



Agreement between WGC and Maypole Environment Ltd (MEL)

1. Background

- The WGC Board has reached an agreement with Maypole Environment Ltd (MEL) regarding the land adjacent to the 9th fairway.
- The Board believes this is an excellent agreement which demonstrably serves the best interests of the Club. It assures the future safety of our golf operations and eliminates virtually all of the future legal and financial risks to the Club. It also preserves opportunities for co-operation with Maypole in the future.
- This pamphlet is intended to explain the agreement and why the Board decided to enter into the arrangement with Maypole.

2. Who is Maypole Environmental Ltd (Maypole)?

- Maypole Environmental Ltd (MEL) is the development company owned by the Smith Family Trust.
- The Smiths were farmers on land adjacent to the 9th and 7th fairways for many years; well before the Golf Club was formed.
- The Smith family gave the land on the edge of the 9th Fairway to WGC about 30 years ago and planted the pine trees in question. Therefore the Club has been benefiting from their generosity for some time. It is ironic that they now have to negotiate some elements of it (the trees and sight lines) back.
- The Smiths also covenanted the 70 ha QE II block to the east of the 7th fairway. This extremely valuable land has therefore been protected from development by the Smiths for the benefit of the community forever. The Club also benefits from having this reserve on its boundary.

3. Waimeha Village Development

- The Waimeha Village was originally proposed about ten years ago by MEL as a visionary multi-stage eco-village spreading further to the east than the current proposal. The expressway development effectively stalled these ambitious plans.
- Following the finalisation of the expressway, the village development was substantially reduced and now consists of six stages to the west of the new road.
- The first stage is a gateway development off Te Moana Rd. The second stage (which directly affects WGC) bounds the 9th fairway from behind the 9th tees all the way to the 9th green.

4. Events to date

The following events have occurred to date.

- 2014 – Maypole felled their trees on the southern boundary. At the same time they requested that WGC allow them to remove the trees on our property. We refused on the grounds of safety to residents and to protect the Club's long-term operations.
- 2015 – Maypole lodged an RMA application for the Stage I and II developments

- 2015 – The RMA hearings process began WGC objected on the grounds of safety (i.e. the risk of ball strike to people and houses in close proximity to the 9th fairway). Note; there are instances of golf Clubs being forced to close or restructure their operations due to the risk of ball strike on houses built after the Club was formed.
- 2015 – The RMA commissioner agreed to delay the hearings to allow negotiations between WGC and Maypole to resolve the issue of safety and sightlines.
- May 2015 – WGC and Maypole entered negotiations – **in good faith**. This means that the negotiations were conducted to amicably resolve the issues between the parties. This involved a redesign of the 9th fairway (at Maypoles cost) to direct balls away from the proposed housing.
- WGC was represented by Brian Ramford of Kapiti Law working on a pro-bono basis. Tommy Cushnahan, a professional golf architect with an existing relationship with this Club, provided the course design services on behalf of WGC at Maypoles expense.
- August 2015 – After four extensions, agreement was reached and a deed of settlement prepared. In the last week the RMA commissioner advised that he would not allow any more extensions to the hearings.
- Following is a schematic of the proposed development including the new 9th hole layout.

SCALE: 1:1500 @ A3
 0 25 50 75 100 metres



WAIKANAЕ GOLF HOLE 9 - Proposed Layout

18 July 2015



5. Features of the proposed new 9th fairway

- The Club engaged a professional golf architect, Tommy Cushnahan Golf, to provide advice and design services. The brief was to produce a design that would be safe to play and of no lesser golfing quality than already exists. He provided three options of which Option 2 was chosen. The option chosen includes the following features,
- New 9th tee block to bring the blue tees into the corner of the boundary (behind the existing White and Yellow tees) and realign the aim 10 - 15 degrees more towards the current firewood dump. A new forward tee for ladies will be included.

- The fairways will be re-contoured and replanted and the hill will be flattened and sand moved to other points to fill and contour.
- The rough and old retired fairway will be planted with low species by agreement with Maypole. They wish to preserve their “native” theme and we agree with that, subject to it not making it impossible to find your ball and play it from the rough.
- The existing green is unaffected.
- The hole will be slightly lengthened for men (shortened for women) and will retain and likely improve on its current challenge and variety. Our architect assures us it will be a better hole.
- The trees will stay in place until the works are finished and, if consents cannot be obtained and the work not done, then the agreement is null and void.
- There will be a period of disruption with a temporary tee in use while the works are undertaken.
- Maypole will pay all costs which could be as high as \$200,000.

6. Background to the negotiations

In negotiating with Maypole the WGC Board took into account the many factors and issues which are confronting the Club. These include:

- The delicate financial situation of the Club. We have few reserves and falling revenues.
- The access and carpark. The ownership issues need to be resolved.
- The waahi tapu proposal on the land adjacent to the 9th tee; this matter needs to be negotiated.
- The slowly declining membership and revenue. We are planning a continuous membership drive, but need to do even more.
- The need to upgrade our Clubhouse to make it warmer and more inviting.
- The continuing need to maintain and improve our course.
- Health and safety requirements. This is a major new risk area for the Club.
- Thin Board resources. It is getting harder to find good people willing to devote their time and expertise to help manage the Club. The existing Board is extremely stretched.
- The Board’s conclusion is that we cannot afford a long, expensive and time-consuming fight over something which is unlikely to return any cash to the Club. We are advised that a war on the border could cost up to \$50K per year in legal costs and boundary management and consume enormous amounts of scarce time.

7. The Agreement

The final deed of settlement was signed on 14th August 2015. Its essential features are as follows;

Maypole will:	WGC will:
<ul style="list-style-type: none"> • Realign the 9th fairway according to the agreed design. • Remove the trees on the boundary. • Allow a ‘No objection’ covenants on Maypole land transferrable to future owners. This means no owner could ever object to the Club’s golf operations or ball strike. • Replant the rough and old fairway • Replace the existing fence • All this will be at their cost. 	<ul style="list-style-type: none"> • Withdraw its RMA objection and agree not to object in future • Covenant and preserve the sight lines to fairway. • Allow the trees to be removed.

8. Advantages and disadvantages of the Agreement

- The Board’s conclusion is that we have negotiated a very favourable agreement which protects the Club from costs and risks. Following are what we see as the advantages and disadvantages involved.

Advantages – we get	Disadvantages – we give away
<ul style="list-style-type: none">• An improved 9th fairway and tees• Professional landscaping• No cost• No future risk• Peace on the boundary• Goodwill for future co-operation• Board time freed up to deal with the issues confronting the Club.• Opportunities with the village	<ul style="list-style-type: none">• Very ‘weak’ restrictions on a small piece of land.• A few months disruption to our golf

- The Board regards this as an excellent result– a ‘no brainer’. In the end the agreement was too good to back away from. We have traded a little for a lot.

9. Member concerns

- The Board is aware that some members are unhappy with what they know about the agreement and how it has been negotiated. Members have every right to express concerns and this shows a healthy attitude towards the fortunes of the Club.
- Please be assured that all concerns and issues have been heard and thoroughly considered. The Board has not entered into this agreement lightly.
- Following are some of the concerns expressed by members and the Board’s response to those.

10. Concern #1 – “Giving away land”

- Some members have expressed concern that the agreed covenants “give away our land forever”. They argue that the Board cannot alienate land without the agreement of members at a special general meeting (see Paragraph 12 below with regard to the constitutional position). Please consider the following points in relation to this concern.
- The covenants we have agreed have very ‘weak’ restrictions on our land. The restrictions on area “B” above the 9th green are particularly weak in that they only restrict what we can plant.
- The covenants represent a very minor constraint. It does not interfere at all with any of our golf activities, now or in the future.
- The constitution requires us to consult members in the event of ‘sale’, ‘lease’ or ‘rent’ of land. The covenants are none of these.
- The reverse covenants we have negotiated with Maypole on their land are far stronger. We have gained much more than we have lost in this exchange.
- The area involved is a comparatively small piece of land, not zoned for residential development (re-zoning would be vigorously opposed), with no road access and for which the Club has no other use than as a ‘rough’ buffer zone for safety.

11. Concern #2 – “Maypole should pay”

- Some members have expressed the opinion that WGC should “play hard ball” and hold out for a cash payment. Figures as high as \$400,000 have been floated.

- The Boards view is that such sums and settlements were never a likelihood and once we entered negotiations in good faith they were never appropriate.
- Holding out for a cash payment would more likely have resulted in a long drawn out process and a very costly fight which could have cost us as much as we got and in the end would have destroyed any goodwill and tied up the Board for many years.
- ‘Good faith’ negotiating means resolving issues amicably. The request for a “hard ball” cash settlement was not made until the negotiations were very advanced and any withdrawal by WGC from the process at that stage could have been viewed by the commissioner as vexatious. Such a tactic would have destroyed all of our goodwill and committed us to tens of thousands of dollars of costs as our pro-bono legal advice has run out.

12. Concern #3 – “Ignoring member concerns’

- The Board has been accused of ignoring member’s wishes and being secretive about the agreement. The Board believes it has communicated as much as it realistically could, given the nature of the negotiations, and has constantly sought out the advice and opinions of a wide range of Club members. All of the many opinions have been heard and have been taken into account.
- The Board’s ability to communicate and consult has been limited by the nature of the negotiations; especially when changes were being considered up until the 11th hour. Every attempt has been made to keep members up to date through Pukeko Pages and by word of mouth.
- A small group of members called for the Board to hold a special general meeting to approve the agreement. The Board considered this request but was unable to agree to the request for the following reasons.
 - i. The request was too late; a SGM requires three weeks’ notice in writing and was made two days before the deadline for completing the agreement.
 - ii. There were no grounds under the constitution were proffered for the request to call a SGM.
 - iii. The people involved claimed to have the requisite 15 signatures but no signatures were ever produced in writing.
 - iv. Delaying the signing of the agreement meant it would have been lost and we would have had to start again with expenditure of more time and money.
- In the end your Board is elected by you to make decisions. In this case it has weighed all the facts and made a decision which we believe to be by far in the best interests of you and the Club.
- At all times the Board has been mindful of and acted in accordance with the Clubs constitution – Clauses 16.4 (no sale, letting or leasing), 16.5 (direction to address safety issues) and 16.9 (Board latitude to act when matter not covered in Constitution) are relevant.

13. Future opportunities with Maypole

- While it has never been the main focus in its decision making, the Board has always been mindful of the possibility of partnering with Maypole in future to unlock the value of the land above the 9th green. This is about 1 ha and currently has little value due to lack of access, the threat of a waahi tapu designation over the site and inappropriate zonings. The Club could never subdivide this land on its own. If we could gain access through

Waimeha Village and address the other issues the land could have a sale value of over \$1 million. Maypole may be willing to partner in this venture.

- Maypole is also affected by the waahi tapu designation. We need to co-operate with them to ensure it does not unduly affect us.
- The Waimeha Village is potentially a significant source for future Club members and Maypole is keen to integrate the course with the development for mutual advantage and is a source of potential future sponsorship.
- It is much more sensible that we have Maypole as a potential future partner rather than as an enemy.

14. Summary and conclusion

- In conclusion the Board is convinced that the agreement is a very good deal which serves the best interests of you the members and the Club.
- It was clearly too good a deal to miss out on and eliminates all risk to Club; legal and financial and through diverting our scarce human resource.
- Clearly the gains far outweigh any losses and we can now get on with a peaceful life

Ed Isaac
Chairman, on behalf of the Board.

27th August 2015