

**Before Independent Hearing Commissioners  
In Napier**

**Under** the Resource Management Act 1991 (RMA)  
**In the matter** of Proposed Plan Change 12 to the Operative City of Napier District  
Plan under the First Schedule to the RMA

**Adopted by** **Napier City Council**  
Local Authority

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**Submissions on behalf of Marist Holdings  
(Greenmeadows) Ltd**

**18 September 2018**

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# Submissions on behalf of Marist Holdings (Greenmeadows) Ltd

## 1 Introduction

- 1.1 The Mission Estate plays a special part in Napier's economy, landscape and history. Its special character and activities are valued by both tourists and locals.
- 1.2 Marist Holdings (Greenmeadows) Ltd (**Marist Holdings**) has worked with Napier City Council for several years to develop a more appropriate planning framework for its unique property.
- 1.3 The result is a plan change that:
  - (a) Protects the visual amenity value of this landscape as a backdrop to Taradale and the City of Napier and in particular the integrity of the skyline;
  - (b) Provides connectivity as a walkway link across the Western Hills;
  - (c) Provides connectivity as part of an ecological corridor within the City Reserves Network; and
  - (d) Provides a different style of residential opportunity in Napier.
- 1.4 Owing to the significance of the public benefits that Plan Change 12 will enable, it has rightly been adopted and promoted by the Council.
- 1.5 In order for Plan Change 12 to deliver the positive outcomes envisaged, it needs to at the same time provide a reasonable and practical framework for Marist Holdings to develop its land.
- 1.6 In my submission it is important to keep the big picture in mind – enabling Plan Change 12's positive outcomes to be delivered in a reasonable and practical way – as you respond to the more finely detailed matters raised in the submissions.

## 2 Decision-making framework

- 2.1 The statutory framework for evaluating a proposed change to a district plan is set by sections 32 and 74 to 76. A comprehensive summary of the requirements of those sections can be found in the Environment Court's decision in *Colonial Vineyard Ltd v Marlborough District Council*.<sup>1</sup>
- 2.2 As regards section 32, the key requirements in the present case are:

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<sup>1</sup> *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55, at para [17]. This decision continues to be a point of reference for the Environment Court when evaluating plan changes, see for example *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2018] NZEnvC 67, at para [159].

- (a) The objectives should be the most appropriate way to achieve the purpose of the Act.<sup>2</sup> In light of the *King Salmon* decision, it should be assumed that the Act's purpose is articulated by the higher order planning documents except in cases of invalidity, incomplete coverage or uncertainty of meaning;<sup>3</sup>
  - (b) The provisions should be the most appropriate way to achieve the objectives, having regard to their efficiency and effectiveness and other reasonably practicable options;<sup>4</sup> and
  - (c) The benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions must be assessed, including opportunities for economic growth and employment.<sup>5</sup>
- 2.3 In relation to sections 74 to 76, the most relevant requirements are:
- (a) To give effect to any national policy statement;<sup>6</sup>
  - (b) To give effect to any regional policy statement;<sup>7</sup>
  - (c) To have regard to management plans and strategies prepared under other Acts;<sup>8</sup> and
  - (d) When making a rule, to have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.<sup>9</sup>
- 2.4 The Section 32 report and Section 42A report include full evaluations of these matters.

### 3 Evidence

- 3.1 A suite of reports were provided by Marist Holdings in support of the section 32 report, including:
- (a) An Urban Design, Landscape and Recreation Assessment;
  - (b) An Engineering Assessment;
  - (c) A Transportation Report;
  - (d) An Archaeological Assessment;
  - (e) An Economic Benefit Assessment;
  - (f) A Stormwater and Flooding Effects Assessment; and

<sup>2</sup> RMA, s 32(1)(a).

<sup>3</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, at para [88].

<sup>4</sup> RMA, s 32(1)(b), note also s 32(3).

<sup>5</sup> RMA, s 32(2)(a). See Appendix E to the section 32 report, executive summary, paras 3-6.

<sup>6</sup> RMA, s 75(3)(a).

<sup>7</sup> RMA, s 75(3)(c).

<sup>8</sup> RMA, s 74(2)(b)(i).

<sup>9</sup> RMA, s 76(3).

(g) Geotechnical Assessments.

3.2 No expert evidence has been called by any of the submitters to challenge these reports and as such, in combination with the Council's evidence, they stand as uncontested expert evidence.

3.3 Mr Philip McKay has provided expert planning evidence on behalf of Marist Holdings to address the issues identified in the section 42A report. His is the only statement of expert evidence that has been provided by any submitter. He is available to answer your questions today and will address a number of matters that were raised by submitters or in questions from the chairman or commissioner.

## **4 Issues raised by submitters**

4.1 I address the issues raised by the submitters below, following the same structure as the section 42A report.

### *Visual amenity*

4.2 Marist Holdings agrees with the section 42A report in all respects but one, which relates to the design manual and review process.

4.3 The issue is, should the design manual and review process apply to the Rural Residential Precincts at all? Marist Holdings say it should not, for the reasons given in Mr McKay's evidence:<sup>10</sup>

(a) The Rural Residential Precincts have been provided to protect the amenity of the neighbouring Rural Residential Zone where the Marist Special Character Zone abuts it. The Rural Residential Zone does not have controls such as those in the design manual and review process. It follows that the protection of that Zone's amenity values does not require any additional or unusual controls on the Rural Residential Precincts. It should be sufficient for the Precincts to reflect the Zone.

(b) In the language of section 32, to impose tighter controls on the Precincts than on the Zone would impose a cost without a commensurate benefit. It would not be the most effective and efficient way to protect the Rural Residential Zone's amenity values.

(c) The amendment is not needed to achieve objective 51b.3 as that objective is for the Mission Special Character Zone generally, and the same drivers do not exist for the Rural Residential Precincts.

(d) In the Rural Residential Precincts visual mitigation occurs through setback distances, separation and on-site landscaping.

4.4 Mr McKay has also noted that the concerns of Mr Arnold can be met by an amendment to the Design Outcomes.<sup>11</sup>

4.5 I also note that yesterday the Chairman asked Ms Anstey about the controlled activity status of residential activities within "prominent visual development

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<sup>10</sup> Paras 31-40.

<sup>11</sup> Para 41.

areas". In particular, whether reserving control over location was sufficient, expressing a concern that in some circumstances the exercise of control might effectively amount to declining consent.<sup>12</sup> In my submission controlled activity status will be satisfactory:

- (a) Under rule 51b.75.1(b) buildings must be screened from view from Church Road in order to qualify as a controlled activity in the first place. If they do not, then they can be declined consent;
- (b) Subdivision is a restricted discretionary activity, and precedes any residential building. This means that any inappropriate sites can be declined consent at that stage;
- (c) Against that background, the sites should all be suited to accommodating a residential buildingsomewhere.

#### *Productive Rural Zone Rules*

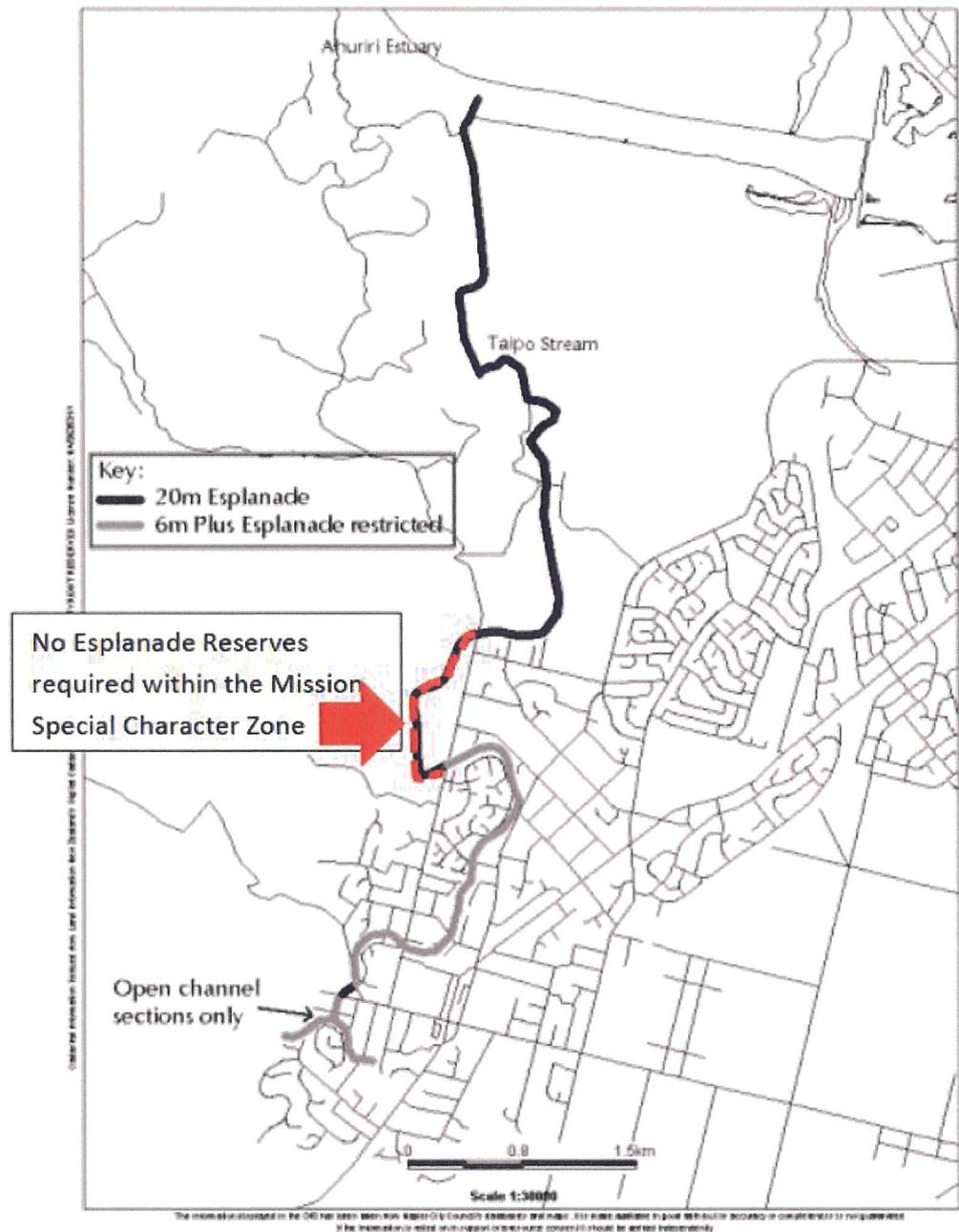
- 4.6 Marist Holdings agrees with the section 42A report as regards the references to versatile and productive land, rather than soils.

#### *Esplanade Reserves*

- 4.7 Hawke's Bay Regional Council has submitted that a 20m esplanade reserve requirement is appropriate.
- 4.8 Marist Holdings agrees with the section 42A report that no esplanade reserve requirement should apply to the stretch of the Taipo stream that traverses the Mission Special Character Zone, noting that Design Outcome 21 in the Mission Special Character Zone Structure Plan provides for a 6m easement for maintenance and stormwater management purposes.
- 4.9 You will be aware that 6m is all that is required by way of esplanade reserve in the residential land adjacent to the Mission Special Character Zone:

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<sup>12</sup> Judge Kenderdine considered this issue in *Aqua King Ltd v Marlborough District Council* 4 ELRNZ 389. The case concerned an application for a controlled activity coastal permit for marine farming to use standard surface longline methods to farm shellfish and seaweeds in Croisilles Harbour. The consent was granted subject to a condition restricting the activity to subsurface marine farming only. On appeal, the applicant successfully challenged the Council's ability to impose a condition limiting the farming method to subsurface structures thus effectively declining the consent for surface farming. A similar issue arose in *Matson v Auckland City Council* (Environment Court) A 104/2009, 29 October 2009 where the appellants appealed the Council's decision to grant a controlled activity demolition consent and sought that the consent be subject to the condition that the street facades and other parts of the building be retained and protected in their entirety. The Environment Court held that removal of all parts of the building was an essential element of the application for demolition consent. To grant a consent for anything else would be to grant an application for partial demolition. It was held that the appeal sought to derogate from the grant of the controlled activity demolition consent and was therefore dismissed.



- 4.10 In my submission the 6m easement corridor is reasonably consistent with the rest of the upper Taipo stream catchment.
- 4.11 Also, a wider esplanade and public access through the vineyard would be inappropriate from a functional perspective and a landscape perspective.
- 4.12 Further, public access and connectivity through the Mission Special Character Zone is being provided by the walkways, satisfying one of the reasons for a wider esplanade reserve.
- 4.13 Nevertheless Marist Holdings has considered the compromises proposed by the Council and by Hawke's Bay Regional Council and Mr McKay will explain how he

considers the plan provisions could be amended to appropriately provide for esplanade reserves.

*Infrastructure services*

- 4.14 Marist Holdings agrees with the section 42A report that there is no need for any amendments as regards planning for infrastructure.

*Traffic*

- 4.15 Marist Holdings concurs with the section 42A and the expert evidence is that the current roading network is sufficient to cater for the increase in traffic. Planned safety improvements will assist but are not necessary in order for the plan change to be approved, and Mr Mills has given evidence for the Council that these upgrades are planned to proceed independent of PC12.

*Archaeology*

- 4.16 Marist Holdings agrees with the section 42A report that no amendments are necessary, noting:
- (a) the Heritage NZ Pouhere Taonga Act 2014 which makes it unlawful for any person to modify or destroy, or cause to be modified or destroyed, the whole or part of any archaeological site without the prior authority of Heritage NZ. The process of obtaining an authority through Heritage NZ requires the development of an accidental discovery protocol and consultation with mana whenua as kaitiaki; and
  - (b) Design Outcome 3: Archaeology requires an updated Archaeological AEE to be submitted with applications for subdivision consent within the residential precinct, felling of the Southern pine plantation, construction of walkway paths and of art cabin accommodation.

*Heritage*

- 4.17 Marist Holdings concurs with the section 42A report that Plan Change 12 does not put any heritage resources at increased risk. The listing of new items of heritage significance was not proposed and is outside the scope of the plan change.<sup>13</sup>
- 4.18 Heritage Hawke's Bay's submission said as much when it stated "we seek the initiation of the process to list this building and property, as a place of heritage significance in Napier's District Plan in tandem with the Plan Change process". This acknowledges our point that it needs a separate process. Historic Hawke's Bay are entitled to request a plan change, or submit on the review when it happens. That is when an attempt can be made to list the building.

*Stormwater*

- 4.19 As noted in the section 42A report, the correct forum for stormwater concerns was the stormwater discharge permit application. This matter has been

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<sup>13</sup> See *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 the first limb of the jurisdictional test for submissions is that "the submission must address the proposed plan change itself, that is, it must address the extent of the alteration to the status quo which the change entails.";

considered and dealt with now by Hawke's Bay Regional Council with a discharge permit DP180163L granted on 21 May 2018. There is no jurisdiction to revisit that decision in this hearing.

- 4.20 You have heard from the submitters Mr and Mrs Alexander, assisted by Mr Ehlers. Their evidence confirmed two further difficulties with the relief sought: the offending culverts are in Hastings District, out of the Council's jurisdiction, and also, when Mr Ehlers was asked by the Chair what impact PC12 had he said "none. Absolutely none".
- 4.21 This is an interesting issue for the Alexanders and Marist Holdings to potentially discuss with Hawke's Bay Regional Council and Hastings District Council, but it is not necessary to address it in order to approve PC12 and this hearing is not the right forum.

#### *Hazards*

- 4.22 The section 42A report recommends no change, noting that the Mission Special Character Zone has a much lower hazard profile than other locations in Napier. Marist Holdings concurs.

#### *Cultural values and consultation*

- 4.23 The Cultural Impact Statements provided by Ngāti Pārau and Te Taiwhenua o Te Whanganui ā Orotū have provided an appropriate basis for you to consider any cultural effects.
- 4.24 Marist Holdings agrees with the recommendations in the section 42A report. This includes an objective to retain and enhance the cultural values that create the special character of the zone, the inclusion of a new supporting policy and Mr McKay's recommended additional reasons.<sup>14</sup>
- 4.25 These measures will assist to ensure that cultural values and relationships are appropriately recognised.

#### *General and range of issues*

- 4.26 Marist Holdings agrees that no amendments are required.

## **5 Conclusion**

- 5.1 In my submission Proposed Plan Change 12 should be approved on the terms set out in the section 42A report, subject to the amendments recommended by Mr McKay.

Date: 18 September 2018



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B A Watts  
Counsel for Marist Holdings Ltd

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<sup>14</sup> Para 59.