

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

**AND**

**IN THE MATTER** of a proposed review of the Kapiti Coast District  
Plan: Chapter 7 Rural Environment

**BETWEEN** **MAYPOLE ENVIRONMENTAL LIMITED**

Submitter [No. 263] Further submitter [No. 125]

**AND** **KAPITI COAST DISTRICT COUNCIL**

Local Authority

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**BRIEF OF EVIDENCE OF CHRISTOPHER ADRIAN HANSEN  
ON CHAPTER 7 RURAL ENVIRONMENT OF PROPOSED DISTRICT  
PLAN  
FOR MAYPOLE ENVIRONMENTAL LIMITED**

**17 May 2016**

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## SUMMARY OF EVIDENCE

1. My name is Christopher Adrian Hansen and I am a planning expert. I summarise the key points in this brief of evidence under the following sub-headings.

### Outline of Evidence

2. I refer to my Primary Evidence on General/Plan Wide Issues (dated 22 March 2016) (**Primary General Evidence** or **General Evidence**) which provides background to who Maypole Environmental Limited (**Maypole**) is, and how it has sought the retention of Plan Change 80 (**PC80**), recently made operative under the District Plan, as a stand-alone master-planned community. Retention of the existing provisions (and the ordering of those provisions) is sought to avoid changes to the integrity of PC80, and unnecessary uncertainty and expense that at present would accompany future development of Maypole's Ngarara Farm property under the Proposed Plan. My Primary General Evidence also provides an overview of the planning context that is relevant to this hearing.
3. The focus of this brief of evidence is on the Ngarara Precinct provisions of the Rural Environment of the Proposed Kapiti Coast District Plan (**PDP**), and in particular:
  - (a) Policy 7.17 – Rural Eco-Hamlet Zone;
  - (b) Policy 7.18 – Ngarara Precinct;
  - (c) Rules 7.0 - 7.6;
  - (d) Appendix 7.2 – Ngarara Precinct Structure Plan; and
  - (e) Appendix 7.3 – Ngarara Precinct Management Principles.
4. I have reviewed the s.42A Report recommendations and seek that some of the reporting Officer's recommendations are adopted where appropriate. My strong preference is for the Ngarara Precinct, as incorporated into the operative District Plan, to be included in the PDP as a complete package (my reasons for this preference are discussed in this evidence). However, if the

Commissioners are of the mind to adopt the PDP structure and approach, I provide alternative wording and recommendations to meet Maypole's key concerns where those concerns are not addressed or accepted in the s.42A Report.

5. The approach I have taken to addressing the planning context includes:
  - (a) An outline of the Planning Context to be considered;
  - (b) An overview of the Ngarara Precinct provisions included in the operative District Plan;
  - (c) A review of the notified PDP provisions;
  - (d) A review of the matters relating to Chapter 7 – Rural Environment raised by Maypole in its submission, and the relief sought;
  - (e) A review of the s.42A Report recommendation regarding the PDP provisions; and
  - (f) My planning comment.
6. As discussed in my Primary General Evidence, I also rely on the statement of Mr Jon Smith, the landowner, provided to the General/Plan Wide hearings regarding Maypole's project development to date, and future development plans and aspirations.

### **Conclusions**

7. The intent of PC80 was to develop a stand-alone set of plan provisions that would allow the development of the Ngarara Farm in a planned way to meet the outcomes sought, including certainty for future consenting. The Ngarara Precinct incorporated into the Rural Zone of the operative District Plan achieves this intent.
8. The PDP has included the policies and appendices of the Ngarara Precinct from the operative District Plan, and with the Council Officer's recommended amendments, these closely reflect the operative District Plan provisions.

9. However, the PDP also places additional constraints over the planning process for the rural portions of the Ngarara Farm that are unnecessary and undermine the intent of the operative District Plan Ngarara Precinct rules and processes.
10. My preference is that the Ngarara Precinct is returned to being stand-alone provisions within the Rural Zone in the PDP that retains the integrity of principles, objectives, rules and planning process that was the intent of PC80.
11. To achieve this, amendments are required to the rules contained in the Ngarara Precinct of the PDP to ensure clarity with their applicability, and to make them more consistent with the operative District Plan rule provisions.
12. In my opinion, with the amendments to the rules I recommend, and the amendments to the policies recommended by the Council Officer, the Ngarara Precinct would include policies and rules in the Plan that are the most appropriate way to achieve the objectives (s.32(1)(b)).

## **INTRODUCTION**

### **Qualifications and experience**

13. My name is Christopher Adrian Hansen and I am a Director and Principal Planning Consultant with Chris Hansen Consultants Ltd. My qualifications and experience are outlined in my Primary Evidence (dated 22 March 2016) provided to the Hearings Panel for the General/Plan Wide hearings.

### **Code of conduct**

14. I have read the Code of Conduct contained in the Environment Court's Practice Notes for Expert Witnesses and even though this is a Council hearing, I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

### **Background to evidence preparation**

15. I provide the following statement of evidence in support of the submission lodged by Maypole on the Ngarara Precinct provisions that are included in Chapter 7 – Rural Environment of the PDP. I have assisted Maypole over a number of years with planning advice related to its proposed development.
16. I have visited the site and environs of the land which is the subject of Maypole's submissions, and as discussed in my Primary General Evidence dated 22 March 2016, I am generally familiar with land planning matters in Kapiti District through other consulting briefs.
17. In preparing this evidence I have read the following reports and evidence:
  - (a) Proposed Kapiti Coast District Plan 2012; Section 42A Report: Part A – Background and Process;
  - (b) Proposed Kapiti Coast District Plan 2012; Section 42A Report: Part B – Chapter 7 - Rural Environment and the attached documents.

## OVERVIEW OF MAYPOLE'S SUBMISSION

18. I have provided a background to the Ngarara Farm development in my Primary General Evidence, including the Mission for the development and an overview of Maypole's main submission points [No. 263].
19. The overall intent of Maypole's submission is to ensure the PDP provisions for the Ngarara Zone and Ngarara Precinct are consistent with the provisions introduced through PC80, now incorporated into the operative District Plan.
20. Through its submission Maypole seeks relief that in the event the provisions in the PDP conflict with those in PC80 (now incorporated into the operative District Plan), the latter shall prevail.
21. This evidence addresses matters raised by Maypole in relation to the Ngarara Precinct provisions of Chapter 7 – Rural Environment.

## PLANNING CONTEXT

22. In my Primary Evidence I provided a broader planning context relating to how the provisions developed through PC80 relating to the Ngarara Zone (including Neighbourhood Development Areas and Neighbourhood Development Plans) and the Ngarara Precinct had been made operative under the District Plan. I then discussed the extent to which PC80 had been given effect under the PDP.
23. I note s.31(1)(a) of the RMA outlines the functions of a territorial authority, for the purpose of giving effect to the Act, which include:

“The establishment, implementation, and review of objectives, **policies, and methods** to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.”

**(Emphasis added)**

24. Policies are the course of action to be pursued to achieve or implement the objectives included in the Plan (i.e. the path to be followed to achieve a certain, specified, environmental outcome). Policies are implemented through methods (often plan rules) so they need to be worded to provide clear direction to those making decisions on rules and those implementing methods. Policies have particular importance when considering non-complying activities under the s104D(1) tests.
25. Rules are the means by which policies will be implemented (often along with non-regulatory methods) and have the force and effect of a regulation (but are still subject to the principal Act). Rules must conform to common law principles and conventions regarding validity.
26. I consider that s.32(1)(b) of the Act requires proposed policies and methods (rules) to be evaluated to determine the extent to which they (as 'lower order' provisions) are the most appropriate way to achieve the purpose of the objectives (as the 'higher order' provisions as discussed in my Brief of Evidence dated 1 April 2016), which are in turn are required to meet the sustainable management purpose of the RMA.
27. I provide further comment on the role and purpose of policies and methods (including rules) later in my evidence.

#### **REVIEW OF THE OPERATIVE DISTRICT PLAN**

28. In my Primary General Evidence, I provided an overview of PC80. In summary, PC80 rezoned 280 hectares of land located within the Waikanae North Area, to Ngarara Zone and Ngarara Precinct in the Rural Zone, with a structure plan, objectives, rules and detailed provisions to enable development of the land into a number of neighbourhood areas.
29. The Ngarara Precinct introduced by PC80 covers that part of the Ngarara Farm which remains in the Rural Zone within the Eco-Hamlet Area north of the urban edge.

30. The Ngarara Precinct consists of clustered development areas surrounded by a balance of rural and conservation activities. The goal of the precinct is to retain the distinctive character of the site by the careful integration of built form with its rural coastal setting. Development within this precinct is limited to a total of 144 households in up to four Eco-Hamlets with the overall density being very low. The comprehensively designed Eco-Hamlets provide a rural living experience in a landscape which reflects and enhances the existing environment.
31. The Eco-Hamlets will not (normally) be serviced with water supply and wastewater disposal systems from the reticulated public services. Instead onsite supply, management and conservation techniques are to be used. The precinct is based on a Structure Plan within which are a series of Eco-Hamlets, as identified on the Ngarara Precinct Structure Plan map [Appendix 2 of operative District Plan]. The development of each Eco-Hamlet will be guided by specific management guidelines relating to Environmental Outcomes and anticipated form that dictate the form and nature of development, and overarching management principles.
32. The Ngarara Precinct provisions are incorporated within the Rural Zone and include:
  - (a) **Policy 6(b) – Waikanae North Eco-Hamlet Area** in Section 7.2 Rural Subdivision and Development – provides for low-impact rural subdivision (Eco-Hamlets) and development within the Eco-Hamlet Area is managed through structure plans to be developed and implemented through further plan changes. The policy includes 19 development principles to guide these plan changes.
  - (b) **Policy 6(c)** in Section 7.2 Rural Subdivision and Development – this policy ensures development within the Ngarara Precinct enables connection and integration with other land in the Eco-Hamlet Area and incorporates principles from Policy 6(b), and includes an Explanation to the Ngarara Precinct.

- (c) **Rule D.2.1.3 (B) xvii - Discretionary Activity** provides for all buildings and activities (including subdivision) in the Kukutauaki and Kawakahia Eco-Hamlets of the Ngarara Precinct as discretionary activities where all discretionary activity standards for the Ngarara Precinct are complied with.
- (d) **Rule D.2.2.1 Discretionary Activity Standards (vi)** has specific standards that relate to subdivision in the Ngarara Precinct of the Eco-Hamlet Area – these standards relate to:
- i. The maximum number of lots (144);
  - ii. Compliance with General Standards D.2.2.2;
  - iii. Encumbrances prohibiting further lot subdivision; on site domestic effluent disposal;
  - iv. An assessment of ecological health of the Kawakahia Wetlands;
  - v. The implementation of an integrated transport assessment; and
  - vi. Compliance with KCDC's Subdivision and Development Principles and Requirements.
- (e) Also within this section are Discretionary Activity Standards that relate specifically to development in the Kukutauaki and Kawakahia Eco-Hamlets of the Ngarara Precinct, including:
- i. Dwellings and structures and setback distances from the boundary of adjoining lots (at least 10m in distance and not exceeding 8 metres in height);
  - ii. Matters that a resource consent has to demonstrate for development in the Kukutauaki Eco-Hamlet including a 50m open space wetland buffer zone around the Kawakahia wetlands; mitigation of adverse effects on indigenous flora and fauna values and the ecological health of ecological sites;

ownership and management structures for the Eco-Hamlet; and Environmental Management Plan; individual platforms for each lot; roading infrastructure and development of house lots outside buffer areas sensitive to existing dunes; waste control structures; stormwater discharges treated;

iii. Buffer areas for development within the Kawakahia Eco-Hamlet that adjoins the Kawakahia Wetland.

(f) **Appendix 2** includes the Ngarara Precinct Structure Plan and the Eco-Hamlet Design Principles.

(g) **Appendix 3** includes the Ngarara Precinct Management Principles.

33. The purpose of providing you with this review of the operative District Plan provisions for the Ngarara Precinct is to highlight the level of detail the Precinct provisions encapsulate, and to demonstrate that while the Precinct sits within the Rural Zone, it is stand-alone and not subject to other provisions included within the operative District Plan.

#### **REVIEW OF NOTIFIED PDP**

34. The notified PDP adopts a new structure that includes:

(a) A separate section with district-wide objectives;

(b) A number of 'environments' that include issues; policies and methods, and some include district-wide provisions;

(c) A number of new provisions including overlays that apply across a number of 'environments';

(d) A separate section with general district-wide provisions; and

(e) District wide and zone specific rules listed in table form.

35. Due to this different structure, it is difficult to do a comparative assessment of the provisions of the PDP against the operative District Plan provisions. Notwithstanding this difficulty, below I have endeavoured to undertake such a

comparative assessment to assist the Commissioners understand the difference between the provisions of the Ngarara Precinct in the operative District Plan and the PDP.

### **Objectives**

36. The PDP includes 20 new objectives. There are no objectives included in Chapter 7 – Rural Environment and no objectives in Chapter 2 that specifically relate to the Ngarara Precinct or Eco-Hamlets. In some ways this is not surprising as the Rural Zone in the operative District Plan does not contain any specific objectives relevant to the Ngarara Precinct or Eco-Hamlets. There are a number of objectives in the PDP that have ‘wider’ application to the rural environment and therefore they are likely to be relevant to the Ngarara Farm:
- (a) Objective 2.6 – Rural Productivity – in relation to sustaining the primary production potential of the land;
  - (b) Objective 2.9 – Landscapes – relating to protecting landform and valued landscapes;
  - (c) Objectives 2.11 – Character and amenity – relating to protecting the unique character of the District;
  - (d) Objective 2.12 – Housing choice and affordability – relating to meeting diverse community needs by increasing the amount of housing;
  - (e) Objective 2.18 – Open spaces/active communities – requirement to protect District’s cultural, ecological and amenity values and enhancement of open spaces; and
  - (f) Objective 2.19 – Urban design – liveable and safe public and private spaces.
37. I have addressed Maypole’s submission points on the objectives in my Brief of Evidence on Chapter 2 – Objectives [dated 1 April 2016], and I do not intend to comment on the objectives in relation to the Ngarara Precinct any further.

## **Zone Descriptions**

38. The introduction to Chapter 7 – Rural Environment provides a description of the Rural Zone, and five zones within the Rural Zone which are based on their individual character and anticipated uses. One of these zones is the Rural Eco-Hamlet Zone which comprises the land adjacent to identified urban growth areas at Waikanae North and Otaki (which include consolidated sand dunes, interdune sandplains and wetlands) and shares similar physical characteristics with the Rural Dunes Zone.
39. The Zone Description states:

“The intention is to provide a buffer or transition between the proposed urban area and the wider rural environment. New buildings in the Rural Eco-Hamlet Zone will be clustered with existing buildings and should not be visible from the beach or State Highway 1. Development should entail minimal disturbance to the natural contours and any significant cultural and ecological features of the area. While some development is anticipated to be clustered, the overall density of development should be relatively low so as to retain the area’s sense of openness.”

## **Policies**

40. Chapter 7 – Rural Environment has 24 Policies, with two particularly relevant to the Ngarara precinct:
- (a) Policy 7.17 – Rural Eco-Hamlet Zone – requires subdivision and development to be undertaken in accordance with an approved Structure Plan, consistent with the following principles listed in the policy:
- a) ensure that landform dictates the shape and design of roads, lots and location of buildings to minimise landform modification;
  - b) minimise disturbance to sensitive natural features including preventing sedimentation of any waterbodies;
  - c) use infrastructure and other services efficiently, maximise water and energy efficiency and minimise light pollution while ensuring public health is maintained;

- d) incorporate the use of local renewable energy generation systems where practicable;
- e) reflect local character, in buildings, including having cladding and colour schemes that are in harmony with the natural landscape and having low reflective qualities;
- f) retain an appropriate overall rural-type density and ratio of development intensity to open space and retain larger balance lots to enable land to be utilised for a range of primary production activities;
- g) integrate stormwater treatment and management systems into the landscape to minimise storm-water runoff resulting from development and protect water quality, and any associated native ecosystems or habitats;
- h) ensure that individual lots are landscaped and planted in a manner that that reduces the visual bulk of buildings, integrates buildings into the landscape, provides shade and windbreaks, and maintains visual privacy;
- i) limit the planting of hedges and shelter belts along property boundaries;
- j) maintain sufficient separation distance between buildings and vegetation and regionally significant infrastructure;
- k) maintain and the ecological health of water bodies, wetlands and aquatic habitats and prevent the degradation of environmentally sensitive areas, native flora and fauna;
- l) retain and enhance blue and green corridors (waterways and native bush areas) as a feature of the zone;
- m) integrate the protection of areas of historic heritage and sensitive natural features; and
- n) provide an integrated transport network which enables for walkable communities with generous provision for walking, cycling and horse riding trails.

(b) Policy 7.18 – Ngarara Precinct which reads:

Ensure that development in the Ngarara Precinct enables connections to and integration with other land in the Rural Eco-Hamlet zone and incorporates the principles outlined in Policy 7.17 and is developed in accordance with the Ngarara Precinct Structure Plan (Rural Appendix 7.2) and Ngarara Precinct Management Principles (Rural Appendix 7.3).

41. From a brief comparative review of the operative District plan provisions with the PDP provisions, I note the following:
  - i. The Zone Description in the operative District Plan specific to the Ngarara Precinct has been discarded, and a more generic description of the Eco-Hamlet Zone has been incorporated into the PDP;
  - ii. When comparing the principles contained in Policy 6(b) with the principles contained in Policy 7.17, I note that 11 of the 19 principles have been carried over in full or in part. Only one new principle is added to Policy 7.17 – principle n) relating to an integrated transport network. I can find no clear reason why some principles have been adopted, and others discarded.
  - iii. Policy 6(c) has been carried over into Policy 7.18, with the addition of the references to Appendix 7.2 and 7.3.
  
42. Overall in my opinion the PDP policies are more complex and cover a wider range of matters than the operative District Plan policies. This is because there are a number of district-wide policies that apply to rural matters, as well as the two policies within the Rural Zone specific to the Ngarara Precinct. In relation to the Ngarara Precinct policies, similar to the Ngarara Zone provisions I discussed in my Brief of Evidence on Chapter 5 – Living Environment [dated 30 April 2016], some aspects (design principles) have been incorporated into Policy 7.17, and some have been discarded. I consider there are aspects of the intent of the operative District Plan provisions specific to the Ngarara Precinct that have been lost through carrying only part of the Ngarara Precinct provisions into the PDP.

## Rules

43. The rules and standards included in Section 7.1.2 of the PDP apply to all Rural Zones across the District. Specific Ngarara Precinct rules and standards are included in Rule 7A.1.10; 7A.3.6 and 7A.5. In Rule 7A.0 – Applicability of Rules 7.1 – 7.6, the following matters should be noted:
- (a) Rules 7.1 – 7.6 only apply to the land within the Rural Zones;
  - (b) Rules in Chapters 3, 9, 11 and 12 apply to all activities across the District and also may apply; and
  - (c) Rules in Chapters 3, 4, 9, 10 and 11 that apply to special features identified on the Planning Maps also may apply.
44. The Notes concerning the applicability of the rules states that the rules identified above in (b) and (c) may identify the activity as (or result in the activity being) a different activity category than that expressed in the Rural Zone rules (including the Ngarara Precinct).
45. The following is a brief summary of the activity status of the rules specific to the Ngarara Precinct:
- (a) Permitted Activities:
    - i. Rule 7A.1.4. - Buildings and structures in all rural zones except in the Paraparaumu North Rural Precinct:
      - a) including habitable buildings and accessory buildings on any lot; and
      - b) the relocation of buildings that:
        - i. are up to and including 15 years old; or
        - ii. have a gross floor area up to and including 30m<sup>2</sup>;
- subject to listed permitted activity standards; and

- ii. Rule 7A.1.10 - Buildings and development in the Rural Eco Hamlet zone including the Ngarara Precinct subject to listed permitted activity standards. I note that apart from Permitted Activity Standard 3. a) – f), all of the other permitted activity standards are new (i.e. not carried over from the operative District Plan).

(b) Restricted Discretionary Activities:

- i. Rule 7A.3.6 All buildings and activities in the Kukutauaki and Kawakahia Eco-Hamlets of the Ngarara Precinct where all discretionary activity standards for the Ngarara Precinct are complied with. I note that all of the Restricted Discretionary Activity standards have been carried over from the operative District Plan (Discretionary Activity Standards). However, I also note the matters over which Council has restricted its discretion are all new.
- ii. Rule 7A.3.7 Subdivision in the Ngarara Precinct of the Rural Eco-Hamlet Zone (as shown in Appendix 7.2 and 7.3). I note that all of the Restricted Discretionary Activity standards have been carried over from the operative District Plan (Discretionary Activity Standards). However, I also note the matters over which Council has restricted its discretion are all new.

(c) Non-Complying Activities:

- i. Rule 7A.5.1 All activities which are not permitted, controlled, discretionary or prohibited or which do not comply with two or more permitted or controlled activity standards or one or more restricted discretionary activity standards in all Rural Zones;
- ii. Rule 7A.5.4 Subdivision in any rural zone which does not comply with one or more of the restricted discretionary activity subdivision standards.

46. Appendix 7.2 – Ngarara Precinct Structure Plan and 7.3 – Ngarara Precinct Management Principles in the PDP are copied from the operative District Plan.

47. As I will discuss below in my comparative assessment of the provisions:
- (a) There are more permitted activity standards included in the PDP, with many standards that are new to the Ngarara Precinct provisions included in the operative District Plan;
  - (b) There is a new restricted discretionary activity and while the standards adopted are from the operative District plan, new matters of discretion have been included;
  - (c) The non-complying 'default' rule for activities that do not comply with two or more permitted activity standards and one or more restricted activity standards in all Rural Zones; and subdivision that does not comply with one or more of the restricted discretionary activity subdivision standards are new.
48. Overall there are a large number of inconsistencies in the Ngarara Precinct provisions between the operative District Plan and the PDP provisions, which I will discuss in below. While the differences between the operative District Plan and PDP provisions might not be as pronounced as with the Ngarara Zone provisions, I consider the differences are still unacceptable and create issues of uncertainty and complexity for Maypole as the developer of the Ngarara Precinct in the future that was not included in the operative District Plan provisions.

#### **REVIEW OF MAYPOLE'S SUBMISSION POINTS**

49. Maypole made four submission points on Chapter 7 Rural Environment:
- (a) **Policies 7.17 and 7.18** – Maypole submitted it has been through a comprehensive Plan Change process for the Ngarara Precinct and it is appropriate that the policy framework in the PDP reflects recent work. Maypole sought for policies 7.17 and 7.18 to be amended so they are consistent with those for the Ngarara Precinct in PC80 subsequently made operative and incorporated into the current District Plan.

- (b) **Rules 7.0 to 7.6** – Maypole submitted that it had been through a comprehensive Plan Change process for the Ngarara Precinct and it is appropriate that the rule framework in the PDP reflects recent work. Maypole sought for Rule 7.0 and Rules 7A.1 to 7A.6 to be amended so they are consistent with those for the Ngarara Precinct in PC80 subsequently made operative and incorporated into the current District Plan, and it is clear that the rules in other chapters of the PDP are not applicable to the Ngarara Precinct.
- (c) **Appendix 7.2** – Maypole submitted that it has been through a comprehensive Structure Planning process for the Ngarara Precinct and it is appropriate this is carried across into the PDP. Maypole sought for Appendix 7.2 to be retained to the extent it is consistent with the Structure Plan in PC80 subsequently made operative and incorporated into the current District Plan.
- (d) **Appendix 7.3** – Maypole submitted that it has been through a comprehensive Structure Planning process for the Ngarara Precinct and it is appropriate this is carried across into the PDP. Maypole sought for Appendix 7.3 to be retained to the extent it is consistent with the Ngarara Precinct Management Principles in PC80 subsequently made operative and incorporated into the current District Plan.

#### **REVIEW OF S.42A REPORT COMMENT AND RECOMMENDATION**

- 50. I have reviewed the s.42A Report relating to Maypole's submission points on the relevant Chapter 5 provisions identified above. I address the Council Officer's views on Maypole's submission in that report as follows.

#### **Policies 7.17 and 7.18**

- 51. The s.42A Report recognises Maypole's submission on Policy 7.17 in paragraph [10056] (page 329) and in paragraph [10065] (page 330) agrees that the wording of Policy 7.17 should be amended so that it is generally more consistent with PC80. However, the Council Officer considers that it is not appropriate or necessary to include clauses xv), xvi) and xvii) of Operative District Plan Policy 6(b) which relate to development minimising its carbon

footprint, designing new dwellings to minimise fire risk, and providing for management of domestic animals.

52. The s.42A Report recommends Maypole's submission be **accepted in part** in paragraph [10073] (page 332) insofar as it is recommended that Policy 7.17 is amended to be more consistent with Policy 6(b) of the Operative District Plan. The recommended amendments to Policy 7.17 are included in paragraph [10075] (page 333).
53. The s.42A Report recognises Maypole's submission on Policy 7.18 in paragraph [10076] (page 334) and in paragraph [10077] (page 334) agrees that the wording of Policy 7.18 should be amended so that it is consistent with Policy 6(b) and Policy 6(c) of the Operative District Plan, which were introduced as part of PC80. This includes inserting clauses (vii) and (viii) of Policy 6(b) into Policy 7.18.
54. The s.42A Report recommends Maypole's submission be **accepted** in paragraph [10078] (page 334) insofar as it is recommended that Policy 7.18 is amended to be more consistent with Policy 6(b) and Policy 6(c) of the Operative District Plan. The recommended amendments to Policy 7.18 are included in paragraph [10079] (page 334).

#### **Rules 7.0 to 7.6**

55. The s.42A Report recognises Maypole's submission in paragraph [244] (page 78) and in paragraphs [247 - 249] (page 79) assesses the submission points being made. The Council Officer records that in 2013 discussions between Council Staff and Maypole's Planner (Mr Michael Hall – letter included in Attachment 3 to the s.42A Report) developed wording that was agreed to in order to resolve Maypole's submission. The Council Officer disagrees with the suggested wording and instead considers that the wording in Rule 7.0 should be amended to exempt activities proposed to be undertaken in accordance with a resource consent granted under Rule 7A.3.6 for buildings and activities in the Kukutauaki and Kawakahia Eco-Hamlets of the Ngarara Precinct, and for subdivision within the Ngarara Precinct under Rule 7A.3.7.

56. In paragraph [250] (page 79) the s.42A Report recommends Maypole's submission be **accepted in part** insofar as Rule 7.0 is recommended to be amended, as set out in paragraph [251] (page 80):

Rule 7.0 Applicability of Rules 7A.1 to 7A.6

Rules 7A.1 – 7A.6 ~~shall~~ apply only to land within the Rural Zones. For the avoidance of doubt, where a *site* comprises more than one zoning, the provisions of each *zone* shall be considered for those parts of the *site* within each *zone*. Unless otherwise specified, all rules, standards and matters of control/discretion shall apply to all Rural Zones. Where there is a conflict between any rule or standard in this chapter and any other chapter, the more stringent rule or standard shall apply except where the proposed activity is undertaken in accordance with conditions of a resource consent granted under Rule 7A.3.6 or Rule 7A.3.7.

57. I note the second part of Maypole's submission on the rules – the request for the rules of the PDP to be consistent with those in PC80 subsequently made operative and incorporated into the current District Plan – has not been assessed in the s.42A Report, and I can find no recommendation regarding this request.

**Appendices 7.2 and 7.3**

58. The s.42A Report recognises Maypole's submission on Appendix 7.2 in paragraph [10180] (page 356) and Appendix 7.3 in paragraph [10184] (page 356) and assesses these submissions in paragraphs [10181] (page 356) and [10185] (page 356) respectively.
59. The s.42A Report recommends in paragraphs [10182] (page 356) and [10186] (page 357) Maypole's submission be **accepted**. There are no recommended amendments.

**PLANNING COMMENT**

60. As I outlined in the Planning Context (paragraphs [23] to [27] above), the policies and rules (methods) are required to be the most appropriate way of achieving the objectives (s.32(1)(b)) which are required to be the most appropriate way of achieving the purpose of the RMA (s.32(1)(a)). I have

addressed Maypole's concerns relating to the Objectives in Chapter 2 and the need for them to provide for appropriate subdivision, use and development in my Brief of Evidence dated 1 April 2016. My main focus in my evidence is to review the policies and rules (methods) to determine whether they are the most appropriate way of achieving the objectives.

61. As outlined by Maypole in its submission, the provisions of the PDP are critical for the ongoing development of the Ngarara Precinct as intended by PC80.

#### **Rule 7.0 Applicability of Rules 7A.1 to 7A.6**

62. The intent of Maypole's submission is to ensure that only the rules and standards applicable to the Ngarara Precinct in Rural Zone apply to subdivision, development and activities in the Eco-Hamlets identified. This is the clear intent of PC80 which was subsequently incorporated into the current District Plan. However, Rule 7.0 Applicability of Rules 7A.1 to 7A.6 included references to other chapters and mechanisms (includes rules and special items) in those chapters that apply to activities in the Rural Zones.
63. In my opinion, it is not acceptable or appropriate for subdivision, development and activities in the Ngarara Precinct to be subject to the provision of other Chapter provisions. The primary reason for this being that PC80 has been through a comprehensive and robust planning process, and the stand-alone provisions of the Ngarara Precinct incorporated into the operative District Plan should not be subject to other provisions in other Chapters of the PDP.
64. The s.42A Report provides a commentary on the earlier efforts by the Council Staff and Maypole's Planner to get suitable wording to resolve this concern. The Council Planner in paragraph [247] (page 79) provides the wording agreed to, and in paragraph [249] identifies an issue with the agreed wording being reference to an approved Neighbourhood Development Plan.
65. I agree with the Council Planner that the wording that was developed by Council Staff and the Maypole Planner in 2013 is not appropriate as it has wrongly linked the exemption to meeting the rules and standards in another Chapter with an approved Neighbourhood Development Plan. The Ngarara Precinct is not subject to the requirement to prepare a Neighbourhood Development Plan, and therefore the proposed wording is incorrect.

66. To resolve this matter, the Council Officer recommends wording in paragraph [251] (page 80) as I have outlined in paragraph [56] of my evidence above. This wording links the exemption to the rules and standards in other Chapters of the PDP to where the proposed activity is undertaken in accordance with conditions of a resource consent granted under Rule 7A.3.6 (all buildings and activities) or Rule 7A.3.7 (subdivision).
67. However, I consider the wording proposed by the Council Officer does not address the concern raised by Maypole in its submission (as I have outlined in paragraph [62] above), and is not lawful. I fail to see how the wording proposed assigns precedence to the provisions of the Ngarara Precinct over the other provisions of the PDP.
68. Furthermore, the proposed wording places a requirement for an activity to have a resource consent to be gained under Rule 7A.3.6 or Rule 7A.3.7 to give it status. It is my understanding that a resource consent cannot (as a matter of law) change the effect of rules or other provisions under a plan. Either the consent provides a right, or it does not. In this decision on *Queenstown Airport Corporation Limited v Queenstown Lakes District Council*<sup>1</sup>, the Environment Court found that rules which require an activity to comply with a resource consent (which in itself is not a standard, term or condition in the plan) in order to achieve a particular activity status are ultra vires<sup>2</sup>.
69. In my Brief of Evidence to Chapter 5 – Living Environment (paragraphs [91] to [97]) I have addressed this applicability clause issue in relation to the Ngarara Zone. I consider the similar words can be adopted for an exemption to the rules and standards of other chapters applying to the Ngarara Precinct.
70. I recommend Rule 7.0 Applicability of Rules 7.1 – 7.6 be amended as follows (underlined to be added):

Rules 7.1 – 7.6 shall apply only to land within the Rural Zones. For the avoidance of doubt, where a site comprises more than one zoning, the provisions of each zone shall be considered for those parts of the site within

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<sup>1</sup> [2014] NZEnvC 93

<sup>2</sup> Ibid, Para [179]

each zone. Unless otherwise specified, all rules, standards and matters of control/discretion shall apply to all Rural Zones. Where there is a conflict between any rule or standard in this chapter and any other chapter, the more stringent rule or standard shall apply. Except, no other rule or standard in any other Chapter of this Plan applies to activities provided for in the Ngarara Precinct.

### **Rules 7A.1 to 7A.6**

71. Maypole in its submission requested Rules 7A.1 to 7A.6 be amended so they are consistent with those in PC80 subsequently made operative in and incorporated into the current District Plan. As I have discussed in paragraph [57] above, the Council Officer has not addressed this matter in their assessment or recommendations. As I have also highlighted in my evidence above, there are a number of differences between the Ngarara Precinct rules in the operative District Plan and the PDP. I note the key differences are:
- i. The PDP provides for buildings and development in the Ngarara Precinct as permitted activities, subject to permitted activity standards – the operative District Plan provided for buildings and activities in the Kukutauaki and Kawakahia Eco-Hamlets of the Ngarara Precinct as discretionary activities, subject to discretionary activity standards;
  - ii. The PDP provides for all buildings and activities in the Kukutauaki and Kawakahia Eco-Hamlets of the Ngarara Precinct as restricted discretionary activities where all discretionary activity standards for the Ngarara Precinct are complied with – the operative District Plan provides for all buildings and activities in the Kukutauaki and Kawakahia Eco-Hamlets of the Ngarara Precinct as discretionary activities where all discretionary activity standards for the Ngarara Precinct are complied with;
  - iii. The PDP provides for subdivision in the Ngarara Precinct of the Rural Eco-Hamlet Zone as a restricted discretionary activity, subject to standards – while the operative District Plan does not specifically provide for subdivision, it did include discretionary activity standards and it is likely subdivision is provided for as a discretionary activity;

- iv. The PDP introduces non-complying activity status for activities that do not comply with two or more permitted activity standards and one or more restricted activity standards in all Rural Zones; and subdivision that does not comply with one or more of the restricted discretionary activity subdivision standards are new – the operative District plan does not have a non-complying default rule.
72. From the above summary of the key differences, I wish to make a number of comments regarding the PDP rule regime:

*Permitted Activity Rule 7A.1.10 – Buildings and development in the Rural Eco-Hamlet zone including the Ngarara Precinct*
73. While overall I support permitted activity Rule 7A.1.10, I have a number of concerns regarding the rule. Firstly, it is not clear to me how Rule 7A.1.10 relates to Rule 7A.3.6. It seems to me there is a clear intent for Rule 7A.1.10 to provide for buildings and development as a permitted activity if the standards are met. However, Rule 7A.3.6 seems to also provide for buildings and activities (as opposed to development) as a restricted discretionary activity, but subject to different standards. This is confusing.
74. Furthermore, I note that apart from Standard 3 a) – f), all of the permitted activity standards included in rule 7A.1.10 are new and are not included in any of the operative District Plan provisions (including the Structure Plan and Management Principles). Therefore, the workability and appropriateness of these permitted activity standards have not been tested in the context of the specific objectives and policies for Ngarara Precinct.
75. I consider the above matters need addressing in order to provide clarity and certainty to Maypole as the developer of the Ngarara Precinct.

*Rule 7A.3.6 All buildings and activities in the Kukutauaki and Kawakahia Eco-Hamlets of the Ngarara Precinct as restricted discretionary activities where all discretionary activity standards for the Ngarara Precinct are complied with*
76. I support the PDP including these activities as restricted discretionary activities, and I note the standards are carried over accurately from the operative District Plan discretionary activity standards.

77. I note the matters over which council will restrict its discretion are new. I question the appropriateness of these matters which have essentially already been considered as part of the extensive PC80 process when the Ngarara Precinct Structure Plan and Management Principles were developed. I consider it is more appropriate that the matters over which Council will restrict its discretion to is compliance with the approved Structure Plan included in Appendix 7.2, and the Management Principles included in Appendix 7.3. That is the purpose of these appendices.

78. I recommend the matters over which Council will restrict its discretion to are deleted, and replaced with the level of compliance the proposed buildings or activities have with Appendix 7.2 and appendix 7.3.

*Rule 7A.3.7 Subdivision in the Ngarara Precinct of the Rural Eco-Hamlet Zone (as shown in Appendix 7.2 and 7.3).*

79. The same comments apply as per Rule 7A.3.6 above. I note the standards included in the rule are carried over accurately from the operative District Plan discretionary activity standards. However, as above, I consider it is more appropriate that the matters over which Council will restrict its discretion to is compliance with the approved Structure Plan included in Appendix 7.2, and the Management Principles included in Appendix 7.3. That is the purpose of these appendices.

80. I recommend the matters over which Council will restrict its discretion to are deleted, and replaced with the level of compliance the proposed buildings or activities have with Appendix 7.2 and appendix 7.3.

*Rule 7A.5 Non Complying Activities*

81. While the PDP has provided for activities within the Ngarara Precinct as permitted or restricted discretionary activities, not meeting two or more permitted activity standards or one or more restricted discretionary standards means the activity becomes non-complying. I note the PDP does not provide for any activities as Discretionary in the Rural Zone.

82. I consider a non-complying activity default rule is onerous and unnecessary for the Ngarara Precinct. Through the PC80 process, discretionary activity status was considered all that was necessary to consider the effects of any development in accordance with the Structure Plan and Management Principles, and I see no reason why non-complying activity status is not required.
83. I recommend a discretionary activity rule be introduced into the Rural Zone provisions to provide specifically for activities within the Ngarara Precinct that do not comply with two or more permitted activity standards, and one or more restricted discretionary activity standards.

### **Appendices 7.2 and 7.3**

84. Maypole supported the inclusion of Appendix 7.2 and 7.3 in the PDP to the extent they were consistent with the Structure Plan and Management Principles for the Ngarara Precinct in the operative District Plan. My understanding is that both appendices have been carried over into the PDP without any changes.
85. The Council Officer accepts Maypole's submission and recommends no amendments be made to Appendix 7.2 or 7.3. I support this recommendation, and seek the Commissioners to adopt it.

### **CONCLUSION**

86. In intent of PC80 was to develop a stand-alone set of plan provisions that would allow the development of the Ngarara Farm in a planned way to meet the outcomes sought, including certainty for future consenting. The Ngarara Precinct incorporated into the Rural Zone of the operative District Plan achieves this intent.
87. The PDP has included the policies and appendices of the Ngarara Precinct from the operative District Plan, and with the Council Officer's recommended amendments, these closely reflect the operative District Plan provisions.

88. However, the PDP also places additional constraints over the planning process for the rural portions of the Ngarara Farm that are unnecessary and undermine the intent of the operative District Plan Ngarara Precinct rules and processes.
89. My preference is that the Ngarara Precinct is returned to being stand-alone provisions within the Rural Zone in the PDP that retains the integrity of principles, objectives, rules and planning process that was the intent of PC80.
90. To achieve this, amendments are required to the rules contained in the Ngarara Precinct of the PDP to ensure clarity with their applicability, and to make them more consistent with the operative District Plan rule provisions.
91. In my opinion, with the amendments to the rules I recommend, and the amendments to the policies recommended by the Council Officer, the Ngarara Precinct would include policies and rules in the Plan that are the most appropriate way to achieve the objectives (s.32(1)(b)).

**17 May 2016**

**Chris Hansen**