

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 9 Hazards

BETWEEN **MAYPOLE ENVIRONMENTAL LIMITED**

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

AND **KAPITI COAST DISTRICT COUNCIL**

Local Authority

**PRIMARY EVIDENCE OF CHRISTOPHER ADRIAN HANSEN
ON CHAPTER 9 HAZARDS FOR MAYPOLE ENVIRONMENTAL LIMITED**

28 July 2016

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 provisions included in Chapter 9 Hazards of the Proposed Kapiti Coast District Plan (**PDP**) that affect the Ngarara Farm site, and in particular:
 - (a) Policy 9.12 – High Hazard Flood Areas;
 - (b) Rules 9B.2.1; 9B.4.1 - Flood Storage Area Provisions;
 - (c) Rules 9B.1.3; 9B.1.4; 9B.3.1; 9B.3.2; 9B.4.1 - Ponding Area Provisions;
 - (d) Rules 9B.1.2; 9B.1.4; 9B.1.5; 9B.2.2; 9B.4.2; 9B.5.3; 9B.5.4 - Stream Corridor Provisions;
 - (e) Rule 9A.5 Noncomplying Rule for Multiple Hazards;
 - (f) Maps 6, 7 and 9 - Overlays – Stream Corridor Areas; Storage Areas; Ponding Areas;

- (g) Rules relating to subdivision for reserves to be vested in Council.
4. I note in my evidence below that the Ngarara Farm site is subject to separate hazard provisions in the operative District Plan that are not contained within the Ngarara Zone and Ngarara Precinct. However, flood hazards have been addressed in detail in PC80 through the preparation and approval of the Structure Plan, the approval of Neighbourhood Development Areas, and the discretionary activity consent required for a Neighbourhood Development Plan. This latter consent is able to consider these matters again, if new information becomes available.
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 hazard provisions included in the operative District Plan;
 - (c) A review of the notified PDP provisions;
 - (d) A review of the matters relating to Chapter 9 Hazards raised by Maypole in its submission, and the relief sought;
 - (e) A review of the s.42A Reports recommendation regarding the PDP provisions; and
 - (f) My planning comment.
6. As discussed in my Primary General Evidence, I rely on the statement provided Mr Jon Smith, the landowner, dated 7 April 2016, regarding Maypole's project development to date, and future development plans and aspirations.

Conclusions

7. 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.
8. My preference is that the Ngarara Zone and Ngarara precinct is incorporated into the PDP as independent plan provisions that retain the integrity of principles, objectives, rules and planning process that was the intent of PC80.
9. I do not consider the hazard provisions included in Chapter 9 are necessary or appropriate for the Ngarara Farm Site, which has its own unique consenting regime that already allows for stream corridors, flood storage areas and ponding areas to be considered and reviewed if new information becomes available.
10. I continue to be of the opinion that the operative District Plan provisions are 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 Resource Management Act 1991 (**RMA** or **the Act**) (s.32(1)(a)). I do not consider the Chapter 9 policy and rule provisions, even if amended, are the most appropriate way of achieving the objectives, for reasons I discuss below.

INTRODUCTION

Qualifications and experience

11. 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

12. 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

13. I provide the following statement of evidence in support of the submission lodged by Maypole on the provisions that are included in Chapter 9 Hazards of the PDP. I have assisted Maypole over a number of years with planning advice related to its proposed development.
14. 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.
15. 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 9 Hazards

OVERVIEW OF MAYPOLE'S SUBMISSION

16. 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].
17. 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.
18. 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.
19. This evidence addresses matters raised by Maypole in relation to the Ngarara Precinct provisions of Chapter 9 – Hazards.

PLANNING CONTEXT

20. As with my previous briefs of evidence, 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]

21. 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.

22. 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.
23. Methods may also include other planning mechanism that are regulatory or non-regulatory. Of particular relevance to this evidence are the methods adopted by Council to implement objectives and policies, including Overlays included on the Planning Maps (i.e. Stream Corridor Areas; Storage Areas; and Ponding Areas);
24. 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 required to meet the sustainable management purpose of the RMA.
25. 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

26. 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 development areas.
27. These hearings are specifically focussed on hazards, I note the Ngarara Farm is subject to the provisions of Section C.15 Natural Hazards of the operative District Plan. In particular, parts of the Ngarara site have ponding (blue) and storage (orange) notations shown on the Map 03 Natural Hazards, as shown in Figure 1 below:

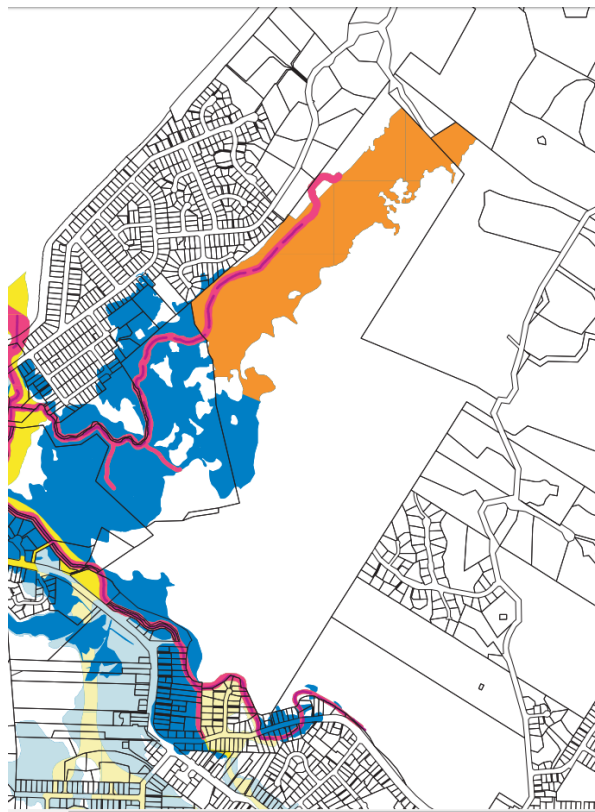


Figure 1: Planning Map 03 Natural Hazards

28. The following are the relevant hazard provisions of Section C.15 Natural Hazards that apply to the Ngarara Farm:

- (a) **Objective 1** – to manage activities and development within natural hazard prone areas so as to avoid or mitigate the adverse effects of natural hazards;
- (b) **Policy 1** that intends to permit subdivision and development where the effects of natural hazards can be avoided, remedied or mitigated;
- (c) **Policy 2** that Ensure services are designed to resist natural hazard event;
- (d) **Policy 3** that intends to Ensure appropriate uses, zones and performance standards are developed for areas known to be liable to flooding ...;
- (e) **Policy 4** that intends to Ensure there are flood and erosion free building sites within newly created allotments;
- (f) **Policy 9** that requires when assessing discretionary activities within a river corridor, ponding area, overflow path, flood erosion area or flood storage area consider the following:
 - The effects of the development on the flood hazard - in particular flood levels and flow
 - Whether the development redirects floodwater onto adjoining sites or other parts of the floodplain.
 - Whether the development reduces storage capacity and causes adverse effects on adjoining sites or other parts of the floodplain.
 - Whether access to the site/development will adversely effect the flood hazard
- (g) **Methods**
 - Rules and Performance Standards.
 - Identify the 1 in 100-year flood event and flood storage areas on District Plan Maps.
 - Identify hazard categories - river corridor and overflow paths.
 - Building Consent Controls (Building Act 2004).

- Consent notices on the title (Section 221 RMA) may be used where development is to take place on properties known to be subject to a natural hazard, to inform future owners of the risk associated with the property.
- Identify on District Plan Maps areas known to be liable to flooding, including flood storage areas, areas subject to erosion, and faults.
- Education (through Civil Defence initiatives such as disaster response training/exercises).

29. I note in particular the operative District Plan does not contain hazard specific rules, but includes the consideration of hazards as a permitted activity standard, or a matter of discretion when considering a discretionary activity. The intention of Maypole's submission is to ensure the PDP has a similar level of provisions relating to the Ngarara Farm site as the operative District Plan.

REVIEW OF NOTIFIED PDP

30. As I have discussed in my previous evidence, 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 which 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.

31. Due to this different structure, it is difficult to undertake 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 operative District Plan and the PDP.

Objectives

32. The PDP includes 20 new objectives. There are no objectives included in Chapter 9 Hazards. There are two objectives in Chapter 2 of the PDP that have 'wider' application to hazards and therefore they are likely to be relevant to the Ngarara Farm site:
- (a) **Objective 2.3 c)** – Development Management – relating to resilient communities where development does not result in an increase in risk to life or severity of damage to property from natural hazard events;
 - (b) **Objective 2.5** – Natural Hazards – relating to ensuring the safety and resilience of people and communities by avoiding exposure to increased levels of risk from natural hazards, while recognising the importance of natural processes and systems;
33. 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.

Policies

34. Chapter 9 Hazards has 7 General Policies and 6 Specific Policies relating to flood hazards, with the following particularly relevant to the Ngarara Farm site:

General

- (a) **Policy 9.1** – Identify hazards - on planning maps;
- (b) **Policy 9.2** – Risk-based - Approach to all hazards, including flooding, by developing high risk categories;
- (c) **Policy 9.3** – Hazards Prone Areas – new subdivision and development to avoid hazard prone areas;
- (d) **Policy 9.4** – Precautionary Approach - to be taken to subdivision and development where there is uncertainty about the potential effects of a hazard until further detailed information on the extent and nature of the hazard becomes available;

- (e) **Policy 9.5** – Protect via Natural Buffers - natural features which have the effect of reducing hazard risk by buffering development from natural hazards will be protected;

Specific

- (f) **Policy 9.8** – Flood Mapping;
- (g) **Policy 9.9** – Flood Risk Categories;
- (h) **Policy 9.10** – Flood and Erosion Free Building Sites – all new subdivisions based on 1 in 100-year flood;
- (i) **Policy 9.11** – Flood Risk Levels;
- (j) **Policy 9.12** – High Hazard Flood Areas - development in the river and stream corridor, overflow path, flood erosion and flood storage areas will be avoided unless the 1 in 100-year risk can be completely mitigated on-site to avoid damage to property or harm to people;
- (k) **Policy 9.13** – Ponding, Residual Ponding, Fill Control Areas - when assessing application for subdivision or development within a ponding, residual ponding or fill control area consider the following:
 - a) the effects of the development on existing flood mitigation structures;
 - b) the effects of the development on the flood hazard – in particular flood levels and flow;
 - c) whether the development redirects floodwater onto adjoining sites or other parts of the floodplain;
 - d) whether access to the site/development will adversely affect the flood hazard.
 - e) the extent to which buildings can be located on areas of the site not subject to flooding.
 - f) whether any subdivision or development will or may result in damage to property or harm to people.

35. From a brief comparative review of the operative District Plan provisions with the PDP provisions, I note the following:
- (a) The operative District Plan provisions are enabling and intend to provide for subdivision and development within areas that may be subject to hazards;
 - (b) The PDP provisions are restricting and focus on the identification of hazards, establishing risk categories, management of risks, and avoiding subdivision and development within areas prone to hazards.
36. Overall in my opinion, the PDP policies are more prescriptive and risk based, and add a new level of complexity that is required in any subdivision and development consent applications.

Rules

37. The rules and standards included in Section 9B of the PDP apply to all land and activities in all Zones across the District, unless otherwise specified. There are no specific Ngarara Farm rules and standards included in Chapter 9. In Rule 9B.0 – Applicability of Rules 9B.1 – 9B.6, the following matters should be noted:

[1] Notwithstanding the activity category defined by Rules 9B.1 – 9B.6, attention is drawn to rules

- (a) in Chapters 3, 9, 11 and 12 which apply to matters which apply across all zones in the District – for example, transport; and
- (b) in Chapters 5, 6, 7 and 8 that apply to specific land use Zones in the District – for example the Rural Plains Zone and the Open Space (Recreation) Zone.

The rules in these chapters may identify the activity as (or result in the activity being) a different activity category than expressed below

38. The following is a brief summary of the activity status of the rules included in the PDP specific to the Ngarara Farm:

(a) Permitted Activities:

- i. **Rule 9B.1.2** - Any building or structure in any zone subject to standards – separation from water bodies;
- ii. **Rule 9B.1.3** – New or relocated buildings within ponding areas subject to meeting standards – floor level above 1 in 100-year flood event level;
- iii. **Rule 9B.1.4** – Earthworks in ponding areas and stream corridors subject to meeting standards – ponding areas – not disturb more than 20m³ volume in 10-year period and not alter existing ground level by more than 1m; stream corridors not disturb more than 10m³ volume in 10-year period;
- iv. **Rule 9B.1.5** – Fences except in the stream corridor.

(b) Controlled Activities:

- i. **Rule 9B.2.1** - Development and earthworks within any flood storage area subject to standards - equivalent compensatory storage or another solution to achieve hydraulic neutrality; development proposals shall be accompanied by detailed and extensive hydraulic modelling of relevant streams to fully test consequences of the activity; floor level of any new or relocated building constructed above the 1 in 100-year flood event level.
- ii. **Rule 9B.2.2** - Fences in a stream corridor subject to not impede the free flow of flood waters.

(a) Restricted Discretionary Activities:

- i. **Rule 9B.3.1** – New network utilities either above ground or underground within ponding areas subject to standards;
- ii. **Rule 9B.3.2** - subdivision in ponding areas subject to standards - each lot has a building site located outside any stream corridor and located above 1 in 100-year flood event level; formed

vehicle access not adversely affect the flood hazard risk on other properties in the same flood catchment.

(b) Discretionary Activities:

- i. **Rule 9B.4.1** - Any activity which does not comply with one or more permitted or controlled activity standards, and is not noncomplying or prohibited;
- ii. **Rule 9B.4.2** - In any stream corridor fill earthworks or earthworks that do not comply with one or more of the permitted activity standards in Rule 9B.1;
- iii. **Rule 9B.4.4** - Earthworks within 20 metres of a waterbody.

(c) Non-Complying Activities:

- i. **Rule 9B.5.3** – Subdivision in the stream corridor;
- ii. **Rule 9B.5.4** - The construction, placement or erection of any building in the stream corridor;
- iii. **Rule 9A.5.1** - Subdivision of or development on land subject to two or more of the following natural hazards areas (identified on natural hazard maps): f) flood storage hazard area; g) ponding flood hazard area i) stream corridor

39. Overall rule provisions introduced by the PDP are far more comprehensive and prescriptive than the standards and matters of discretion contained in the operative District Plan.

Overlays

40. Through the policies and rules of the PDP a number of overlays are shown on the planning maps that relate to the natural environment that apply to the Ngarara Farm, including:

- (a) Stream Corridor Areas
- (b) Storage Areas;
- (c) Ponding Areas.

Summary

41. The purpose of providing you with this overview is to demonstrate there are a large number of additional provisions (particularly rules) included within the PDP that relate to the hazards. The nature of the provisions makes a comparative assessment between the operative District Plan and PDP difficult.
42. While I accept Council is required to ensure subdivision and development is undertaken in a manner that ensures risks from natural hazards are managed, I consider the PDP provisions do not take into account the investigations and considerations of PC80 that is incorporated into the operative District Plan, and the extensive consideration of development in the flood hazard areas that is included in the Structure Plan and Neighbourhood Development Areas for the Ngarara Farm site. I have covered these provision in my previous briefs of evidence.

REVIEW OF MAYPOLE'S SUBMISSION POINTS

43. Maypole made multiple submission points on Chapter 9 Hazards. I have provided a summary of Maypole's submissions on specific PDP provisions in **annexure "A"** of this evidence. Maypole's submission sought a number of outcomes that focussed on:
 - (a) Deleting Policy 9.12 that is unduly onerous or inappropriate;
 - (b) Amending rules relating to flood storage areas and ponding areas so they do not apply to any activity within an identified Neighbourhood Development Area that is in accordance with a Council-approved Neighbourhood Development Plan granted under Rule 5C.4.2 or within the Ngarara Precinct;
 - (c) Amending rules relating to stream corridor areas so it is clear the Ngarara Zone and Ngarara Precinct are exempt from these provisions;
 - (d) Deleting from the Planning Maps overlays that add additional layers of complexity over the Ngarara Farm site.

REVIEW OF S.42A REPORT COMMENT AND RECOMMENDATION

44. The s.42A Report provides a range of responses and recommendations to Maypole's submission points. For completeness, I have provided a summary of the s.42 Report comments and recommendations to Maypole's submission points in **annexure "B"** to this evidence.
45. From my assessment of the two s.42A Reports, it seems the following are the recommendations in response to Maypole's submission points:
- (a) An amendment to Policy 9.12 to make it more balanced;
 - (b) No amendments to the Flood Storage Area and Ponding Area provisions submitted on by Maypole;
 - (c) No amendments to the Stream Corridor provisions submitted on by Maypole;
 - (d) Deletion of Rule 9A.5 relating to the noncomplying rule for multiple hazards;
 - (e) Retention of the Stream Corridor; Flood Storage Area and Ponding Area overlays contained on Planning Maps 6, 7, and 9;
 - (f) Inclusion of a new restricted discretionary activity rule relating to the subdivision of land wholly within a stream corridor that is proposed to be vested in Council.
46. I provide planning comment on each of the above proposed amendments below.

PLANNING COMMENT

47. As I outlined in the Planning Context (paragraphs [21] to [26] 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 this statement of evidence is to review the policies and methods of Chapter 9 to determine whether they are the most appropriate way of achieving the objectives that specifically relate to the Ngarara Farm development.

48. In my previous evidence I have highlighted how the operative District Plan has unique, stand-alone provisions in the form of the Ngarara Zone and the Ngarara Precinct that provide for the comprehensive development of the Ngarara Farm with certainty. In relations to hazards, while there are no specific policies or rules that relate to hazard, the comprehensive Structure Plan for the Ngarara Zone and Ngarara Precinct and the accompanying comprehensive design and management principles ensure any subdivision and development of the Ngarara Farm site manages the effects of any natural hazards, and are subject to consenting requirements (such as the Neighbourhood Development Plan requiring a discretionary consent) that are able to address these matters.
49. These provisions were arrived at after a comprehensive investigation and plan change process, and have clear environmental, cultural and social outcomes that have been agreed between Maypole, Council and the community.
50. While I accept that Council is entitled to introduce new provisions in the PDP to ensure subdivision and development address the effects associated with natural hazards, I note a paradigm shift from the operative District Plan which intends to provide for subdivision and development in areas where natural hazards are identified with any effects managed, to avoid subdivision and development in these areas in the PDP. While this approach may be appropriate for some parts of the District, in my opinion applying the PDP provisions to the Ngarara Farm site, with its multitude of rules restricting activities, does not seem justified to me. I have seen no evidence to suggest that the environmental outcomes of the operative District Plan are unacceptable, or that the new policies and methods incorporated in the PDP will result be better environmental outcomes than those contained in the operative District Plan.

51. The overall outcome, in my opinion, will be a duplication of the consent regime that has already been adopted within the operative District Plan and uncertainty and costs to Maypole as developer. I therefore continue to be of the opinion that the operative District Plan provisions are 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 do not consider the Chapter 9 Hazards policy and rule provisions discussed below, even if amended, are the most appropriate way of achieving the objectives, for a number of reasons I highlight below.
52. Chapter 9 Hazards provisions submitted on by Maypole provides another example of how the PDP introduces provisions, in the form of overlays, which are likely to complicate and increase the cost of development with the Ngarara Zone and Ngarara Precinct.

Policy 9.12 – High Hazard Flood Areas

53. I note the Council Officer agrees to some extent with Maypole's concerns, and acknowledges the notified policy sets the bar too high. While the s.42A Report recommendation is for Maypole's submission to be rejected, it recommends an amendment that deletes the term '*completely*' in an endeavour to provide for flexibility to resource users.
54. As I understand it, Maypole's submission is based on a concern that additional areas had been shown as ponding and flood storage on the planning maps beyond what the modelling had shown. However, the amendments to Policy 9.12 recommended in the s.42A Report provides an opportunity for mitigation within the site, and I support the deletion of the term '*completely*'.

Rules 9B.2.1; 9B.4.1 - Flood Storage Area Provisions; Rules 9B.1.3; 9B.1.4; 9B.3.1; 9B.3.2; 9B.4.1 - Ponding Area Provisions

55. The key matter raised in Maypole's submission is that the Ngarara Zone and Precinct should be exempt from the flood storage area and ponding area provisions in recognition that the risk and potential for environmental effects have already been addressed as part of the plan change and will also be addressed for the Ngarara Zone in the development of Neighbourhood Development Plans.

56. I note the Council Officer considers that the Neighbourhood Development Area process under Chapter 5 (of the PDP) is comprehensive and would be expected to consider flood hazard issues in an integrated manner, and they also agree that consent process should not be duplicated. Notwithstanding this, the Council Officer proceeds to justify a consenting process that provides for the re-assessment of the flood hazard situation as it applies to the site. The s.42A Report recommends Maypole's submission be accepted in part, but makes no recommended change to the rule provisions.
57. I agree with the concerns raised by Maypole. While I accept that flood storage and ponding issues do need to be assessed, I consider it is appropriate that these issues are considered at the first stage of submitting the Neighbourhood Development Plan as outlined in the proposed and operative District Plan provisions. As I have discussed above, these matters have also have been assessed as part of formulating the structure plan and development principles for this area.
58. I do not agree with the concerns raised by the Council Officer regarding the need to re-assess the flood hazard situation. As I have stated above, I consider the discretionary resource consent required for an approved Neighbourhood Development Plan is the appropriate mechanism to review any updated information on the hazards of the site, and the provisions should not apply to any further subdivision of development that is in accordance with that plan.
59. Maypole sought for the rules to be amended so it is clear that they do not apply to any activity within an identified Neighbourhood Development Area that is in accordance with a Council-approved Neighbourhood Development Plan granted under Rule 5C.4.2 or within the Ngarara Precinct.
60. I agree with this request, and would recommend it be adopted. There are two ways this request could be implement:
- (a) A new Note [2] be added to the Rule 9B.0 Applicability of Rules 9B.1 – 9B.6 that reads: *The following rules that specifically relate to flood storage areas; ponding areas shown on the planning maps over the Ngarara Zone or Ngarara Precinct do not apply to any activity within*

an identified Neighbourhood Development Area that is in accordance with a Council-approved Neighbourhood Development Plan granted under Rule 5C.4.2 or within the Ngarara Precinct”; or

- (b) Include the exemption within each of the Rules 9B.2.1; 9B.4.1 9B.1.3; 9B.1.4; 9B.3.1; 9B.3.2; 9B.4.1.

Rules 9B.1.2; 9B.1.4; 9B.1.5; 9B.2.2; 9B.4.2; 9B.5.3; 9B.5.4 - Stream Corridor Provisions

61. I note that Maypole raised different concerns with the stream corridor provisions than it did the flood storage area and ponding area provisions discussed above. I therefore am surprised that the Council Officer has assessed Maypole’s submission as one in the same. In particular, Maypole raised a concern that the approval of a Neighbourhood Development Plan could default to a non-complying activity under the rules, rather than a discretionary activity consent required under the operative District Plan provisions. In my opinion, this situation is not justified in planning terms, and is overly onerous and restrictive.
62. For clarity, Maypole sought an exemption from the stream corridor provisions for activities within the Ngarara Zone and Ngarara Precinct to ensure it did not get caught by the non-complying activity status. I am unable to find any consideration in the s.42A Report of Maypole’s concerns, or the relief they seek.
63. I recommend the request for an exemption be adopted. Similar to above, there are two ways this request could be implement:
- (a) A new Note [3] be added to the Rule 9B.0 Applicability of Rules 9B.1 – 9B.6 that reads: *The following rules that specifically relate to stream corridor shown on the planning maps over the Ngarara Zone or Ngarara Precinct do not apply to any activity within the Ngarara zone or Ngarara Precinct*”; or
- (b) Include the exemption within each of the Rules 9B.2.1; 9B.4.1 9B.1.3; 9B.1.4; 9B.3.1; 9B.3.2; 9B.4.1.

Rule 9A.5 - Noncomplying Rule for Multiple Hazards;

64. The s.42A Report recommendation to delete Rule 9A.5 is supported. I recommend the recommendation is adopted.

Maps 6, 7 and 9 - Overlays – Stream Corridor Areas; Flood Storage Areas; Ponding Areas;

65. Maypole's key concern with the overlays shown on the planning maps is that a comprehensive structure planning and plan change process has already identified those areas within the Ngarara Zone and the Ngarara Precinct that are sensitive, and the operative District Plan provisions are appropriate to manage any effects of subdivision and development on these areas. My comments included in my brief of evidence (dated 18 July 2016) on the Chapter 3 Natural Environment overlays apply here.
66. I note the Council Officer acknowledges that they understand that Maypole does not want to carry out a number of assessments on the same matters, but considers hazards are critical and can cause significant adverse effects to people and property and KCDC has responsibilities to take these into account. The Council Officer considers that it is appropriate for these layers to be considered when applications are made for these areas so that the adverse effects of these hazards can be appropriately addressed.
67. As I have stated above, these areas have already been incorporated into planning for the development of the site through the PC80 process, which provides three layers of protection to manage flood risk:
- i. The original structure plan comprehensively considered flood risk and the design of the development was shown to avoid effects;
 - ii. The approval of the Neighbour Development Areas; and
 - iii. The areas are reassessed as part of the Neighbourhood Development Plans discretionary activity consents which will be required for all Neighbourhood Development Plans. This will incorporate any changes that have occurred to the flood hazard profile, and has led to consents for development.

68. In all the previous assessments undertaken, and for any future assessment, Council's base model is used which ensures Council the risks being considered by Council are also being considered by the resource user.
69. Therefore, the additional provisions associated with the overlay is an unnecessary duplication of what is already required by the PC80 process. The Ngarara Farm develop is unique in the Kapiti District in that it set out to avoid flood risk by leaving up to 50% of the original zoned area as open space.
70. I agree with Maypole's concern that Council is endeavouring to add further layers of control and complexity despite these matters having been considered PC80. This is not appropriate or an efficient use of resources.
71. I recommend Maypole's request to delete the Stream Corridor Area; Storage Area; and Ponding Area overlays from the Planning Maps be adopted.

Rules relating to subdivision for reserves to be vested in Council

72. While I note the Council Officer's comments in the s.42A Report regarding how Maypole raised this matter during SEV communications, I am unable to find any submission point made by Maypole that requests the new restricted discretionary activity rule recommended in the s.42A Report. I question whether there is scope for the introduction of the rule into the PDP through Maypole's submission (there may be another submission I am not aware of that provides scope for this recommendation).
73. Furthermore, I do not support the recommended rule. The reason for this is because the issue of areas being vested in Council is currently addressed through the consenting of the Neighbourhood Development Plan, and subsequent subdivisions consents, in accordance with a Council-approved plan, and should not be the subject of an additional rule in Chapter 9 Hazards. Such a situation would create further duplication of consenting requirements.
74. I accept this this rule may be appropriate for other subdivisions within the District outside of the Ngarara Zone and Ngarara Precinct, and therefore if the Commissioners are of a mind to accept the recommendation, I recommend that an exemption be provided for any activity within the Ngarara Zone or Ngarara Precinct as recommended above for other rules.

CONCLUSION

75. 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.
76. My preference is that the Ngarara Zone and Ngarara precinct is incorporated into the PDP as independent plan provisions that retain the integrity of principles, objectives, rules and planning process that was the intent of the PC80.
77. I do not consider the hazard provisions included in Chapter 9 are necessary or appropriate for the Ngarara Farm Site, which has its own unique consent regime that already allows for stream corridors, flood storage areas and ponding areas to be considered, and reviewed if new information becomes available.
78. I continue to be of the opinion that the operative District Plan provisions are 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 do not consider the Chapter 9 policy and rule provisions, even if amended, are the most appropriate way of achieving the objectives, for reasons discussed in this statement.

28 July 2016

Chris Hansen

ANNEXURE “A”

REVIEW OF MAYPOLE’S SUBMISSION POINTS

Maypole made the following submission points on the PDP provisions of Chapter 9 Hazards:

(a) Policy 9.12 – High Hazard Flood Areas

Maypole opposed in part Policy 9.12. Maypole considered the policy sets a very high threshold for development on areas in the river and stream corridor, and flood storage areas, which is not justified based on the current defined overlay areas, particularly in the Ngarara Zone and Precinct areas.

Maypole sought the deletion of Policy 9.12.

(b) Rules 9B.2.1; 9B.4.1 - Flood Storage Area Provisions; Rules 9B.1.3; 9B.1.4; 9B.3.1; 9B.3.2; 9B.4.1 - Ponding Area Provisions

Maypole opposed in part these rules. Maypole considered the Ngarara Zone and Precinct should be exempt from the identified provisions in recognition that the risk and potential for environmental effects have already been addressed as part of the plan change and will also be addressed for Ngarara Zone in the development of NDPs. Maypole considered the proposed provisions would lead to unnecessary and inefficient duplication of assessment under the two stage approach of consenting for Ngarara Zone. Maypole accepted that these issues do need to be assessed, but it is appropriate that these issues are considered at the first stage of submitting the NDP as outlined in the proposed and operative District Plan provisions. They also have been assessed as part of formulating the structure plan and development principles for this area.

Maypole sought for the rules to be amended so it is clear that they do not apply to any activity within an identified Neighbourhood Development Area that is in accordance with a Council-approved Neighbourhood Development Plan granted under Rule 5C.4.2 or within the Ngarara Precinct.

(c) Rules 9B.1.2; 9B.1.4; 9B.1.5; 9B.2.2; 9B.4.2; 9B.5.3; 9B.5.4 - Stream Corridor Provisions

Maypole opposed these rules. Maypole considered the proposed activity statuses are more stringent and would change the activity status of the NDPs to non-complying instead of discretionary. Based on the evidence provided for PC 80, non-complying would not be an appropriate status to apply through the proposed District Plan, as the technical assessments completed identify that development is able to appropriately accommodate development while maintaining ecological values and managing hazards. A non-complying activity status is, in this case, not appropriate and discretionary status can effectively manage issues that may need to be address from future consents.

Maypole sought for the rules to be amended so it is clear that the Ngarara Zone and Precinct are exempted from these provisions.

(d) Rule 9A.5 - Non-complying Rule for Multiple Hazards

Maypole opposed this rule. Maypole considered this proposed rule would make subdivision a non-complying activity for parcels of land which include areas with two or more of the listed hazards; e.g. stream corridor, ponding and storage. This would apply to applications for developing NDAs which involve the subdivision of these areas, which would otherwise be discretionary.

Maypole considered this proposed rule is an inappropriate approach to managing natural hazards in Ngarara Zone and Precinct, as it is not risk-based for this area of land, which has already had significant assessments undertaken to confirm how to manage natural hazards. The risk-based approach to managing hazards is set out in proposed Policy 9.2, which is contradicted by Rule 9A.5.

Maypole sought for the rule to be deleted.

(e) Maps 6, 7 and 9 - Overlays – Stream Corridor Areas; Storage Areas; Ponding Areas

Maypole opposed in part the overlays on the planning maps. Maypole considered the comprehensive structure planning and plan change process identified those areas within the Ngarara Zone and the Ngarara Precinct that are sensitive. Maypole considered Council is endeavouring to add further layers of control and complexity despite these matters having been considered through Plan Change. This is not appropriate or an efficient use of resources.

Maypole sought the deletion of the Stream Corridor Areas; Storage Areas; and Ponding Areas from the Planning Maps.

(f) Rules relating to subdivision for reserves to be vested in Council.

Maypole sought for rules to be amended so it is clear that they do not apply to any activity within an identified Neighbourhood Development Area that is in accordance with a Council-approved Neighbourhood Development Plan granted under Rule 5C.4.2 or within the Ngarara Precinct. I can find nowhere in Maypole's submission that it sought a restricted discretionary rule as recommended in the 42A Report to meet Maypole's submission points.

REVIEW OF MAYPOLE'S FURTHER SUBMISSIONS

Maypole made further submissions (Further Submission No. [FS55]) to the following PDP provisions in addition to the above provisions:

- (a) 208.45 Transpower opposed Rule 9A.5.1 and sought an amendment – Maypole opposed this submission – Maypole's further submission is accepted in part;
- (b) 218.67 Coastlands oppose Rule 9A.5.1 – Maypole supported this submission – Maypole's further submission is accepted in part;
- (c) 218.69 Coastlands who request changes to both 9B.1.4 and to the Discretionary rule that this rule defaults to when the standards are not met – Maypole supported this submission - – Maypole's further submission is accepted.
- (d) 208.48 Transpower oppose Rule 9B.5.4 and sought an amendment – Maypole opposed this submission - Maypole's further submission is accepted in part.

ANNEXURE “B”

SUMMARY OF S.42 REPORT ON MAYPOLE’S SUBMISSION POINTS

The following is a summary of how the s.42A Report addresses submissions lodged by Maypole on Chapter 9 Hazards:

Policy 9.12 – High Hazard Flood Areas

The s.42A Report recognises Maypole’s submission [263.27] on deleting Policy 9.12 in paragraph [261] (page 59). The Council Officer agrees to some extent with Maypole’s submission (paragraph [269] page 60). The Council Officer considers the notified the policy does set too high a bar for development, however they consider that the deletion of the word “completely” as suggested by GWRC makes the policy appropriate.

The s.42A Report recommends in paragraph [276] (page 61) Maypole’s submission be **rejected**, and recommends Policy 9.12 be amended to read:

Development in the *river and stream corridor, overflow path, flood-erosion and flood storage* areas will be avoided unless the 1% AEP in 100-year risk hazard can be ~~completely~~ mitigated on-site to avoid damage to property or harm to people, and the following criteria are met;

- a) no increase in flood flow or level on adjoining sites-properties or other parts of the floodplain;
- b) no reduction in storage capacity on-site; and
- c) all flow corridors or overflow paths are kept clear to allow flood waters to flow freely at all times.

Rules 9B.2.1; 9B.4.1 - Flood Storage Area Provisions; Rules 9B.1.3; 9B.1.4; 9B.3.1; 9B.3.2; 9B.4.1 - Ponding Area Provisions

The s.42A Report recognises Maypole’s submission [263.26] seeking an amendment to these rules so they do not apply to an identified Neighbourhood Development Area that is in accordance with a Council-approved Neighbourhood Development Plan or within the Ngarara Precinct in paragraph [296] (page 65). The Council Officer states:

“In regard to submission 263.26 and 28 Maypole I consider that the Neighbourhood Development Area process under Chapter 5 is comprehensive and would be expected to consider the flood hazard issues in an integrated manner. I agree that the consent processes should not be duplicated. However, I consider depending on the timing between seeking consents, there could be instances where the hazard information has been updated, resulting in different hazard information applying to the relevant site at the time the subsequent consents are sought. I consider that relying on old hazard information may present a risk, and therefore I consider it is necessary that hazard information should be checked, and

where necessary, re- considered. If there has been no change to the situation, then the information from the first consent could be used in the second consent. However, if the flood hazard situation has changed since the first consent was obtained, I consider it is appropriate to re-asses the site that the application relates to so that the effects of hazards can be appropriately addressed and the Council can be satisfied the hazard mitigation still meets the intent of Section 106 of the RMA.

One change is proposed to this chapter in response to this submission and it relates to subdivision for land located within the Stream or River Corridor which is to be vested as a Reserve. This issue is discussed in detail in section 3.29 of this report below.”

The s.42A Report recommends in paragraph [306] (page 66) Maypole’s submission be **accepted in part**, however recommends no amendments to the rule provisions.

Rules 9B.1.2; 9B.1.4; 9B.1.5; 9B.2.2; 9B.4.2; 9B.5.3; 9B.5.4 - Stream Corridor Provisions

The s.42A Report recognises Maypole’s submission [263.28] seeking an amendment to the rules in paragraph [297] (page 65). The assessment of the submission is the same as for the flood storage area and ponding area provisions above.

The s.42A Report recommends in paragraph [306] (page 66) Maypole’s submission be **accepted in part**, however recommends no amendments to the rule provisions.

Rule 9A.5 - Non-complying Rule for Multiple Hazards

The s.42A Report recognises Maypole’s submission [263.25] seeking the deletion of the rule in paragraph [230] (page 52). The Council Officer agrees with the concerns raised by the submitters in paragraph [231] (page 52).

The s.42A Report recommends in paragraph [235] (page 52) Maypole’s submission be **accepted** and recommends the rule be deleted.

Maps 6, 7 and 9 - Overlays – Stream Corridor; Flood Storage Areas; Ponding Areas

The s.42A Report recognises Maypole’s submission [263.37] on deleting the Overlays as they relate to the Ngarara Zone and/or Ngarara Precinct from Planning Maps 6, 7 and 9 in paragraph [460] (page 98). The Council Officer assesses the request in paragraphs [504] to [506] (page 115) and states:

“In regard to Maypole’s request in submission 263.37 that the Stream Corridor Areas, storage areas and ponding areas be removed from the Ngārara Zone and/or Ngārara Precinct. Stream corridors are the minimum area able to contain a flood of up to a 1%AEP event magnitude and enable flood water to safely pass to the stream confluence or the sea. These corridors also include flood and erosion prone land immediately adjacent to the stream.

To remove these overlays from this area would mean that the effects of these hazards could not be assessed at all. I understand the concern of Maypole that they do not want to have to carry out a number of assessments on the same issues, but hazards are critical and can cause significant adverse effects to people and property and KCDC has responsibilities to take these into account.

I consider that it is appropriate for these layers to be considered when applications are made for these areas so that the adverse effects of these hazards can be appropriately addressed. This issue is similar to that discussed under submission 263.26 above.”

The s.42A Report recommends in paragraph [510] (pages 115/116) Maypole’s submission be **rejected**.

Rules relating to subdivision for reserves to be vested in Council

The s.42A Report identifies in paragraph [425] (page 92) that Maypole in submission 262.28 requested that several rules be amended to make it clear that they do not apply to any activity within an identified Neighbourhood Development Area that is in accordance with a Council approved Neighbourhood Development Plan granted under Rule 5C.4.2 or within the *Ngārara* Precinct. In paragraph [433] (page 93) the Council Officer states:

“In SEV communications with Maypole regarding 262.28 it was made clear that one of the concerns they have regarding these rules is that subdivisions for reserve purposes should not be treated as harshly as those for development purposes. Maypole noted that in within the Ngārara development there may be areas that they wish to subdivide and vest in Council as reserve. I agree with this sentiment, as no development is going to occur on the site as a result of a subdivision for a reserve these subdivisions should be able to be treated less restrictively. Therefore, I recommend a Discretionary Restricted Activity for subdivisions where the land is completely within the River or Stream Corridor and is to be vested in the Council. I also recommend that consequential amendments be made to other subdivision rules that reference this new rule.”

The s.42A Report recommends in paragraph [436] (page 94) Maypole's submission be **accepted in part** insofar as it is recommended that Chapter 9 be amended to include a new restricted discretionary activity rule that reads:

Rule 9B.3 Restricted Discretionary Activities

The following activities are **restricted discretionary** activities, provided that they comply with all corresponding restricted discretionary standards (unless otherwise specified).

Restricted Discretionary Activities	Standards	Matters over which Council will restrict its discretion	Reference
<p>6. <u>Subdivision of land located wholly within the river corridor and/or stream corridor where the land is proposed to be vested as Reserve.</u></p>	<p>1. <u>The land being subdivided must be intended to be vested to the Kapiti Coast District Council, the Wellington Regional Council or the Department of Conservation.</u></p> <p><u>Note: the acceptability of the land intended to be vested with these parties should be established prior to lodging an application, and the outcome of consultation with these parties shall accompany the application</u></p>	<p>1. <u>The effect of the subdivision on the effective functioning of the river and/or stream corridor.</u></p> <p>2. <u>Whether or not any or all of the land is accepted as reserve.</u></p>	

Rule 9B.4 Discretionary Activities

The following activities are **discretionary** activities.

Discretionary Activities	Assessment Criteria	Reference
<p>4. <u>Subdivision of land located partly within the river corridor and / or stream corridor where only part, or none, of the land is to be vested as Reserve and where each lot has:</u></p> <p>a) <u>a building site located outside any river or stream corridor, overflow path or residual overflow path.</u></p> <p>b) <u>building sites shall be located above the estimated 1 % AEP flood event level.</u></p> <p>c) <u>formed vehicle access which does not adversely affect the flood hazard risk on other properties in the same flood catchment.</u></p>		

Rule 9B.5 Non Complying Activities

The following activities are **non complying** activities

Non Complying Activities	Reference
<p>3. <u>Subdivision of land located wholly within the Stream corridor and/or River corridor where the land is not to be vested as Reserve.</u></p>	<p>Policies 9.2, 9.3, 9.4, 9.9 & 9.12</p>