

BEFORE THE HEARING PANEL APPOINTED BY KAIPARA DISTRICT COUNCIL

Under the Resource Management Act 1991

In the matter of the hearing of submissions on Proposed Private Plan
Change 84: Mangawhai Hills Limited

**REBUTTAL EVIDENCE OF STEPHEN NICHOLAS BROWN ON BEHALF OF KAIPARA DISTRICT
COUNCIL**

(Ecology)

13 May 2024

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1. INTRODUCTION

1.1 My full name is Stephen Nicholas Brown.

1.2 I prepared a memorandum provided in support of the section 42A Report in this matter addressing Ecology dated 25 March 2024. My qualifications, experience, and background to my involvement in this matter are as set out in that memorandum.

2. CODE OF CONDUCT

2.1 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and have complied with it in preparing this evidence. I confirm that the issues addressed in this evidence are within my area of expertise and I have not omitted material facts known to me that might alter or detract from my evidence.

3. SCOPE OF EVIDENCE

3.1 This statement of rebuttal evidence on behalf of Kaipara District Council responds to various matters arising from the statements of evidence of:

- (a) Mr Mark Delaney (ecology) for the applicant; and
- (b) Mr Mark Klassen (ecology) on behalf of Bergen Trustee Limited.

4. EVIDENCE OF MR DELANEY

4.1 Mr Delaney has prepared a primary statement of evidence on behalf of Mangawhai Hills Ltd dated 29 April 2024. Whilst Mr Delaney's evidence addresses a wide range of topics, my rebuttal is limited to responding to the parts of his evidence relating to:

- (a) The presence of 'Threatened' or 'At Risk' fauna – birds and bats;
- (b) the identification and areal extent of wetlands in relation to proposed developments; and
- (c) clearance of indigenous vegetation.

The presence and protection of 'Threatened' and 'At Risk' fauna (birds and bats)

4.2 I agree with Paragraph 25 of Mr Delaney's evidence where he states "*The EclA also considered that it is unlikely that 'At Risk' or 'Threatened' avifauna species are present within the Site, even on an intermittent basis. However, on reflection and following the review of the EclA by Wildlands Consultants Limited ('Wildlands')³, 'At Risk' or 'Threatened' avifauna species such as fernbird and the Australasian bittern may utilise the wetland habitat within the Site given its proximity to higher value coastal wetlands.*"

4.3 In paragraph 86 of Mr Delaney's evidence, he states he is not opposed to including the requirement to assess the effects of domestic cats and dogs on ecological values as part of any subdivision consent application.

4.4 In light of the agreement regarding the potential presence of 'At Risk' and/or 'Threatened' avifauna at the Site, I support recommendation (k) in the Section 42A report by Jonathan Clease to include consideration of the need to control domestic cats and dogs as an ecological information requirement. I note that Mr Clease's recommended amendment has been agreed to by the applicant's planners as renumbered DEV1-REQ6(2)(e)(xiv)(b).

4.5 I agree with paragraph 27 of Mr Delaney's evidence where he states: "*The EclA also considered that neither long-tailed or short-tailed bats are expected to utilise the Site as habitat. However, on reflection and*

following the review of the EclA by Wildlands, long-tailed bats may utilise the large trees within the Site on an intermittent basis."

- 4.6** Given the potential for long-tailed bats to utilise parts of the site, it is important that that potential effects on bats are able to be assessed prior to any subdivision and development of the site. I recommend that the PPC84 provisions include a requirement that as part of any future consenting process, a bat survey and management plan should be undertaken, including reference to the Department of Conservation Bat tree roost protocols (2021).

Identification and extent of wetlands in relation to proposed developments

- 4.7** In paragraph 97 of his evidence Mr Delaney states that the wetland extents shown in the Ecological Impact Assessment (EclA) prepared by Bioreserches are "*...indicative only and intended to be used as a point of reference for any future consenting processes.*" He nevertheless considers that "*the mapped extent of the wetland features provides an accurate representation of the main wetland extents within PC84 boundaries at the time of the Site assessments.*"

- 4.8** I agree with Mr Delaney where he states at paragraph 102 of his evidence that "*these wetland extents will change in the short and long term, contracting and expanding, in response to land use changes and natural variation*". However, I maintain that the identification of some discrete wetland areas, and the areal extent of other wetlands depicted in the EclA, differed considerably from my observations at the time of my site visit in March 2024.

- 4.9** Considering the variation in the observed extent of wetlands, and in agreement with paragraph 103 of Mr Delaney's evidence, further detailed assessments in accordance with relevant/current best practice methodology will be required closer to the time of future consenting

stages. I add that current best practice is to follow Ministry for the Environment (MfE) wetland delineation protocols (MfE 2022) in accord with the National Policy Statement for Freshwater Management (NPS-FM).

4.10 As noted above in paragraph 4.2 of this rebuttal evidence and paragraph 25 of Mr Delaney's evidence, there is potential for 'At Risk' and 'Threatened' avifauna species to be present at the Site. It is of relevance that the species most likely to be present are species such as fernbird and Australasian bittern that inhabit wetlands.

4.11 I agree with Mr Delaney's recommendation in paragraph 105 of his evidence that within the Structure Plan, all streams and wetlands should be identified/labelled and considered only as 'indicative'. This, together with the labelling and consideration of proposed roads and tracks in the Structure Plan as only 'indicative' should provide for flexibility to allow for both the more comprehensive delineation of wetlands, and if need be, the realignment of roads, in order to avoid or appropriately minimise ecological effects to wetland habitat (and to fauna utilising that habitat) in future consenting processes as required under the provisions of the National Environmental Standards for Freshwater (NES-FW) and the NPS-FM.

4.12 Indigenous vegetation clearance

4.13 The Old Waipu Road Remnant comprises indigenous coastal forest that is deemed to have 'high' ecological value in the EclA. Paragraph 47 of Mr Delaney's evidence states that "*No indigenous vegetation removal is required as a part of the PC84 proposal.*" However, the formation of walking and/or cycle trails through the Old Waipu Remnant as indicated in the Structure Plan would require some vegetation clearance (and some earthworks), and Mr Delaney agrees in paragraph 90 of his evidence that all vegetation removal and earthworks within indigenous vegetation areas should not be a permitted activity.

- 4.14** In Paragraph 94 of his evidence Mr Delaney supports the PC84 provision DEV1-R8 1. c. ii. (provided by Ms. Neal) that allows for indigenous vegetation clearance in the event that *“The removal is for the formation and maintenance of walking tracks less than 3 metres wide, provided that manual methods are used that do not require the removal of any indigenous tree over 300mm in girth.”*
- 4.15** Firstly, for the sake of clarity, I recommend that the threshold of ‘300mm in girth’ is changed to ‘9.5cm diameter at breast height (dbh)’, given that this is the more common metric used to measure tree size. Secondly, it is important to note that the clearance of trees and shrubs up to 9.5cm dbh will likely require lizard and bird management in order to comply with the Wildlife Act.
- 4.16** While I am in agreement with the intent to minimise damage to indigenous vegetation in the process of forming and maintaining trails, I do not agree that the formation of trails should be a Permitted activity. Although this provision as worded would restrict the width of trail to be cleared and restrict the felling of larger trees, it could potentially leave the high value Old Waipu Remnant vulnerable to habitat fragmentation and degradation (i.e. through the creation of new edges) if the number and location of the trails is not carefully designed. Design of the trails through the Old Waipu Remnant area should be undertaken by an appropriately qualified and experienced ecologist. The indicative trails through the Old Waipu Remnant as shown in the updated version of the PPC84 Structure Plan may not reflect optimal design.
- 4.17** To ensure the protection and ecological integrity of the Old Waipu Remnant, I recommend that DEV1-R8 1. c. ii. is deleted from the provisions and that indigenous vegetation clearance for the purpose of forming walking and cycle trails should be conferred the activity status of Restricted Discretionary. Further, the design of walking and cycle trails through the Old Waipu Remnant should be explicitly mentioned in PPC84 as a matter of discretion that requires further ecological

information. It is a reasonable expectation that following the formation of correctly designed trails, ongoing 'maintenance' of those trails - as opposed to 'formation' of trails - would be permitted. Consideration of this activity can be included at the resource consenting stage of any development.

EVIDENCE OF MR KLASSEN

4.18 I have also reviewed the statement of primary evidence by Mr Klassen (Ecology) dated 6 May 2024 on behalf of Berggren Trustee Co. Limited.

4.19 Mr Klassen states in his evidence that he undertook a "limited assessment" of the wetland features on the submitter's property (Allot 247 PSH of Mangawhai) on 18 April 2024. That assessment indicated the presence of a number of ephemeral wetland areas that he identifies on a map attached to his evidence. Mr Klassen concludes that *"...the locations of the identified wetland features should be considered indicative, and further assessment should be required prior to subdivision stage."*

4.20 Mr Klassen's assessment corroborates my view that a further assessment of the extent of wetlands is required prior to subdivision stage.

4.21 I note that all three ecologists who have prepared evidence for PPC84 (i.e. myself, Mr Delaney and Mr Klassen) are in agreement on this point.

Concluding statement

4.22 I remain of the view that Proposed Private Plan Change 84 and the development of the site as presented in the Mangawhai Hills Development Area provisions have the potential to confer a substantial

overall ecological gain for the Site and the wider Mangawhai area compared to the status quo. I am in agreement with the overall intent demonstrated in the application and Mangawhai Hills Development Area provisions in this regard.

4.23 In particular, the measures outlined in those provisions intended to protect and enhance ecological features on the site, including the exclusion of stock animals, protection of areas of indigenous vegetation, watercourses and wetlands, and the extensive revegetation and buffer plantings proposed support this view.

4.24 However, to ensure potential adverse ecological effects are appropriately avoided, remedied or mitigated, in my opinion, the recommendations summarised in this rebuttal evidence should be followed.



Stephen Brown

13 May 2024