

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 10 Historic Heritage (Waahi Tapu)

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 10 HERITAGE FOR MAYPOLE ENVIRONMENTAL LIMITED**

19 September 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 Kapiti Coast District Plan (**PDP**). 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 10 Historic Heritage of the PDP that affect the Ngarara Farm site, and in particular those matters included in Maypole's submission being:
 - (a) Policy 10. 2 Criteria for Identifying historic heritage;
 - (b) Policy 10.10 Waahi Tapu;
 - (c) Rule 10A.1.6 – Permitted Activity - activities in an area identified in the Schedule of Historic Heritage as waahi tapu and Other Places and Areas of Significance to Iwi – Group B;
 - (d) Rule 10A.3.6 – Restricted Discretionary Activities - activities in an area identified in the Schedule of Historic Heritage as waahi tapu and Other Places and Areas of Significance to Iwi – Group B;
 - (e) Schedule 10.1 - Item WTS0318 Taewapirau;
 - (f) Maps 6, 7 and 9 - Waahi Tapu WTS0318.

4. Maypole also lodged a further submission to submissions on Chapter 10 provisions including Rule 10A.1.6; public notification provisions; Schedule 10.1; Rule 10A.3; and submissions that supported the identification and scheduling of particular waahi tapu.
5. The approach I have taken to addressing the planning context includes:
 - (a) An outline of historic heritage matters in relation to Ngarara Farm;
 - (b) An outline of the Planning Context to be considered;
 - (c) An overview of the historic heritage provisions included in the operative District Plan;
 - (d) An overview of the historic heritage provisions included in the notified PDP;
 - (e) A review of the matters relating to Chapter 10 Historic Heritage raised by Maypole in its submission, and the relief sought;
 - (f) A review of the s.42A Reports recommendation regarding the PDP provisions; and
 - (g) 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. I also rely on the expert evidence of Mr Kevin Jones (archaeologist) and Mr Morrie Love (Cultural).

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. As I have discussed in my previous evidence, 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. Based on the expert evidence of Mr Jones and Mr Love, I do not consider the historic heritage provisions included in Chapter 10 of the PDP are necessary or appropriate for the Taewapirau site located with the Ngarara Farm site. I consider the PC80 provisions incorporated into the operative District Plan provides for the recognition and provision for the relationship with iwi and the Taewapirau site as required by s.6(e) of the RMA.

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 10 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 10 Historic Heritage 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 10 Historic Heritage;
 - (c) Appendix A to the s.42A Report - *Waahi Tapu & The Kāpiti Coast: A Research Report* prepared by Pātaka Moore (September 2012);

- (d) Appendix B to the s.42A Report – *Review of the 'Wāhi Tapu and Kapiti Coast Research Report'* prepared by Des Tātana Kahotea PhD (October 2015);
- (e) *The Cultural Impact Report on the Ngarara Development Waikanae* prepared by Anthony Thomas (February 2009). This report was prepared for Maypole as part of the application for PC80, which now forms part of the Operative Plan;
- (f) *"Cultural Impact Assessment for archaeological authority application for Waimeha Village"* prepared by Ms Mahina-a-rangi Baker (September 2015). This was prepared for Maypole as part of the subdivision consent and archaeological applications for the Waimeha Neighbourhood Development Plan;
- (g) The archaeological evidence of Mr Kevin Jones for Maypole dated 15 September 2016; and
- (h) The cultural evidence of Mr Morrie Love dated 19 September 2016.

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 provisions of Chapter 10 Historic Heritage.

HISTORIC HERITAGE WITHIN NGARARA FARM

20. The historic heritage values of the Ngarara Farm have been previously assessed for PC80, and included a Cultural and Social Plan (November 2007) prepared by Maypole that recorded (amongst other things) the pre-settlement, Maori settlement and Pakeha settlement of the Ngarara Farm area.
21. This Cultural and Social Plan was followed by a Cultural Impact Report prepared by Anthony Thomas (February 2009) to support Maypole's private plan change application for PC80.
22. A further Cultural Impact Assessment (**CIA**) was prepared by Mahina-a-rangi Baker (10 September 2015) to support Maypole's subdivision consent and archaeological applications as part of the Waimeha Neighbourhood Development Plan. This CIA was based on (amongst other things) the information available at the time which included information from previous CIAs conducted on behalf of iwi; waahi tapu records and archaeological records.
23. Ms Baker's CIA determined the site was originally part of a network of communal mahinga kai (food cultivation) sites in the wider area. The CIA also concluded the Taewapirau site carries a multitude of layers of significance in terms of its value, including a place of food gathering and occupation, and also a site where large loss of life occurred in the Te Kuititanga battle. Ms Baker determined the Taewapirau site is a waahi tapu.
24. Mr Pātaka Moore prepared a research report (December 2012) for Kapiti Coast District Council (**Council**) that had the purpose of identifying and protecting waahi tapu sites in Kapiti. This report is Appendix A to the s.42A Report. This research report provides a classification and methodology for identifying waahi tapu sites. The result of Mr Moore's research work was that 42 waahi tapu sites have been incorporated in to the PDP, including the Taewapirau site. I note Mr Moore's report included as Appendix A to the s.42A Report does not actually reference the Taewapirau site, or identify its classification, status or values.
25. As a result of the submissions received on waahi tapu sites included in the PDP, Council engaged Dr Des Kahotea to review the report prepared by Mr Moore and to identify any further information that might be required. Dr Kohatea considered the Moore Report approach was thorough and reflected

the focus on archival material supported by iwi and hapū informants. Dr Kahotea undertook further archival work to supplement the Moore Report, and undertook some site visits. I understand Dr Kahotea did not have access to the Taewapirau site on Maypole's land. Dr Kahotea determines Taewapirau to be a pa site and confirms the earlier work of Mr Moore identifying the site as a waahi tapu.

26. As I mentioned in my Primary Evidence, Maypole has gained resource consent [RM140252] that subdivided Waimeha Stage 1 from the larger Ngarara Farm. This consent also allows earthworks to be undertaken in accordance with the approved Waimeha Neighbourhood Development Plan. Conditions on the consent require Maypole to liaise with Te Atiawa ki Whakarongotai and facilitate an iwi observer, and outlines accidental discovery protocols to be followed. In addition, monitoring of the earthworks is required by Heritage New Zealand authority 2016/316.
27. In his evidence, Mr Kevin Jones provides a summary of the recent monitoring (July 2016) of earthworks allowed by RM140252. From the six earthwork cuts monitored by Mr Jones within the Waimeha development area, scattered archaeological deposits of middens, oven bases, oven rake-outs and one proven storage pit (at Cut 1) were uncovered. From his findings Mr Jones concludes:
 - (a) A low density of middens, ovens, oven rake-outs and pit-like features were identified in the Waimeha development area – this is not suggestive of close settlement over a long period of time;
 - (b) There is no evidence from the recent excavations that the part or parts of Taewapirau on the Waimeha land was a fortified pa or a permanent settlement; and
 - (c) The excavations confirm in essence the view of Carkeek (1966) that it is a general area of cultivations and not noted as an area of any particular settlement.
28. Mr Morrie Love has reviewed the earlier work undertaken by Mr Thomas on behalf of Maypole when it applied for PC80; the additional CIA prepared by Ms Baker; the reports of Mr Moore and Dr Kahotea; and the most recent archaeological work undertaken by Mr Jones. As he outlines in his evidence,

the purpose of his review was to look at how waahi tapu are dealt with in the PDP, and how the PDP affects Taewapirau.

29. As I understand Mr Love's evidence, a key concern he has is that the PDP takes a very broad position on waahi tapu, which has the effect of degrading the importance of places where tapu still remains, such as burial grounds, places where tohi rites were observed, and tuahu or their modern equivalent of churches. In Mr Love's opinion, the key is whether the site has a tapu element, and if it doesn't, then it is not waahi tapu.
30. Based on the background reports Mr Love has reviewed, and considering the most recent archaeological work reported on by Mr Jones in his evidence, he concludes the description of the Taewapirau site as a Pa in the traditional sense of a fortified village along with being waahi tapu on the basis of burial and battles is not supported by evidence.
31. Mr Love in his evidence describes Taewapirau is a waahi tupuna or a place associated with ancestors and it is important in the narrative for Te Ati Awa people and others. It was part of the area in which the battle Kuititanga was fought but Taewapirau was probably not central to that battle as there is no evidence of the extensive burials that would have resulted from the battlefield.
32. The above historic heritage context informs my planning assessment later in my evidence.

PLANNING CONTEXT

33. As well as the purpose of the RMA to promote the sustainable management of natural and physical resources to enable people and communities to provide for their cultural well-being (amongst other things), sections 6(e) and 6(f) provide directions to Council as it considers the provisions of Chapter 10 Historic Heritage of the PDP:

Section 6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

...

(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

(f) the protection of historic heritage from inappropriate subdivision, use, and development:

34. The RMA defines historic heritage as:

(a) ... those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:

- i. archaeological:
- ii. architectural:
- iii. cultural:
- iv. historic:
- v. scientific:
- vi. technological; and

(b) includes -

- i. historic sites, structures, places, and areas; and
- ii. archaeological sites; and
- iii. sites of significance to Māori, including wāhi tapu; and
- iv. surroundings associated with the natural and physical resources

35. The PDP adopts this same definition as the RMA for historic heritage, and defines a historic heritage feature as any item listed in the schedule of historic heritage (Schedule 10.1) in Chapter 10.

36. While the RMA does not define waahi tapu, the PDP includes the following definition:

Waahi Tapu means a site or an area which is sacred or spiritually meaningful to tāngata whenua. Waahi tapu may be associated with creation stories of tāngata whenua, a particular event (such as a battle or ceremony); it may be where the whenua (placenta) was returned to the earth, or where a certain type of valued resource was found.

37. Furthermore, as discussed in my previous evidence, Council has a function under s.31 (1) (a) to give effect to these requirements through the inclusion of objectives, policies and methods in the PDP.

38. 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]

39. 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.
40. 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.
41. Methods may also include other planning mechanism that are regulatory or non-regulatory. Of particular relevance to this evidence are the policies, rules and methods adopted by Council to implement objectives and policies, including Overlays included on the Planning Maps (i.e. Heritage Items);
42. 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.
43. 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

44. 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.
45. These hearings are specifically focussed on heritage items, I note the Ngarara Farm is not subject to any historic heritage item included in Section C.8 or the planning maps the operative District Plan.
46. The following are the relevant historic heritage provisions of Section C.8 Heritage that apply to the Ngarara Farm site:
- (a) **Objective 1** that intends to identify and protect heritage features of significance to the Kapiti Coast District;
 - (b) **Policy 1** that intends to prepare and maintain a heritage register;
 - (c) **Policy 2** that ensure identifies general assessment criteria when considering the destruction, demolition, alteration, modification or removal of any heritage feature recorded on the Heritage Register;
 - (d) **Objective 2** that recognises the relationship a heritage resource may have with the land surrounding the resource.
 - (e) **Policy 1** that intends to address subdivision of heritage sites and preventing the separation of any land that is closely associated with the significance/value of the heritage resource.
 - (f) **Methods**
 - Rules and Performance Standards.
 - Financial contributions (fencing).
 - Waiver of building consent fees for work which protects or enhances heritage values (first \$20,000) and waiver of resource consent fees.
 - Rates relief for protection of heritage sites including landforms and geological features.
47. I note the operative District Plan does not contain heritage specific rules, but the Ngarara Zone does require consideration of whether a site is waahi tapu or otherwise culturally significant if artefacts are unearthed during earthworks as a permitted activity standard (i.e. accidental discovery protocols). Earthworks within archaeological sites within a Neighbourhood Development

Plan is a matter of discretion and conditions can be imposed to protect the site in the case consent is granted (e.g. archaeological survey and assessment).

48. 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

49. 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.

50. 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

51. The PDP includes 20 new objectives. There are no objectives included in Chapter 10 Historic Heritage. There are two objectives in Chapter 2 of the PDP that have 'wider' application to historic heritage matters and therefore they are likely to be relevant to the Ngarara Farm site:

- (a) **Objective 2.1** – To work in partnership with the tāngata whenua of the District in order to maintain kaitiakitanga of the District's resources and ensure that decisions affecting the natural environment in the District are made in accordance with the principles of the Treaty of Waitangi (Te Tiriti o Waitangi);

- (b) **Objective 2.7** – To protect historic heritage in the District for the social, cultural and economic well-being of the Kāpiti Coast community and future generations, this includes: a) supporting the contribution of historic heritage values, features and areas to the identity, character and amenity of places and landscapes; and b) recognising and protecting tāngata whenua historic heritage, including places, knowledge, histories and ngā taonga tuku iho.
52. 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 Zone or Ngarara Precinct any further.

Policies

53. Chapter 10 Historic Heritage has 12 Policies relating to historic heritage, with the following particularly relevant to the Ngarara Farm site:
- (a) **Policy 10.1 – Identify historic heritage** that intends to identify historic heritage matters;
 - (b) **Policy 10.2 – Criteria for identifying historic heritage** that identifies the criteria for identifying historic heritage;
 - (c) **Policy 10.3 – Additional listings for the Schedule of Historic Heritage** that identifies additional historic heritage including waahi tapu and waahi tapu areas;
 - (d) **Policy 10.5 – Protection of historic heritage** that intends that subdivision, development and land use involving the District's historic heritage and its surroundings will be managed in a way that protects historic heritage values from adverse effects;
 - (e) **Policy 10.8 - Relocation, demolition, destruction and removal from the Schedule of Historic Heritage** that intends to avoid complete destruction of items listed on the Schedule of Historic Heritage, and waahi tapu and places of significance to iwi; and minimising partial destruction of waahi tapu and waahi tapu areas, items listed on the Schedule of Historic Heritage, and waahi tapu and places and areas of significance to iwi.
 - (f) **Policy 10.9 - Subdivision involving historic heritage** that intends to avoid inappropriate subdivision of historic heritage, and includes matters for consideration if subdivision is proposed on sites containing historic heritage;
 - (g) **Policy 10.10 – Waahi Tapu** intends for waahi tapu and their surroundings to be recognised as particularly sensitive to any subdivision, development or

change in land use, as these activities may affect the physical features and non-physical values of the place or area, and will be protected from any adverse effects of these activities;

- (h) **Policy 10.11 – Unidentified historic heritage** intends for a precautionary approach to protecting unidentified historic heritage adopting accidental discovery procedures.

54. From a brief comparative review of the operative District Plan provisions with the PDP provisions, I note both plans intend to identify and protect historic heritage items and values.
55. Overall in my opinion, the PDP policies are more prescriptive, and add a new level of complexity that is required in any subdivision and development consent applications.

Rules

56. The rules and standards included in Section 10B 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 10. I note the Taewapirau WTS0318 is a Group B scheduled item in Schedule 10.1.
57. In Rule 10A.0 – Applicability of Rules 10A.1 – 10A.5, the following matters should be noted:

[1] Notwithstanding the activity category defined by Rules 10A.1 – 10A.5, 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

58. 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 10A.1.3** – minor works to a historic place (site) subject to standards;
- ii. **Rule 10A.1.6** – The following activities in an area identified in the Schedule of Historic Heritage as waahi tapu and Other Places and Areas of Significance to Iwi – Group B (subject to standards):
 - a) Land disturbance (not exceeding 10m³);
 - b) Modifications and alterations to existing buildings;
 - c) Fencing;
 - d) New buildings ancillary to lawfully established uses in the waahi tapu;
 - e) Relocation of existing buildings within the site.

(b) Restricted Discretionary Activities:

- i. **Rule 10A.3.1** – Subdivision of any land or site containing historic heritage identified in the Schedule of Historic Heritage as Historic Places (buildings and structures), Historic Places (sites) or Historic Areas;
- ii. **Rule 10B.3.2** -.

(c) Discretionary Activities:

- i. **Rule 10B.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 10B.4.2** - Alteration or modification of any historic heritage identified in the Schedule of Historic Heritage as Historic Places (buildings and structures), Historic Places (sites) or Historic Areas, including construction of new buildings or structures; minor work not meeting permitted activity standards;
- iii. **Rule 10B.4.6** - The following activities in an area identified in the Schedule of Historic Heritage as waahi tapu and Other Places and Areas of Significance to Iwi – Group B (subject to Accidental Discovery Protocol):
 - a) Modifications and alterations to existing buildings which does not comply with the permitted activity standards

- b) Land disturbance which does not comply with the permitted activity standards
- c) New buildings and alterations which does not comply with the permitted activity standards
- d) Any building or structure that obstructs views or existing access between 'key access and view points' listed in the Schedule of Historic Heritage
- e) Roads and network infrastructure.

(d) Discretionary Activities

- i. **Rule 10A.4.1** - Any activities which are not listed as Permitted, Controlled, Restricted Discretionary, Discretionary, Non Complying or Prohibited activities and do not comply with one or more permitted activity standards in this chapter unless otherwise specifically stated;
- ii. **Rule 10A.4.3** - Partial demolition or demolition of historic heritage identified in the Schedule of Historic Heritage as Historic Places (buildings and structures), Historic Places (sites) or Historic Areas (except where specified in this District Plan to be a non-complying activity).

(e) Non-Complying Activities:

- i. **Rule 10B.5.4** - The following activities in a area identified in the (Schedule 10.1) of Historic Heritage as waahi tapu and Other Places and Areas of Significance to Iwi – Group B and E: a) Intensive farming
Criteria for notification:

Any application in respect to rules indicated shall be publicly notified or notice serviced on relevant iwi authority and the New Zealand Historic Places Trust as affected parties.;

59. 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.

Scheduled 10.1

60. The Taewapirau site is listed as WTS0318 in Schedule 10.1 and has the following information included:

| District Plan ID | Name | Type | Legal Description | Iwi | Group |
|------------------|------------|------------|---|---------|---------|
| WTS0318 | Taewapirau | Pā & urupā | Lot 5 DP 42411; LOT 6 DP 42411; PART LOT 2 DP 47188 | Āti Awa | Group B |

Planning Maps

61. Planning Map 6B Plan features shows WTS0318 as following (refer to **Figure 1**):

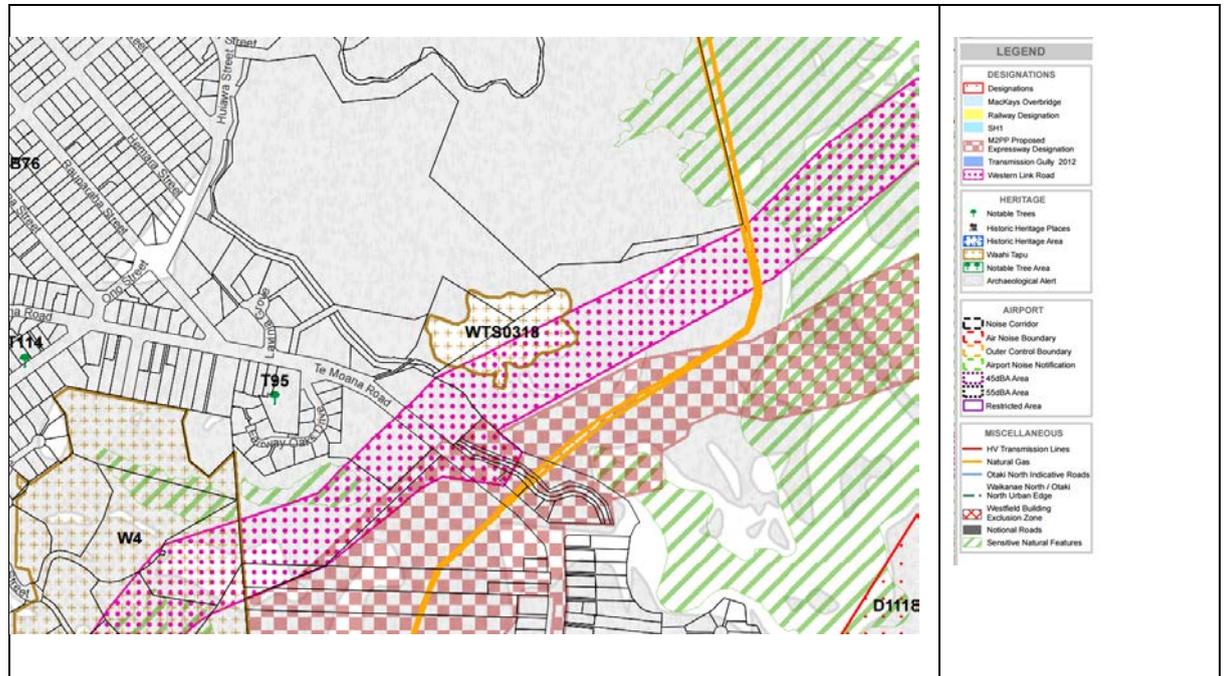


Figure 1 – PDP Planning Map 6B

Summary

62. The purpose of providing you with this overview is to demonstrate there are a large number of additional provisions (in particular new rules) included within the PDP that relate to the historic heritage items and which apply to the Ngarara Farm site. The nature of the provisions makes a comparative assessment between the operative District Plan and PDP difficult.
63. As I have discussed above, Council is required as a matter of national importance to recognise and provide for the relationship of Maori and their culture and traditions with (amongst other things) their ancestral lands waahi tapu (s.6(e) of the RMA), and ensure subdivision, use and development is undertaken in a manner that protects historic heritage (s.6(f) of the RMA). Based on the evidence of Mr Jones and Mr Love, I understand the Taewapirau site is a waahi tupuna and not a waahi tapu or a pa site and therefore matters in s.6(e) are relevant.

REVIEW OF MAYPOLE'S SUBMISSION POINTS

64. Maypole made a number of submission points on Chapter 10 Historic Heritage. The main aim of Maypole's submission is to have the operative District Plan provisions apply to historic heritage matters.
65. I have provided a summary of Maypole's submissions (including further submissions) on specific PDP provisions in **annexure "A"** of this evidence. Maypole's submission sought a number of outcomes that focussed on:
- (a) Amending criteria for identifying historic heritage so they are refined and require robust evidence to establish significance;
 - (b) Deleting Policy 10.10 that defines waahi tapu;
 - (c) Deleting the Taewapirau site from Appendix 10.1;
 - (d) Exempting earthworks for the permitted activity rule standards that set a very low threshold; and
 - (e) Delete Heritage Item WTS0318 from the Planning Maps.

REVIEW OF S.42A REPORT COMMENT AND RECOMMENDATION

66. 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.
67. From my assessment of the s.42A Report, it seems the following are the recommendations in response to Maypole's submission points:
- (a) An *'avoidance of doubt'* clause added to Rule 10A.6 to clarify any conflict between Chapter 10 rules and a Neighbourhood Development Plan approved under Chapter 5 rules;
 - (b) Amendments to the matters of discretion included in Rules 10A.2 and 10A.3 by deleting matters that do not specifically relate to adverse effects on cultural values associated with a waahi tapu (in response to a submission by the Te Anau Trust supported by Maypole);

- (c) The deletion of the notification clauses associated with the rules (in response to a submission by the Te Anau Trust supported by Maypole).

68. I provide planning comment on each of the above recommendations as relevant below.

PLANNING COMMENT

69. While Maypole's submission has addressed a number of provisions in Chapter 10 Historic Heritage of the PDP, a key matter that provides the context for Maypole's submission is whether the Taewapirau site which is included in Schedule 10.1 is a waahi tapu site, and if it is, whether the extent of the waahi tapu site is correctly identified on the planning maps as WTS0318. I note the s.42A Report relies on the reports of Mr Moore and Dr Kahotea to confirm that the Taewapirau site is a waahi tapu and pa site, and is worthy of protection as proposed in the PDP. Contrary to the Council Officer, I question the weight that can be placed on Dr Kahotea's report if he did not undertake a site visit, as acknowledged in paragraph [251] of the s.42A Report.
70. Because I am not a cultural expert, as a planner it is important for me to be informed of the cultural significance of an area in order for me to determine what direction should be taken from the RMA in order to promote the sustainable management of natural and physical resources, and (in this case) to determine whether the objectives, policies and methods (and in particular rules) are most appropriate to meet the purpose of the RMA (discussed further below). Cultural and archaeological advice is critical to draw a planning position on this matter.
71. Based on the evidence of Mr Jones who reports on his recent monitoring of earthworks undertaken as Stage 1 of the Waimeha Neighbourhood Development Plan, and Mr Love who has reviewed the background documents and relies on the findings of Mr Jones, I understand the Taewapirau site is a waahi tupuna and not a waahi tapu or a pa site and therefore matters in s.6(e) are relevant.

72. With this in mind, in my opinion the PDP provisions (which I have outlined above) are overly restrictive by including the Taewapirau site in Schedule 10.1 and making it subject to provisions that are intended to control activities that affect a waahi tapu site. Furthermore, I consider the PDP does not take into account the investigations and considerations of PC80 that is incorporated into the operative District Plan. These investigations and considerations were undertaken in consultation with iwi and resulted in the identification and setting aside of the Taewapirau reserve area that is included in the Structure Plan and Neighbourhood Development Areas for the Ngarara Farm site. The discretionary consent required for the Waimeha Neighbourhood Development provided for Council as a matter of discretion to consider an archaeological survey and assessment of the area.
73. In my opinion, PC80 incorporated into the operative District Plan recognises and provides for historic heritage, and meets the requirements of s.6(e) of the RMA which is appropriate for the Taewapirau site as a waahi tupuna.
74. The above conclusion is highly relevant when considering whether policies and rules (methods) included within the PDP 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 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.
75. 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 certainty for the comprehensive development of the Ngarara Farm. In relation to historic heritage matters, while there are no specific policies or rules that relate to historic heritage, 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 potential effects of the development on any historic heritage. This includes the consenting requirements for the Ngarara Farm (such as the Neighbourhood Development Plan requiring a discretionary consent) that are able to address both heritage and cultural matters.

76. These provisions were arrived at after a comprehensive investigation and plan change process, and are supported by two cultural reports that have been agreed between iwi, Maypole, and the Council. These reports determined that iwi has a relationship with the Taewapirau site, and this relationship is required to be recognised and provided for in terms of s.6(e) of the RMA. The provisions of PC80 incorporated into the operative District Plan were decided through the plan change process to recognise and provide for this relationship, and the Structure Plan and subsequent approved Neighbourhood Development Plan implement s.6(e) requirements.
77. The overall outcome, in my opinion, will be a duplication of the consent regime that has already been adopted within the operative District Plan, resulting in increased 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 10 Historic Heritage 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.
78. In my view the Chapter 10 Historic Heritage provisions submitted on by Maypole provides another example of how the PDP introduces provisions, in the form of a heritage item, which are likely to complicate and increase the cost of development with the Ngarara Zone and Ngarara Precinct.
79. In my view the Commissioners should delete the particular PDP provisions that relate to historic heritage, and in particular the Taewapirau site, and rely on the provisions of PC80 incorporated into the operative District Plan, as sought in my Chapter 5 Living Environment and Chapter 7 Rural Environment evidence.
80. If the Commissioners are unwilling to accept this request, I have provided my comments and assessment below on the specific provisions included in Chapter 10 upon which Maypole submitted.

Policy 10.2 – Criteria for identifying historic heritage

81. Maypole opposed in part Policy 10.2 for a number of reasons, including that the criteria was very broad and all-encompassing and only one of the values is required to be significant for the item to be included in the Schedule. Maypole sought the policy to be amended so the criteria are refined and robust evidence is required on more than one criterion to establish significance.
82. I note the Council Officer does not recognise Maypole's submission and does not recommend any amendment to the policy as they consider it is consistent with Policy 21 of the RPS (refer to paragraph [71] of s.42A Report). No amendments are recommended to Policy 10.2.
83. While I accept that Policy 10.2 is consistent with Policy 21 of the RPS in that it addresses the matters included in that policy, this is not the issue being raised by Maypole in its submission. Essentially Maypole is concerned about how broad the criterion is for identifying historic heritage, and the fact that only one of the values is required to be 'significant' for the site/item to be included in the Schedule. There is no guidance in the policy on how a value listed will be determined to be 'significant'.
84. In my opinion, the risk of this approach is that a lot of sites will be identified as having historic heritage and subject to rules, when the significance of the site may not warrant such restrictions. Mr Love expresses his concern regarding how broadly the PDP applies the term waahi tapu, and how this approach in fact degrades the cultural significance of waahi tapu.
85. I agree with the concerns expressed by Maypole and Mr Love. I consider the criterion should be reviewed to be more focussed and specific, and the Policy should include a method by which significance will be determined. I consider an amended Policy 10.2 as requested by Maypole is the most appropriate way to achieve the objectives of the PDP, in terms of s.32(1) (b) of the RMA.

Policy 10.10 – Waahi Tapu

86. In its submission Maypole opposed Policy 10.10 and sought for it to be deleted. In particular Maypole considered the wording of the policy was more restrictive than s.6 of the RMA.

87. I note the Council Officer does not recognise Maypole's submission. However, in response to other submission, the s.42A Report recommends Policy 10.10 be amended to read:

Waahi tapu and their surroundings will be recognised as particularly sensitive ~~to any~~ protected from inappropriate subdivision, development or change in land use, ~~as these activities which~~ may affect the physical features and non-physical values of the place or area, ~~and will be protected from any adverse effects of these activities.~~

The Council will ~~W~~ work in partnership

88. I consider the s.42A Report recommended amendments address the concerns raised by Maypole, and make the policy consistent with s.6 of the RMA. I support the amendments recommended. I consider the amended Policy 10.10 is the most appropriate way to achieve the objectives of the PDP, as required by s.32(1) (b) of the RMA.

Rules 10A.1.6 and 10A.3.6

89. In its submission Maypole opposed these rules, as the permitted activity trigger standard under Rule 10A.1.6 relating to earthworks is small (not exceeding 10m³), and if this standard is not met the activity is restricted discretionary under Rule 10A.3.6. These provisions could lead to duplication of earthworks consents for Maypole. Maypole sought for Rule 10A.1.6 to be amended to ensure activities in the Ngarara Zone are exempt from the permitted activity standards if located in an identified Neighbourhood Development Area that is in accordance with a Council-approved Neighbourhood development Plan granted under Rule 5C.4.2.
90. I note the s.42A Report considers the 10m³ threshold for land disturbance in Group B waahi tapu should be retained and applied across the site rather than to individual land disturbance activities as the cumulative adverse effects from multiple instances of 10m³ land disturbance on the cultural values of a scheduled waahi tapu could be significant, and the wording should specify that this limit is the maximum within the scheduled waahi tapu per site each calendar year.

91. The s.42A Report identifies Maypole's request to exempt activities in the Ngarara Zone from the permitted activity standards if in an approved Neighbourhood Development Plan (NDP). The Council Officer considers there would be benefit in including an 'avoidance of doubt' clause to make it clear additional consent is not required which is in accordance with a resource consent granted for a NDP. The s.42A Report recommends the following Note be included after Rule 10A.1.6 (has a minor amendment to clause agreed with Jacobs – "shall take precedence" replaces "shall apply"):

Where there is a conflict between this rule or these standards and any other chapter, the more stringent rule or standard shall apply, except where the proposed activity is undertaken within an identified Neighbourhood Development Area in accordance with a Council-approved Neighbourhood Development Plan granted under Rule 5C.4.2 or Rule 5C.5.3, in which case the conditions of the Neighbourhood Development Plan shall take precedence.

92. The s.42A Report recommends that the references to land disturbance standards which refer to 10m³ are amended throughout to Chapter 10 as follows:

The ~~maximum extent~~ total amount of land disturbance shall not exceed 10m³ per calendar year.

93. I support the s.42A Report recognising the concern raised by Maypole, and the amendment recommended to Rule 10A.1.6 to address the issue.
94. I recommend the Commissioners accept the s.42A Report recommendation to include the 'avoidance of doubt' Note after the standards in Rule 10A.1.6. I consider the amended Rule 10A.1.6 is the most appropriate way to achieve the objectives of the PDP, as required by s.32(1) (b) of the RMA.

Schedule 10.1 – Item WRS0318 Taewapirau

95. In its submission Maypole opposed the inclusion of the Taewapirau site [WTS0318] in Schedule 10.1. Maypole considered there was no robust evidence that would categorise Taewapirau as waahi tapu. Maypole also expressed concerns that the imposition of the waahi tapu item constituted a significant infringement on property rights. Maypole sought the deletion of WTS0318 from Schedule 10.1.

96. The s.42A Report provides a comprehensive commentary on the waahi tapu groupings, and in section 3.18 identifies the submissions, the reports and investigations that led to the inclusion of Taewapirau within Schedule 10.1, and recommends that Taewapirau as currently defined in the PDP is retained.
97. I have briefly summarised above the various reports that the Council Officer relies on, and the evidence of Mr Jones and Mr Love. I have also stated above that on advice from Mr Jones and Mr Love, I understand Taewapirau is not waahi tapu but waahi tupuna, and that the provisions contained in the operative District Plan provide for the site in terms of the requirements of s.6(e).
98. Based on this advice, I recommend the Commissions reject the s.42A Report recommendation and delete Item WTS0318 from Schedule 10.1. I consider the inclusion of Item WTS0318 in Schedule 10.1 is not the most appropriate way to achieve the objectives of the PDP, in terms of s.32(1) (b) of the RMA.

Maps 6, 7 and 9 - Overlays – Waahi Tapu WTS0318

99. In its submission Maypole's opposed Item WTS0318 being included on the Planning Maps as a comprehensive structure planning and plan change process had already addressed and provided for matters of interest to iwi. Maypole sought Item WTS0318 be deleted from Planning Map 6.
100. I note there is no reference in the s.42A Report to Maypole's request. I assume the discussion in section 3.18 of the s.42A Report applies to Maypole's submission.
101. The same comments as above regarding including Item WTS02318 in Schedule 10.1 apply.
102. Based on this advice, I recommend the Commissions delete Item WTS0318 from Planning map 6. I consider the inclusion of Item WTS0318 in Planning Map 6 is not the most appropriate was to achieve the objectives of the PDP, in terms of s.32(1) (b) of the RMA.

CONCLUSION

103. 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.
104. As I have discussed in my previous evidence, 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.
105. Based on the expert evidence of Mr Jones and Mr Love, I do not consider the historic heritage provisions included in Chapter 10 are necessary or appropriate for Taewapirau site located with the Ngarara Farm Site. I consider the PC80 provisions incorporated into the operative District Plan provides for the recognition and provision for the relationship with iwi and the Taewapirau site as required by s.6(e) of the RMA.
106. 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 10 policy and rule provisions, even if amended, are the most appropriate way of achieving the objectives, for reasons I discuss below.

19 September 2016

Chris Hansen

ANNEXURE “A”

REVIEW OF MAYPOLE’S SUBMISSION POINTS

Maypole made the following submission points on the PDP provisions of Chapter 10 Historic Heritage:

(a) Policy 10. 2 Criteria for Identifying Historic Heritage

Maypole opposed in part Policy 10.2. Maypole considered the criteria are very broad and all encompassing, and the policy currently only requires one of the values to be significant in order to include on the schedule of historic heritage.

Maypole sought Policy 10.2 be amended so the criteria are refined and robust evidence is required on more than one criterion in order to establish significance.

(b) Policy 10.10 Waahi Tapu

Maypole opposed Policy 10.10. Maypole noted the policy states that waahi tapu is “particularly sensitive” to any change and will be protected from any adverse effects of these activities. Maypole considered this is more onerous than section 6 of the RMA and places unreasonable restrictions on the use of land.

Maypole sought for Policy 10.10 to be deleted.

(c) Rules 10A.1.6 and 10A.3.6

Maypole opposed these rules. Maypole considered as the trigger for consent under these provisions is small (10m³ of land disturbance), it would be more appropriate to consider the effects on the area, other than management of archaeological finds, at the NDP stage, as outlined in submission point 9. This would be more efficient and appropriate than repeating the process of consulting with iwi whenever smaller scale developments are proposed.

Maypole sought for Rule 10A.1.6 to be amended to ensure activities in the Ngarara Zone are exempt from the permitted activity standards if located within an identified Neighbourhood Development that is in accordance with a Council-approved Neighbourhood Development Plan granted under Rule 5C.4.2.

(d) Schedule 10.1- Item WTS0318 Taewapirau

Maypole opposed this scheduled item. Maypole considered the inclusion of Taewapirau in the schedule of waahi tapu conflicts with a cultural assessment

undertaken as part of the plan change, which did not determine that the area had a significance that would categorise it as waahi tapu. Maypole considered there is no robust evidence to support its inclusion. Further, Maypole stated it has significant implications where the waahi tapu, as in the case of Taewapirau, is located on private land and constitutes a significant infringement of private property rights.

Maypole sought for item WTS0318 Taewapirau to be deleted from Schedule 10.1.

(e) Maps 6, 7 and 9 – Waahi Tapu WTS0318

Maypole opposed in part the inclusion Waahi Tapu WTS0318 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 Waahi Tapu WTS0318 from the Planning Maps.

REVIEW OF MAYPOLE'S FURTHER SUBMISSIONS

Maypole made further submissions (Further Submission No. [FS55]) to the following submissions on historic heritage provisions of the PDP:

- (a) Submissions 414.5 and 414.6 David Moore support the recognition and protection of waahi tapu and the involvement of iwi in decisions regarding waahi tapu – Maypole opposed this submission;
- (b) Submission 272.5 Te Anau Trust request that Rule 10A.1.6 is amended to allow for boundary fences and to clarify the volume of land disturbance permitted (i.e. whether this applies to single activities or as a blanket restriction) – Maypole supported this request;
- (c) Submission 272.5 Te Anau Trust considers that it is overly restrictive and unreasonable for all resource consent applications affecting their land to be publicly notified or notice served to relevant iwi authority and Heritage NZ, regardless of the extent of non-compliance. The submission seeks that their property be removed from Schedule 10.1 or the rules relating to Group B waahi tapu be significantly amended – Maypole supported this request;
- (d) Submission 272.5 Te Anau Trust raised concerns with the matters of discretion in Rule 10A.3 stating that it is inappropriate for Council to reserve discretion over aesthetic matters such as colour, building material, layout and design of buildings located on our property. Te Anau Trust also raised concerns that the list of matters are irrelevant to the assessment of the waahi tapu values and may also have cost implications for landowners if development is required to be carried out in a particular way -Maypole supported this request;
- (e) Submission 081.9 Pātaka Moore supported the identification and scheduling of waahi tapu in the PDP - Maypole opposed this submission;
- (f) Submission 272.5 Te Anau Trust - WTS0318 be removed from Schedule 10.12 or for the Rules relating to Group B waahi tapu to be amended to be less restrictive – Maypole supported this request.

ANNEXURE “B”

SUMMARY OF S.42 REPORT COMMENT/RECOMMENDATIONS ON MAYPOLE’S SUBMISSION POINTS

The following is a summary of how the s.42A Report addresses submissions lodged by Maypole on Chapter 10 Historic Heritage:

(a) Policy 10.2 Criteria for Identifying Historic Heritage

There is no recognition of Maypole’s submission in Section 3.5 of the s.42A Report. The Council Officer considers the criteria in Policy 10.2 for identifying historic heritage are consistent with those listed in Policy 21 of the operative RPS. The criteria in Policy 21 of the RPS include *“tāngata whenua values: the place is sacred or important to Māori for spiritual, cultural or historical reasons”*. The criteria in Policy 10.2 of the PDP include *“the spiritual, cultural or historical values associated with places, knowledge, histories and ngā taonga tuku iho sacred or important to tāngata whenua (Māori)”*. The Council Officer considers these two criteria are appropriate, well aligned, and give effect to the statutory directives in the RMA relating to waahi tapu and historic heritage.

No amendments are recommended to Policy 10.2.

(b) Policy 10.10 Waahi Tapu

There is no recognition of Maypole’s submission in Section 3.6 of the s.42A Report. The Council Officer notes s.6 (e) and (f) of the RMA, and s.7(a) and Section 8, and considers Policy 10.10 is consistent with the direction provided by the RMA to protect waahi tapu and other sites of significance to Māori.

In response to submissions, the s.42A Report recommends an amendment to Policy 10.10 to read:

Waahi tapu and their surroundings will be ~~recognised as particularly sensitive to any~~ protected from inappropriate subdivision, development or change in land use, ~~as these activities which~~ may affect the physical features and non-physical values of the place or area, and will be protected from any adverse effects of these activities.

The Council will work ~~Work~~ in partnership with the relevant iwi authority for the ongoing and long term management and protection of waahi tapu. Relevant

iwi authorities will be consulted on all resource consent applications affecting waahi tapu identified in the Schedule of Historic Heritage.

(c) Rules 10A.1.6 and 10A.3.6

The Council Officer considers the 10m³ threshold for land disturbance in Group B and D waahi tapu should be retained and be applied across the site rather than to individual land disturbance activities as the cumulative adverse effects from multiple instances of 10m³ land disturbance on the cultural values of a scheduled waahi tapu could be significant.

The s.42A report recommends that the land disturbance threshold of 10m³ within a schedule Group B and D waahi tapu area is retained as a permitted activity condition, and that the wording should specify that this limit is the maximum within the scheduled waahi tapu per site each calendar year.

The s.42A Report identifies Maypole's request to exempt activities in the Ngarara Zone from the permitted activity standards if in an approved Neighbourhood Development Plan (NDP). The Council Officer considers there would be benefit in including an 'avoidance of doubt' clause to make it clear additional consent is not required which is in accordance with a resource consent granted for a NDP. The s.42A Report recommends the following clause (has a minor amendment to clause agreed with Jacobs – "*shall take precedence*" replaces "*shall apply*"):

Where there is a conflict between this rule or these standards and any other chapter, the more stringent rule or standard shall apply, except where the proposed activity is undertaken within an identified Neighbourhood Development Area in accordance with a Council-approved Neighbourhood Development Plan granted under Rule 5C.4.2 or Rule 5C.5.3, in which case the conditions of the Neighbourhood Development Plan shall take precedence.

The s.42A Report recommend that the references to land disturbance standards which refer to 10m³ are amended throughout to Chapter 10 as follows:

The ~~maximum extent~~ total amount of *land disturbance* shall not exceed 10m³ per calendar year.

(d) Schedule 10.1- Item WTS0318 Taewapirau

The s.42A Report relies on the Moore and Kahotea Reports and summarises their findings as follows:

- i. Taewapirau has been identified and named as a pā by Te Ātiawa in a number of reports and there are references to Taewapirau in Native Land Court hearings during the 19th century;
- ii. A field visit was undertaken to two¹ of the properties containing part of scheduled Taewapirau by Dr Kahotea, Te Ātiawa representatives, Council representative and the property owners - during this site visit, Dr Kahotea identified shell midden and hāngi cooking stones and also noted the areas of irregular crest and hollows which were considered to be similar to the Rangiuuru pā. However, he also noted that the area had been quite modified and the vegetation impeded a detailed field investigation in some places;
- iii. A previous archaeological survey on the property of Maypole Environmental Limited was undertaken by Kevin L Jones in 2014 - this survey examined some identified pits but did not consider these features to be a pā in the “*strict archaeological sense*” and instead referred to it as a pit/terrace complex;
- iv. A cultural impact assessment (CIA) was undertaken by Mahina-a-rangi Baker in 2014 for Te Ātiawa as part of the consent process for Maypole Environmental Limited’s comprehensive development of the Waimeha Neighbourhood Development Area - this assessment identifies the cultural significance of Taewapirau but does not refer to it as a pā as per the previous assessment of Pātaka Moore. Rather this CIA concludes that “*It is not possible to determine a boundary of the full extent of the Taewapirau complex, as Te Ātiawa considers the whole vicinity, including where there is evidence of human presence to be part of the 'Taewapirau' complex. However the highly sensitive sites, those deemed to be most tapu, are limited to those where human remains are located*”. The CIA then makes a number of recommendations to protect the waahi tapu values in the area (e.g. a public reserve, earthwork protocols) which were incorporated as

¹ Maypole Environmental Limited declined the request of Council to visit the site.

conditions in the Waimeha Neighbourhood Development Plan. This is discussed further in section 3.8 above;

- v. Conversely, Dr Kahotea notes that the presence of storage pits, shell middens and hangi stones indicates that Taewapirau was an area of occupation. Dr Kahotea notes that this is also supported by material from the Native Land Court and previous reports which refer to Taewapirau as a pā, including the earlier work of Pātaka Moore; and
- vi. Dr Kahotea also highlights the fact that iwi view pā as a cultural construct rather than purely physical archaeological construct and that fact that pā sites built on sand dunes do not exhibit the same physical features as pā sites build elsewhere. As such, Dr Kahotea concludes that the 10m contour line is an appropriate area to define the location of Taewapirau in the absence of any intensive field and cultural assessment.

The s.42A Report concludes that it is clear that there is some uncertainty about the exact boundaries of Taewapirau and some inconsistencies in the various historical, cultural and archaeological assessments of the site that have been undertaken. In particular, the CIA report of Mahina-a-rangi Baker differs from the reports of Mr Moore in 2012 and Dr Kahotea in 2015 who both identify Taewapirau as pā. However, all assessments consistently conclude that the area has historical and cultural value to Te Ātiawa which indicates the sites warrants recognition and protection under section 6(e) and 6(f) of the RMA.

As noted earlier, this uncertainty on the exact boundary of Taewapirau also relates to the nature of pā on the Kāpiti Coast which were built on sand dunes and have been subject to extensive modification. As a consequence, these pā often don't have the same physical features found elsewhere in New Zealand and their boundaries are difficult to define with a high level of confidence. The Council Officer considers this inevitable uncertainty on the exact boundary of Taewapirau does not justify cause for inaction given the clear directives to identify and protect waahi tapu under section 6(e) and 6(f) in the RMA.

The s.42A Report recommends that Taewapirau as currently defined in the PDP is retained and recommends maypoles submission be **rejected**.

(e) Maps 6, 7 and 9 – Waahi Tapu WTS031h

There is no reference in the s.42A Report regarding Maypole's request to delete historic heritage Item WTS0318 from the planning maps. It is assumed on the basis of the discussion above, that Maypole's submission is **rejected**.

SUMMARY OF S.42 REPORT COMMENT/RECOMENDATIONS ON MAYPOLE'S FURTHER SUBMISSION POINTS

The following is a summary of how the s.42A Report addresses submissions on Chapter 10 Historic Heritage that Maypole lodged further submissions on:

- (a) Submissions 414.5 and 414.6 David Moore – the policies and rules relating to waahi tapu in Chapter 10 are intended to give effect to statutory directives and the submission demonstrates support in the community for the identification and protection of waahi tapu – recommends submission be **accepted in part** and Maypole's further submission **rejected**;
- (b) Submission 272.5 Te Anau Trust – the Council Officer considers the 10m³ threshold for land disturbance in Group B and D waahi tapu should be retained and be applied across the site rather than to individual land disturbance activities as the cumulative adverse effects from multiple instances of 10m³ land disturbance on the cultural values of a scheduled waahi tapu could be significant – recommends submission be **accepted in part** to the extent that the recommended definition of *“heritage site land disturbance”* and amendments to make it clear the threshold volume applies across the site for a full calendar year clarifies the land disturbance rules – Maypole's further submission **accepted in part**;
- (c) Submission 272.5 Te Anau Trust – the s.42A Report recognises practical and legal issues and recommends the notification clause be deleted – recommends submission be **accepted in part** to the extent that the waahi tapu rules may be viewed as less restrictive as public notification or limited notification of applications on scheduled waahi tapu will not be required – Maypole's further submission **accepted in part**;
- (d) Submission 272.5 Te Anau Trust – the Council Officer agrees that the that the list of matters of discretion for waahi tapu for restricted discretionary activities in Rule 10A.3 (and the matters of control in Rule 10A.2) are very broad and some do not appear to specifically relate to adverse effects on cultural values associated with waahi tapu - recommends submission be **accepted in part** to the extent that the matters of discretion for applications on scheduled waahi tapu are refined – Maypole's submission **accepted in part** – Rules 10A.2 and 10A.3 amended to read:
 - Effects on historic heritage values.

- Effects on landscape, visual, character and amenity.
 - ~~Colour and materials of proposed building or structures.~~
 - ~~Layout, design~~ and location of proposed building or structures.
 - Effects on context and surroundings including any effects on 'key access and view points' listed in the Schedule of Historic Heritage.
- (e) Submission 081.9 Pātaka Moore - Council Officer notes submitter's role in researching waahi tapu site in Kapiti that could be considered for protection – 42 waahi tapu sites are included in Schedule 10.1 – most sites supported by submissions but some in opposition – Council commissioned Dr Des Kahotea to undertake an independent review to respond to submissions – considered Moore reports on 5 sites opposed were of high quality and could benefit from additional archival research he undertook – Council Officer considers work of Moore/Kahotea provides a level of confidence that the scheduled waahi tapu sites in the PDP have high cultural significance and warrant an appropriate level of protection - this is also important to implement Policy 10.10 of the PDP and meet Councils' obligations under section 6(e), 6(f), 7(a) and 8 of the RMA - recommends submission be **accepted** and Maypole's further submission be **rejected**;
- (f) Submission 272.5 Te Anau Trust – the summary of the s.42A Report is outlined above for Maypole's submission. The s.42A Report recommends the submission be **rejected** and Maypole's further submission be **rejected**.