

# Speaking notes for hearing

1. My understanding is that the Council is attempting to use the deferred zone provisions to perform three roles:
  - a. Provide a short-cut rezoning process to avoid the need for a Schedule 1 plan change when the prerequisites for urban development are in place, noting that the zoning itself isn't changed but the provisions of a different zone apply once the prerequisites are in place ("deferred zone flip").
  - b. Provide a consenting pathway for deferred zoned land to be developed for urban use in appropriate circumstances ("consenting pathway").
  - c. Allow rural land in areas earmarked for future urban growth to continue to be used for rural activities while avoiding subdivision and development that might compromise future urban development ("future urban protection").
2. These three roles are to apply to two 'classes' of deferred zones – deferred zones within Māpua and Motueka, and deferred zones elsewhere in the district. For both classes of deferred zone, I understand the Council's intention is that:
  - a. the consenting pathway and future urban protection roles are to remain the same.
  - b. The deferred zone flip role is to operate differently – in Māpua and Motueka the operative approach is to remain and in the rest of the district, a new approach is to apply.
3. Unfortunately, in attempting to update the deferred zone flip provisions for sites outside of Māpua and Motueka, PC79 has made changes to the provisions that deal with all

three roles within Māpua and Motueka. That has created significant confusion and complexity in the provisions.

4. The recommended provisions that I included in my planning evidence were an effort to address the issues by using the notified framework. After further consideration, and on reviewing the logic flow I have just described, it may be a simpler drafting exercise to have a separate set of provisions (the operative provisions) that apply only to sites in Māpua and Moteuka, and a second set of provisions (the proposed provisions with amendments to solve other issues) that apply to deferred zones in the rest of the district. That approach would mean the provisions that apply in Māpua and Motueka could remain untouched by PC79 while the updated provisions for the rest of the district can be refined.

## Comments on legal submissions of Mt Hope Holdings Limited and Appleby 88 Limited

5. At para 24, there is statement that determining whether listed infrastructure has been delivered is more straightforward than determining whether a wetland is present. I do not agree. The descriptions of the infrastructure to be provided are, in many cases, high-level and non-specific. In many cases, details of infrastructure known only to the council would be required to determine if something has been delivered. For example, a reasonable person would not know whether pipes that have been installed in a road are for a particular infrastructure upgrade, whether they have been commissioned, whether they have the required capacity, or whether their use is contingent on some other piece of infrastructure in another location being installed (such as a pump station or reservoir). Where infrastructure is to be delivered in the future, there is significant uncertainty around how a future commitment from multiple parties would be demonstrated. Such commitments are also subject to change. An example was

explored with the s42A officers this morning, where the Council is able to, and does, change its funding priorities for infrastructure delivery. There is currently no formula or process provided by the Council or included in PC79 to help plan users to apply these provisions. Wetlands, on the other hand, are generally identified using accepted guidance and methodology. While this requires an expert in wetlands to apply, it is nonetheless clear what methodology is to be used. That is not the case with PC79.

6. Relying on the resource consent process to deal with uncertainty about whether infrastructure has been delivered or not is not efficient, in my view. If a person applies for a subdivision consent as a controlled activity on the assumption that certain infrastructure has been delivered, only for the council to determine that it hasn't been delivered, it would cause the activity status of the application to change to discretionary or non-complying mid-process. Such a change mid-process would create significant procedural issues, costs and uncertainties to applicants. It may influence things like notification decisions, and whether other resource consents are also required (like land use consents for dwellings). Relying on the resource consenting process as a backstop for imprecise plan provisions is not a good drafting outcome.
7. At para 25, there is a statement that I appear to accept that there is not a fundamental issue with the validity of the PC79 approach. In principle, I consider an approach could be drafted that would satisfy the requirements of good plan drafting. As I set out in my evidence, that would rely on significant improvements in certainty in both the infrastructure triggers specified in Schedule 17.14A, and the process by which the delivery of that infrastructure is confirmed. At the moment, there is a long way to go in terms of both.
8. Other councils use a deferred zoning approach that has some similarities to the PC79 mechanism, but which do not go as far as actually altering which provisions of the plan

apply. A plan change is required to 'uplift' the deferral once the prerequisites are in place.

9. The s42A officers refer to some analysis they have undertaken on the use of deferred zones by other councils, and observed that they found 4 other district plans that use a similar approach to that proposed in PC79. I will be interested to see that analysis. Examples such as the Manawātū District Plan Deferred Residential Zone (DEV2) appear to be modelled off the operative TRMP provisions<sup>1</sup>.
10. The legal submissions at para 51 and 55 raise issue with my recommended amendments to Objective 6.3.2.3 and Policy 6.3.3.4A. Those changes are intended to plug the policy gap that has been created in the notified provisions for assessing resource consent applications in Māpua and Motueka. The operative objectives and policies direct decision-makers to consider whether scheduled infrastructure has been delivered either when applying the 'uplift' mechanism or assessing resource consent applications. By altering the objectives and policies that apply to deferred zones in Māpua and Motueka, and removing the schedule infrastructure that needs to be in place before development proceeds, PC79 removes much of that operative policy direction. The s42A officers have been clear that a resource consenting pathway remains for developing deferred zone land in Māpua and Motueka. In fact, it is now the only way that urban development can occur in those areas without a plan change, which makes the policy setting particularly important.
11. Reintroducing a schedule of deferred zone sites within Māpua and Motueka, with the necessary infrastructure required, would assist in resolving this issue. However, these would need to be differentiated from those included in the notified Schedule 17.14A

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<sup>1</sup> [https://www.mdc.govt.nz/\\_\\_data/assets/pdf\\_file/0026/173078/DEV2-Deferred-Residential-Zone.pdf](https://www.mdc.govt.nz/__data/assets/pdf_file/0026/173078/DEV2-Deferred-Residential-Zone.pdf)

because the management approach differs for deferred zones in different parts of the district.

12. At para 78, the legal submissions address the issue of whether the deferred zone flip should apply to parts of sites rather than to the whole of the particular deferred zone. Some of the discussion during the s42A officers presentation this morning highlighted why allowing sub-sets of deferred zones to be 'flipped' becomes very complex, especially where infrastructure is to be delivered in the future by a developer or third party. The infrastructure delivery confirmation process that the s42A reply statement mentioned would need to describe how these sub-set approvals would work.
13. There are a number of other matters that I could address, but I understand the Panel is contemplating directing planner conferencing, which may be a more efficient forum to explore the details.
14. I am happy to answer questions.