have not changed my opinion on these matters and consider that they remain resolved.

**3.2** My s42A report conclusions also set out a number of topic areas where there remained the need for further evidence or resolution of outstanding matters.<sup>1</sup> The evidence on behalf of the applicant and submitters has been of considerable assistance in further narrowing the remaining points of difference since my s42A report was filed on 1 December 2025.

**3.3** Relying on the Council experts' supplementary statements released on 23<sup>rd</sup> January 2026 and subsequent rebuttal statements, I now consider that the following matters are either agreed between the experts or the remaining points of difference are narrow.

#### **Highly Productive Land**

**3.4** The recent amendment to the National Policy Statement on Highly Productive Land (**NPS-HPL**) has removed the need to assess the majority of the plan change area against the tests set out in clause 3.6, as set out in my supplementary statement dated 23 January 2026. I am satisfied that the Rural Lifestyle Zone elements of PPC85 satisfy the tests in clauses 3.7 and 3.10 of the HPS-HPL, noting the agreement on this matter between Mr Cathcart and the applicant's soil/ rural productivity experts Mr Hunt and Mr Hanmore. I am likewise satisfied that the plan change gives effect to the Northland Regional Policy Statement insofar as HPL is concerned;

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<sup>1</sup> S42A report, paras 500-504

### **Natural Hazard risks - coastal and geotechnical**

**3.5** Natural Hazard risks associated with coastal and geotechnical processes are capable of being managed to an acceptable level, relying on the rebuttal of Mr Blackburn and Mr Sands respectively.

### **3.6 Natural hazard risks - flooding**

**3.7** Natural Hazard risks relating to flooding are likewise capable of being managed to an acceptable level, relying on the rebuttal of Mr Senior, and that there is agreement on this matter between Mr Senior and Mr Peters on behalf of the applicant.

**3.8** There remains a difference of opinion between Mr Senior and Mr Westward for the Windsor Way submitters regarding whether site-specific stormwater modelling and design solutions should be resolved now or whether they are matters that can be appropriately left to subsequent subdivision consenting stages. Given that the plan change area does not have a large catchment either upstream or downstream of the site, the only flood risk is in relation to internal development staging across the site.

**3.9** The PPC85 plan change provisions include clear policy direction regarding the need to align subdivision design with the Stormwater Management Plan (**SMP**)<sup>2</sup>; require subdivision consents as a restricted discretionary activity as the 'base' status where the activity complies with the listed standards which include the standard on stormwater management (and full discretionary status if the standard is not met)<sup>3</sup>; and the standard itself which requires stormwater systems be designed in accordance with the SMP and where the matters of discretion include consideration of "whether and the extent to which the capacity of the downstream stormwater system is able to cater for increased runoff from the proposed allotments".<sup>4</sup> Stormwater treatment and discharge systems also invariably require a further suite of consents from the Northland Regional Council. I consider that the PPC85 provisions provide a suitably robust framework to enable more detailed modelling and solution design work to be undertaken (if required) as part of the

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<sup>2</sup> PPC85 plan change Policy DEV X-P7(3)

<sup>3</sup> Ibid, Subdivision rule DEV X-R1(1)(m)(vi)

<sup>4</sup> Ibid, Subdivision standard DEV X-SUB-S8

subdivision consent process. I therefore consider that there are no stormwater/flood hazard reasons to decline the plan change.

### **Transport effects**

- 3.10** Transport effects are largely agreed between Mr van der Westhuizen for Council and Mr Hills for the applicant. In particular, they agree on the importance of a shared path along Insley Street. I note that Ms O'Connor has accepted the text changes I recommended regarding a strengthened policy direction and non-complying rule framework regarding the shared path.<sup>5</sup> Mr Ross for the Riverside Holiday Park supports the need for a shared path, however he has raised several points of clarification as a planner regarding the wording and effectiveness of the proposed policy and rule framework.<sup>6</sup>
- 3.11** I agree with Mr Ross that a more directive 'avoid' policy direction is necessary to reflect the non-complying activity status and the critical importance of the shared path being in place. I recommend an additional clause to Policy DEV X-P3(2) in this regard.
- 3.12** In terms of the use of the 50 households metric beyond which upgrades are required, I understand the rule framework to include all unimplemented subdivision consents and an allowance for additional residential units that would be permitted under the Operative Plan minimum lot size rules. The rule is based on subdivision, as there is limited potential for an urban density development of the nature proposed by PC85 to occur without subdivision. Residential units as a land use activity are permitted under DEV X-LU-R2, where the unit complies with the matters set out in clause (b) of that rule. This includes reference to DEV X-SUB-S6. In short, to be permitted as a land use activity, the proposal must also comply with the subdivision rule that requires the shared path to be in place. I therefore consider that a separate, stand-alone, land use rule is not necessary.
- 3.13** Mr Ross's EIC has however brought to the fore a mechanical issue regarding activity status. Where a proposal does not comply with the land use rule, the activity status defaults to restricted discretionary and the matters of discretion do not extend to

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<sup>5</sup> PPC85 Plan provisions, DEV X-O2(1); DEV 1 Subdivision X-R1; DEV X-SUB-S6(2)

<sup>6</sup> Mr Ross EIC para 4.5

transport matters. To ensure consistency in activity status on this critical matter, I recommend that the activity status of the land use rule also be non-complying, where DEV X-SUB-S6 is not met.

**3.14** With the recommended amendments in place, I am confident that a suitably robust plan framework is in place to ensure the delivery of this key link before the balance of the site is developed.

**3.15** Mr Ross, as a planner, raises similar concerns regarding the inclusion of a shared path along Black Swamp Road as part of the upgrade of that section of road to collector status. I recommend that the Structure Plan show a pink dashed line 'pedestrian/ cycle improvement' along Black Swamp Road to ensure this upgrade is captured in the Structure Plan (as shown in Figure 1 below), along with reference to this upgrade being added to DEV X-SUB-S6 and DEV X-REQ2. Subdivision is required to be in general accordance with the Structure Plan. Ultimately the timing and staging of the upgrades relative to the site of the subdivision being applied for is a matter that I would expect to be negotiated by Council as is the case with most large development areas where upgrades are aligned with stages.

***Figure 1. Shared path on Black Swamp Road (pink dashed line)***



**3.16** The one outstanding transport-related matter between transport experts relates to the need for a roundabout versus a right-turn bay layout at the Insley Street/

Black Swamp Road/ Tomarata Road intersection.<sup>7</sup> Both Mr van der Westhuizen and Mr Hills agree that this intersection requires upgrading, and both solutions are capable of being implemented within existing road reserves. Mr van der Westhuizen remains of the view that a roundabout provides the more robust solution in terms of resolving safety issues, for the reasons set out in his EiC and rebuttal statement. I rely on his expert opinion on this matter. I understand from Mr van der Westhuizen that whilst his professional opinion remains strongly in favour of a roundabout solution, ultimately this not a matter of such consequence as to be determinative of whether or not the plan change should be approved.

- 3.17** In response to Mr Ross' concerns regarding implementation mechanisms associated with the need for the intersection upgrade, I recommend that such a reference be included at a policy level in DEV X-P3(2), as part of the subdivision transport standard DEV X-SUB-S6, and as an information requirement under DEVX-REQ2.

#### **Potable and fire-fighting water supplies**

- 3.18** The ability to service the site with potable and fire-fighting water supplies is agreed, as confirmed in Ms Parlane's rebuttal statement. I note that Ms Parlane does not support the inclusion of a separate bore-fed system for non-potable water (apart from the proposed reticulated fire-fighting supply in the commercial and medium density areas), however servicing the site does not rely on the delivery of a non-potable system. I note that Fire and Emergency New Zealand have not provided expert evidence however I understand from a phone conversation with their planner that they are intending to provide the Panel with a tabled statement prior to the hearing that sets out their position on fire fighting water supply.

#### **Ecological effects**

- 3.19** Ecological effects are largely agreed between ecological experts, as confirmed in Mr Smith's rebuttal statement. Mr Smith has carefully considered the evidence put forward on behalf of the Department of Conservation and the Fairy Tern Trust regarding the critically endangered status of the Fairy Tern and the need ensure effects are carefully managed given that further loss of these birds carries significant

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<sup>7</sup> Ibid, Information Requirement DEVX-REQ2(1)(a)

consequence in terms of maintaining a viable population. As such, he recommends that both cats and dogs be excluded from the PPC85 area. I remain of the view that the most effective mechanism for ensuring that effects from cats and dogs are minimised within the plan change area is a requirement in the subdivision provisions for a covenant on future titles to prevent the keeping of such animals.<sup>8</sup> I do not consider a subdivision rule/ consent notice requiring dogs be kept on a leash in public places to be enforceable via a resource consent process, and animal containment relies on the ongoing good practice of homeowners to keep gates and doors shut.

**3.20** The Council separately controls dogs in public places via a Bylaw.<sup>9</sup> The areas subject to the bylaw are mapped in Schedule 3 of the Bylaw. They include the DoC reserve areas at the spit but do not extend to include the plan change area. Bylaws can be amended to include additional areas, and are a more effective tool for managing dogs in public places compared with consent notices which can only apply to private property. If the Fairy Tern was not so critically endangered then I would be comfortable relying on the Bylaw process. Given the significance of the harbour edge to Fairy Tern feeding and breeding, I consider that a conservative approach is appropriate for managing a risk with low probability but high potential impact and that a covenant mechanism is effective in preventing the number of dogs resident in the area from increasing.

**3.21** The experts for the Department of Conservation raise concerns regarding the provision of boardwalks in ecologically sensitive parts of the site adjacent to the coastal margins.<sup>10</sup> Mr Ross on behalf of the Holiday Park has raised separate concerns regarding the high economic costs relative to the low level of use the boardwalks would receive.<sup>11</sup> The detailed design of boardwalk locations and any the associated mitigation of ecological effects is subject to subdivision standard DEV X-SUB-S3(1).<sup>12</sup> The design is subject to review by an ecologist, with Council required to certify that the report and proposed design solution effectively

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<sup>8</sup> PPC85 Plan provisions – Subdivision rule DEV X-R1(1)(i)

<sup>9</sup> Kaipara District Policy on dogs and dog management Bylaw, June 2019

<https://www.kaipara.govt.nz/uploads/dogs/Policy%20on%20Dogs%20&%20Dog%20Bylaw%202019-Adopted.pdf>

<sup>10</sup> Ms Macleod, section 5.3

<sup>11</sup> Mr Ross EIC, section 7

<sup>12</sup> PPC85 Plan provisions also include policy direction through DEV X-P4 that directs walkway designs to be kept clear of wetlands to the greatest extent practicable



addresses ecological restoration outcomes. Any construction works located within the Coastal Marine Area are likewise subject to Northland Regional Council consenting requirements. I am satisfied that the design of walkways will be subject to a robust assessment of ecological values and mitigation. The construction costs of the boardwalks will be borne by the applicant. Given the high amenity walkway location close to what would be a sizeable residential area I consider that they would become a well-used asset to the community.

- 3.22** Provided that cats and dogs are effectively banned from being resident in the plan change area, I am satisfied that there are no ecological reasons for the plan change to be declined. I further note that the potential for habitat restoration and predator control enabled by the plan change has the potential to deliver ecological benefits.

**Site-specific zoning - 25 Black Swamp Road and Brewery (Mr Hood EiC)**

- 3.23** There is agreement between myself, Ms O'Connor for the applicant, and Mr Hood for Black Swamp Limited regarding the zoning of the residential balance of the submitter's landholding at 25 Black Swamp Road. This site was proposed to have a Rural Lifestyle zone in PPC85 as notified, due to a mix of ecological values and coastal hazard risks. Mr Hood's EiC confirms that no changes are sought for the portion of the submitter's property that is subject to a conservation covenant that covers an area of salt marsh adjacent to the coastline, with this area to retain the Rural Lifestyle Zoning (**RLZ**) as notified. Mr Hood has also confirmed that the submitter holds a resource consent from the Northland Regional Council (AUT.046759) that permits the filling to the balance of the landholding to enable the land to be raised to a sufficient height to mitigate coastal inundation risks. With the resource consent in place, there is agreement across the three planners that it is appropriate for this balance area to have a Low Density Residential Zone (**LDRZ**), dependant of course on the Panel being minded to approve the plan change as a whole.

- 3.24** Whilst the saltmarsh covenant area and the residential area form the majority of the Black Swamp Ltd site, there is a third portion of the site that contains an existing brewery operation and that is approximately 5,450m<sup>2</sup> in area. The Brewery is operating under an existing resource consent (RM210463). Mr Hood considers that

a Mixed Use Zone (**MUZ**) is a more appropriate zoning for this part of the site than the notified RLZ (or the alternative of a LDRZ), on the basis that a MUZ better reflects both the nature of the existing operation and would provide a more enabling framework to facilitate a modest amount of expansion or commercial adaptation of the brewery area over time. Ms O'Connor has not expressed a view either way on the brewery zoning. Mr Foy's rebuttal statement identifies that there are no economic reasons to oppose a MUZ.

- 3.25** In essence, the relief sought by Mr Hood constitutes a spot zone that reflects the current activities on the site. There is little wider urban form rationale for a pocket of MUZ in this location, with PPC85 focussing commercial activities in a new node centred around the intersection of Black Swamp Road and Raymond Bull Road. That said, the brewery is a long-established non-residential operation and MUZ outcomes are more closely aligned with the character and nature of the existing operation than RLZ or LDRZ outcomes. The proposed PPC85 rules for the MUZ have either a restricted discretionary or fully discretionary activity status depending on the size and nature of the activity proposed. Any future expansion will therefore remain subject to a site-specific assessment of outcomes, albeit that this assessment will take place within a more enabling MUZ policy framework. On balance I am comfortable with the rezoning sought by Mr Hood, for the reasons set out in his s32AA assessment, and as shown on the zone map in Appendix 1 to his EiC. Legal counsel for Council will be able to assist the Panel regarding questions of scope.

**Site specific zoning – Riverside Holiday Park (Mr Ross EiC)**

- 3.26** The submitter originally sought that the existing Rural Zone be retained for this site. I recommended in the s42A report that the site have a RLZ, with Ms O'Connor adopting this recommendation in her EiC. I understand from Mr Ross's EiC that whilst the Holiday Park understand the rationale for my earlier recommendation, their preference is the retention of the existing Rural Zone. I remain of the view that if the Panel are minded to approve the wider plan change, then a RLZ is more appropriate than a Rural Zone. The 'self-sufficient' nature of the site identified by

Mr Ross<sup>13</sup> is no different to the majority of RLZ areas where sites are generally serviced by rainwater, septic tanks/ private schemes, and private rights of way.

- 3.27** I note Mr Ross's agreement that a 'no complaints covenant' as originally sought by the submitter is no longer considered to be necessary.<sup>14</sup>

### **Urban Design**

- 3.28** Mr Evans has provided urban design evidence on behalf of the applicant that includes a design guide as Attachment B. In response to Mr Evan's evidence, Ms O'Connor has recommended a series of amendments to the PPC85 policy and rule package to better articulate urban design outcomes, with a particular focus on the more design-sensitive higher density residential and commercial parts of the site. I am comfortable with the urban design-related amendments to the zone descriptions, policies, and Neighbourhood Centre/ MUZ provisions.
- 3.29** I did not raise any urban design-related concerns regarding the internal layout of the plan change area or the clustering of medium density housing forms adjacent to the proposed neighbourhood centre. Given that at the time of the s42A report the site was subject to NPS-HPL requirements that urban zoning be the minimum size necessary, relying on Mr Foy's evidence in terms of business land capacity I raised concerns regarding the size of the proposed commercial centre relative to the size for the residential area. I support the provision of a neighbourhood centre as part of a residential node, rather the concern rests with the size of the centre. Now that NPS-HPL is no longer in play, then ultimately the success or otherwise of the centre is a commercial outcome for the developer – if demand is not forthcoming then parts of the centre may simply be developed for housing.
- 3.30** Mr Evan's evidence and the proposed amendments to the plan change provisions are helpful in confirming the outcomes sought within the plan change area itself. I remain satisfied that the plan change will deliver good quality urban design outcomes within the plan change area.

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<sup>13</sup> Mr Ross EiC, para 2.5

<sup>14</sup> Ibid, para 3.1 – 3.4

**3.31** In terms of wider urban form outcomes for Mangawhai as a whole, ultimately I consider the difference between myself and Mr Evans comes down to questions of timing and staging at a township level. I disagree with Mr Evans that the plan change fosters a compact, walkable urban form when it concurrently creates a new urban node on the southern side of the harbour. In my view it simply spreads growth over a wider area, resulting in a less compact, more dispersed form than would otherwise result. This view is informed by the evidence of Mr Foy, where he considers that the existing urban zoned area of the township provides ample capacity to meet demand over the next thirty years. If Mr Foy is correct, then PPC85 simply leap-frogs the harbour to create a fourth node where none is needed. Of course, if the Panel prefer Mr Thompson's evidence and consider that demand is much higher and the existing township capacity will be taken up within the medium term, then the provision of a fourth node becomes necessary. If an additional node is necessary then the PPC85 proposal delivers that capacity in a location that addresses other thematic topic areas, as confirmed by the suite of Council rebuttal evidence. Wastewater servicing remains an outstanding matter, but that is an issue that will confront any growth area where a site-specific solution is not provided.

**3.32** In summary, the PPC85 structure plan and associated zone mix, layout, and design guidance all provide confidence that it will be a locally successful 'fourth node' from an urban design perspective. The bigger question is whether a fourth node is needed at all in terms of capacity, and if it is needed whether or not it can be serviced. I turn to these matters next.

#### **4. THE ABILITY TO SERVICE PPC85 WITH WASTEWATER IS THE KEY OUTSTANDING MATTER**

**4.1** At a fundamental level, urban growth requires two things – 1) appropriately zoned land in a location that delivers a well-functioning urban environment; and 2) the infrastructure to service it. Because zoning is determined under the RMA and council-held network infrastructure is delivered under the LGA, coordination of the processes under these two different statutory frameworks is critical.

- 4.2** This need for coordination is recognised in the NPS-UD, especially clause 3.4 which requires development capacity to be both ‘plan enabled’ and ‘infrastructure ready’.
- 4.3** The design and funding of Mangawhai’s wastewater system has proven to be particularly controversial and challenging over the last two decades and as such the Council and local community are very focussed on ensuring careful integration between urban growth and the services necessary to support that growth.
- 4.4** Turning first to ‘plan enabled’, Mangawhai’s growth has been considered over the last two decades via two spatial plans – the first in 2005 that was subsequently integrated into the Operative District Plan in 2013 and the second in 2020 that was timed to inform the development of the Proposed District Plan. I disagree with Ms O’Connor that the PPC85 site has been identified through these processes as a future urban growth location.<sup>15</sup> It is shown in both plans as rural residential, with the 2005 spatial plan identifying the area’s character of 4ha lots and the 2020 spatial plan identifying an anticipated density of 2-4ha.<sup>16</sup> Given that the PPC85 site is 94 ha, this equates to a maximum of some 47 households, which is similar to the 50 units that are either existing or consented across the plan change area i.e. the 2020 spatial plan in essence simply seeks to maintain an outcome that is similar to the area’s status quo character and density.
- 4.5** The 2020 spatial plan did however recognise the need to provide for growth in Mangawhai more generally. It identified a number of greenfield areas, since rezoned as PPC78, PPC83 and PPC84, along with infill/ smaller vacant lots across the township.
- 4.6** As set out in the rebuttal statement of Mr Foy, there is a material difference in view between himself and Mr Thompson, the applicant’s economist, regarding both the level of housing capacity afforded by the existing urban zoned extent, and the level of demand anticipated in the coming years. The difference in view between the two economists leads to them reaching differing conclusions as to whether Mangawhai’s existing zoning delivers the requisite capacity over short, medium,

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<sup>15</sup> Ms O’Connor EIC, para.27

<sup>16</sup> Mangawhai Spatial Plan 2020, pg. 30

and long-term time periods to meet NPS-UD direction for Tier 3 territorial authorities.

**4.7** Mr Foy's assessment of zoned *capacity* is based on a detailed site-by-site analysis of all urban zoned lots across the township. Mr Thompsons' assessment appears to be based simply on an assumption that infill take-up is capped at 5-15% of existing sites in rural towns.<sup>17</sup> Given Mr Foy's more detailed assessment, I prefer his conclusions regarding capacity.

**4.8** Mr Foy's assessment of *demand* is based on both the 'real world' level of demand experienced through building consent data over the past decade and seen across periods that cover both economic booms and downturns. Mr Foy also bases his forward-looking projections on data supplied by Infometrics and Statistics New Zealand, both well-respected organisations who routinely provide the growth projection information relied upon by Territorial Authorities when undertaking NPS-UD assessments. He conservatively includes a 20% competitive margin, even though the use of this margin is optional for Tier 3 Authorities.<sup>18</sup> Mr Thompson's projections instead rely on both a starting point that utilises the build rates seen at the post-Covid market high point and an assumption that Mangawhai will experience an exponential increase in its rate of growth from this high starting point. Whilst all growth projections include a speculative element, I prefer Mr Foy's given that it is grounded in both real-life data over the last decade and the use of standard methodologies and assumptions utilised by Infometrics and Statistics New Zealand.

**4.9** In summary, I am satisfied that the capacity provided through the existing urban zoned extent of Mangawhai is more than adequate for meeting demand as required by the NPS-UD.

**4.10** I do however agree with Ms O'Connor and Mr Thompson that the NPS-UD places no policy barrier on providing more capacity than the minimum required, provided that such capacity results in a well-functioning urban environment and can be

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<sup>17</sup> Mr Thompson EIC, para 45

<sup>18</sup> NPS-UD, clause 3.22

served. Assuming that capacity is well-located, more is better than less in terms of facilitating housing choice and competitive land markets.

- 4.11** The key is that it can be serviced – NPS-UD clause 3.5(1) states that “Local authorities must be satisfied that the additional infrastructure to service the development capacity is likely to be available”. I turn now to consider the level of confidence that is currently available that the infrastructure capacity necessary to service PC85 over and above what is required to service existing urban-zoned areas is ‘likely to be available’.
- 4.12** As identified in Mr Cantrell’s EiC there are existing conveyancing constraints between the PPC85 site and the Waste Water Treatment Plant (**WWTP**), along with the treatment plant itself. These constraints are able to be plausibly overcome through the provision of new pump stations, rising mains, and plant capacity. Whilst none of these upgrades are minor works, they are all able to be realistically consented and delivered. The primary network infrastructure constraint that carries a heightened level of uncertainty is in relation to the capacity of the WWTP to discharge treated effluent. Council’s understanding of the WWTP system capacity, the capability of Brown Farm, the challenges with discharge options, and the HUE capacity within the urban zoned areas has continued to evolve over the last couple of years as a result of the investigative work associated with designing and programming treated effluent disposal solutions.
- 4.13** As set out in the EiC of Mr Cantrell, the current programming and delivery of wastewater infrastructure through Long Term Plan (**LTP**) processes is broadly aligned to the capacity anticipated to be realised through the 2020 spatial plan and consequently the existing zoned areas post PC78, PC83, and PC84. Programmed WWTP upgrades equates to the ability to service approximately 6,500 Household Equivalent Units (**HUEs**) i.e. more than double Mangawhai’s current 2,900 HUE connections.

- 4.14** I agree with Ms O'Connor that, as a general proposition, territorial authorities should not ration servicing capacity between landowners.<sup>19</sup> Councils should however seek to align the capacity of services with the extent of urban-zoned land that is planned to be serviced – that is simply good practice for any infrastructure provider and is integral to the twin tests of 'plan enabled' and 'infrastructure ready'. In my view there is a clear difference in context between a 'first in first served' approach with urban zoned landholdings, and seeking to add additional urban land where the servicing of that land has not been programmed.
- 4.15** My key concern is that PPC85 simply creates an overhang or disjunct between the extent of land needing to be serviced and the ability of council's infrastructure to meet that demand. WWTP capacity is limited. If PPC85 takes up that capacity then existing landowners in Mangawhai who have purchased sections with a long-standing urban zone and with the clear understanding that they can build will find that they cannot, which places Council in an unenviable position as planning authority and infrastructure provider.
- 4.16** In most cases the logical response to such a capacity shortfall is to simply build more infrastructure, with the funding of that infrastructure provided through a range of tools that include Development Contributions (**DCs**), developer funding agreements, and rates/ Council debt.
- 4.17** It is common for greenfield areas to require infrastructure upgrades. As a general proposition the need for such upgrades should not preclude rezoning, provided an acceptable level of confidence can be had that a deliverable solution is available – the 'satisfied' test set out in clause 3.5.
- 4.18** Mangawhai has a challenging geography from an infrastructure perspective with its proximity to the sensitive harbour environment and being ringed by hills and/or low-lying valley floors. As set out in Mr Cantrell's rebuttal, there is a high level of uncertainty regarding the ability to design, consent, and fund either an ocean outfall or a Brown Farm equivalent land-based disposal area. The reality of these significant engineering and financing constraints is that there may be a natural limit

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<sup>19</sup> Ms O'Connor EIC, para 55



to the size that Mangawhai can grow beyond the capacity enabled via the golf course upgrades.

**4.19** The ability to design, fund, and consent a treated effluent disposal solution beyond current programming is therefore highly speculative at this point in time. The applicant's experts have not provided any technical evidence that confirms such a solution is available/ consentable. There is a clear difference in approach to that adopted by the applicants for PC84 where at the time of the PC84 hearing the applicants had already obtained the necessary Northland Regional Council consents for a stand-alone package plant to service that growth area independent of the Council's reticulated system.

**4.20** In any event, relying on the rebuttal of Mr Foy and Mr Cantrell, I consider that sufficient zoned capacity with available services is available to meet anticipated demand over the short to long term time horizons. For growth in unanticipated locations, Policy 8 requires that in order for them to add significant capacity, that capacity must in turn be 'infrastructure ready'. I consider that for PC85 this has not been demonstrated to the requisite level of detail required as the plan change simply relies on a combination of either being able to utilise the already committed capacity necessary to service the existing urban zoned parts of the township or an expectation that the Council will be forced to deliver a step-change effluent disposal system at some point in the future regardless of costs or consenting challenges.

**4.21** Wrestling with these types of issues is why we have a planning system – the need to align infrastructure and urban zoning, mindful of the need to increase both in a coordinated manner to align with anticipated growth. PPC85 instead creates a disjunct between the extent of zoned land and the ability to service that land. Importantly, it does so in a geographic context where the delivery of a new treated effluent disposal system beyond what is currently programmed is technically challenging to the point that the ability to implement such a system upgrade in a practical sense may not be possible. Servicing the site is therefore highly speculative at this point in time and is some distance from the required threshold

of being able to be 'satisfied that the additional infrastructure to service the development capacity is likely to be available'.

#### **PPC85 provisions**

**4.22** Putting to one side the fundamental wastewater servicing challenge set out above, there is a high level of agreement between myself and Ms O'Connor regarding the PPC85 plan change provisions (Attachment D to Ms O'Connor's EIC). The remaining differences in text are limited to discrete wording choices that will turn on the Panel's merit-based findings.

**4.23** I attach an updated version of the PPC85 provisions as **Appendix 1** to this statement. My latest rebuttal changes are shown in red with a comment box so that they are easily identifiable.

**4.24** In summary, the text in dispute is:

- Whether the road upgrades referred to in the provisions are for a roundabout or a right turn bay intersection;
- Improved certainty regarding the regulatory mechanism to require the roundabout intersection upgrade in the first place; and the upgrade of Black Swamp Road to a collector status;
- Updating the Structure Plan to graphically show the need for a shared path along Black Swamp Road;
- Whether the requirement for a covenant banning cats should also apply to dogs;
- Minor amendments to align clause numbering and rule mechanics.

## **5. CONCLUSION**

**5.1** In my view the key matter before the Panel is whether or not there is sufficient confidence that PPC85 can be serviced by reticulated wastewater. I consider that a finding on this matter turns on the level of capacity present within the township's existing urban zoned area that is likely to be realised. Relying on the evidence of Mr Foy and Mr Cantrell, PPC85 results in more land having an urban zone than the

currently programmed WWTP upgrades can accommodate. Normally this would not be a determinative issue if additional infrastructure could be readily delivered. In this case I understand that the options beyond the golf course disposal upgrades are extremely limited in terms of design, cost and consenting. As such they are speculative at best. Given Mr Foy's evidence that there is ample existing capacity that can be serviced to meet demand for many years, there is simply no need to create a significant disjunct between the extent of urban zoned land and the area that can be realistically serviced with confidence.

**5.2** If servicing can be resolved, then the combination of applicant and submitter evidence has been helpful in resolving other issues. In my view all other issues are either agreed, or the matters of difference are not material to the overall recommendation.

**5.3** Due to the lack of confidence that the site can be serviced with wastewater, I retain my s42A report recommendation that the plan change be declined.

**Jonathan Clease**

9 February 2026