

**BEFORE THE ENVIRONMENT COURT  
AUCKLAND REGISTRY**

**ENV –**

**IN THE MATTER** of an appeal under clause 14(1) of  
Schedule 1 of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of a Proposed District Plan

**BETWEEN** **POKENO WEST LIMITED AND  
WEST POKENO LIMITED**

Appellant

**AND** **WAIKATO DISTRICT COUNCIL**

Respondent

**To: The Registrar  
Environment Court – Auckland**

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**NOTICE OF APPEAL TO THE ENVIRONMENT COURT AGAINST  
A DECISION ON A PROPOSED DISTRICT PLAN  
BY THE WAIKATO DISTRICT COUNCIL**

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*1 March 2022*

**Counsel Instructed**

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## DECISION APPEALED

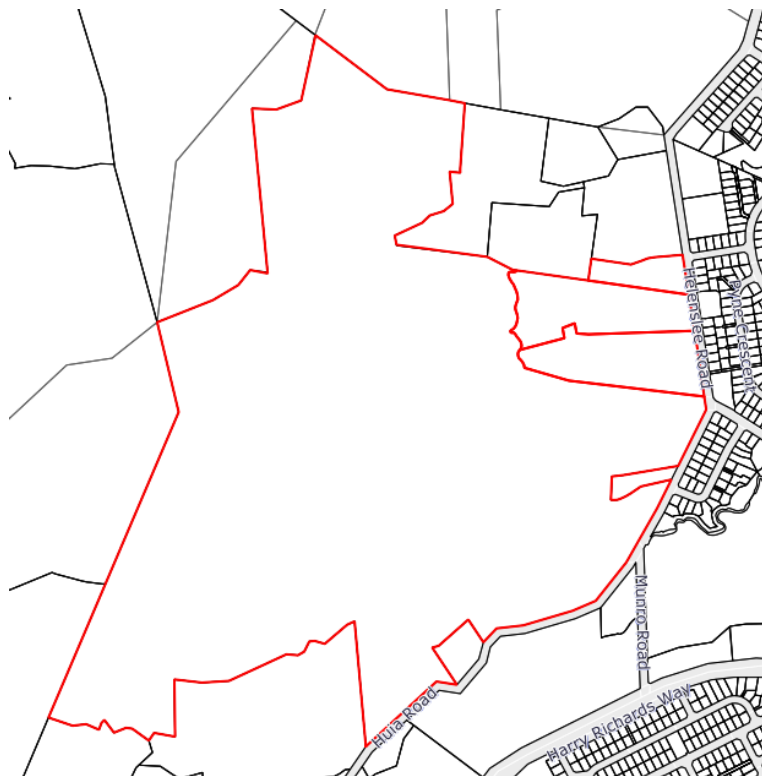
1. Pokeno West Limited (the **Appellant**), appeals a decision of the Respondent, the Waikato District Council, on the following matter (the **Decision**):

The Proposed Waikato District Plan, notified and determined under Schedule 1 of the Act (**Proposed Plan**).

2. The Appellant made a submission on the Proposed Plan that was lodged by Birch Surveyors Limited (Submitter number 97).
3. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**Act**).
4. The Appellant received notice of the Decision on 17 January 2022.
5. The Decision was made by commissioners and adopted by the Respondent.

## THE LAND AFFECTED

6. The Appellants' land affected by the Proposed Plan is 142.5920ha at 53 Munro Rd and 87, 109 and 119 Helenslee Rd as shown in the map below:



**Figure 1 – Appellants' land outlined in red on cadastral plan**

7. The individual land parcels that are included in the appeal are:

ADDRESS	LEGAL DESCRIPTION	AREA
53 Munro Road	Lot 2 DP 459108	130.3502 ha
87 Helenslee Road	Lot 1 DP 211605	5.2100 ha
109 Helenslee Road	Lot 3 DP 211605	5.4500 ha
119 Helenslee Road	Lot 2 DP 176087	1.5818 ha
<b>Total</b>		142.5920 ha

8. The Appellants' land parcels in the Decision Map are shown below.

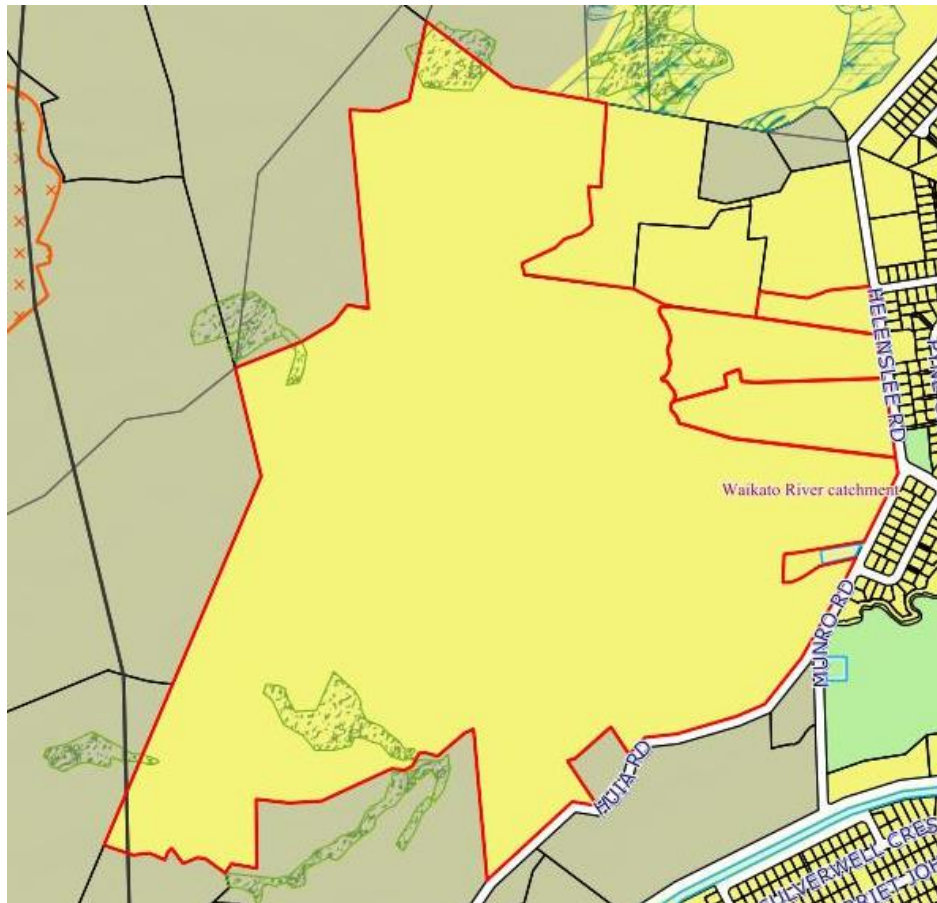
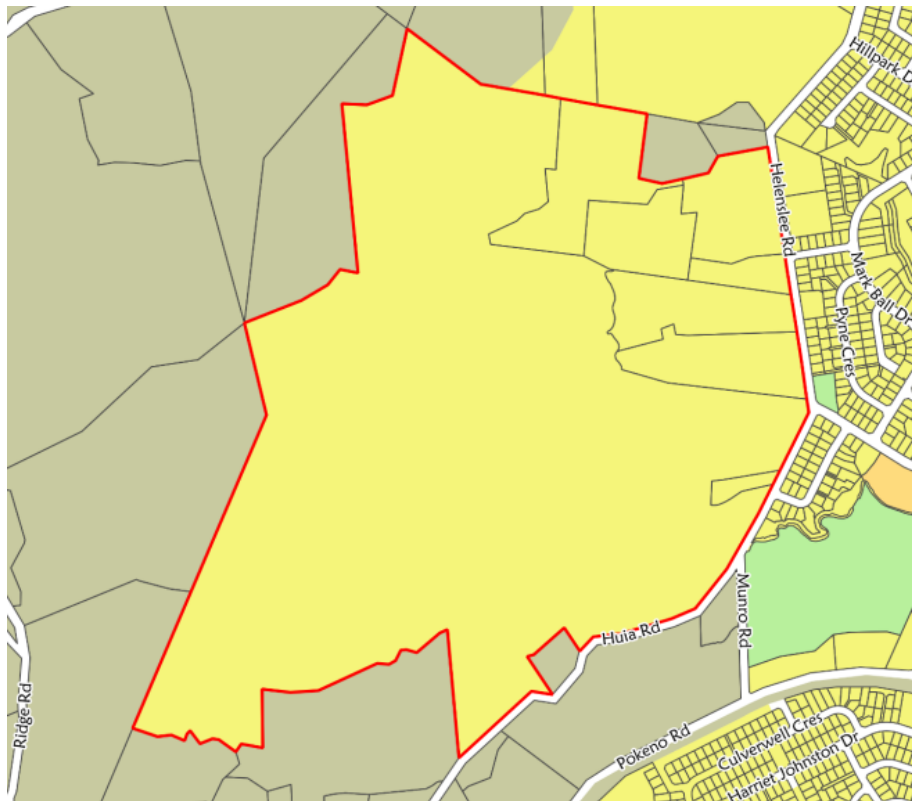


Figure 2 – Appellants' land outlined in red within the Decision zoning plan

## PROVISIONS BEING APPEALED

9. The Decision rezoning map from the Pokeno Report is inserted below:



**Figure 3 – Proposed Plan Decision General Residential Zoning Map**

10. The Appellant supports in principle the Decision that confirmed the Notified Proposed Plan rezoning of its' land, from the legacy rural zone, to General Residential Zone (**GRZ**), subject to the qualifications set out below.
11. The Appellant is appealing the following parts of the Decision:
- a) Part 3 – 2 GRZ – General Residential Zone
  - b) Part 3 – 3 MDRZ - Medium density resident zone
  - c) The zoning Maps for the appeal land
12. Regarding the area zoned GRZ in the Decision, the Appellant sought medium and high density housing and a commercial Local or Neighbourhood Centre activity to support the Master Planned (refer to the plan below) development outcome requested in the original submission relief:



**Figure 4 – Pokeno West Master Plan**

13. However, the Decision applied a uniform low density GRZ across all of the land zoned for urban activity. The density of development sought has not been adequately provided for in the Decision GRZ. Therefore, the objectives, policies and rules, including the zoning, are appealed.
14. What is identified as an indicative Neighbourhood/Local Centre in the Master Plan is provided for in the GRZ as a Permitted Activity subject to being identified in a Council approved Structure Plan or Master Plan. Therefore, the centres activity in the Decision residential chapter (GRZ-R7) is supported.
15. The Decision Figure 22 - Munro Block Green Network [SUB - R22] is appealed because the inserted plan had been superseded.
16. The Decision GRZ objectives, polices and rules, are in the process of being superseded by the mandated provisions in Schedule 3A of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Enabling Housing Act**). Therefore, the Proposed Plan provisions are appealed, and the Medium Density Residential Standards (**MDRS**) from the Enabling Housing Act, are sought to replace the GRZ on the Appellants' land for the reasons set out below.

## REASONS FOR APPEAL

17. The reasons for the appeal include, but are not limited to, the following matters:
18. Regarding the Act, the Decision on the Proposed Plan does not:
- a) meet the purpose and principles in Part 2;
  - b) enable people to provide for their social and economic wellbeing and for their health and safety, by unnecessarily limiting the development opportunities on the Appellants' land;
  - c) use the land resource efficiently in terms of allocation, public and private welfare, and operational efficiency (s 7(b)). Urban land is a scarce resource and providing for higher density development will enable a more efficient use of natural and physical resources and promote sustainable management;
  - d) mean that the Respondent achieves its functions as a territorial authority under s 31 of the Act, and in particular, by ensuring ("shall") that there is sufficient development capacity for housing and business land to meet demand (s 31(1)(aa));
  - e) satisfy s 32 and s 32AA requirements, and in particular, the need to assess the benefits and costs of low density GRZ verses medium density residential and commercial development. The GRZ will result in lost opportunities for housing, economic growth and employment, and does not meet the tests in (s 32(2)(a));
  - f) satisfy the matters that must be considered for a Proposed Plan (s 74);
  - g) "give effect" to the higher order statutory planning instruments as is required (s 75(3)) and as explained further below;
  - h) avoid, remedy and mitigate, significant adverse environmental effects, and in particular, the adverse effects on social and economic wellbeing from a shortage of housing choices and employment opportunities;
  - i) recognise the significant and positive urban design and amenity outcomes that the Appellants' Master Planned development could contribute to Pokeno; and

j) demonstrate sound resource management practice.

19. Regarding the higher order statutory planning framework, and without limiting the generality of the above:

a) The Decision does not give effect to the National Policy Statement – Urban Development 2020 (**NPS-UD**) including ensuring that there is sufficient urban development capacity that is zoned, and commercially viable. For example, 2.2 Policies:

*Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

*(a) have or enable a variety of homes that:*

*(i) meet the needs, in terms of type, price, and location, of different households; and.....*

*(b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*

*(c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport;*

*(d) and support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*

*(e) support reductions in greenhouse gas emissions ....*

- i. Housing choice and affordability will be improved by enabling higher density development that reduces the land cost component of housing (Policy 3).
- ii. Business sectors will be enabled by the provision of a commercial local or neighbourhood centre as sought in the Master Plan.
- iii. The relief sought will give effect to a well-functioning urban environment (Objective 1 and Policy 6).
- iv. Providing an accessible and integrated “live, work and play” Master Planned urban environment will support reductions in greenhouse gas emissions.

b) The Decision does not give effect to the relevant objectives and policies of the Waikato Regional Policy Statement (**WRPS**) and in particular;

- v. The removal of medium density housing provisions/opportunities will not achieve a compact urban form, integrated with infrastructure (WRPS 3.12(c)), and will not help to ease pressure for additional greenfield development in inferior locations.
- i. The relief sought “gives effect” to the WRC-RPS and Chapter 3.12 Built Environment objectives, and Chapter 6 provisions in particular. Pokeno is an established village in a strategically important location, and it has been appropriately identified as a significant growth node for the Region.
- ii. The residential zoning sought in the submission and hearing evidence provided for medium density housing and commercial local centre activities. However, the Decision not only rejected the medium density zoning sought, but the Decision:
  - imposes a relatively large minimum lot size of 450 m<sup>2</sup>;
  - rejected provisions allowing up to two dwellings in the GRZ as a Permitted Activity; and
  - removed the Notified Proposed Plan “multi-unit development” activity provisions.
- iii. A higher density of development will best achieve the protection of productive soils from inappropriate subdivision, use and development (WRPS 3.25 & 3.26).
- iv. The Decision retention of the ability to construct a local centre subject to master plan approval does give effect to WRPS Objective 3.12(k) because it will provide a range of commercial development to support social and economic wellbeing. These provisions are supported.
- v. The Master Plan, and detailed background technical reports provided by the Appellant, gives effect to WRPS 6.1.7 and 6.1.8 regarding the process and information requirements for rezoning land for urban development. The submission contained over 200 pages of supporting technical information.
- vi. It is appropriate that new residents have accessible employment opportunities, and commercial and community services, within the newly zoned area, to manage travel demand.



20. It is noted that the WRPS pre-dates the NPS-UD, and has not been amended, to reflect the new statutory requirements. Therefore, if there is any inconsistency, and the NPS-UD is more enabling of business and housing capacity provision, it should be given more weight.
21. The Decision does not ensure consistency and integration (horizontal and vertical) with the relevant objectives and policies of other parts of the Proposed Plan and the higher order statutory requirements. For example, the removal of provisions providing for medium density development, and the Decision GRZ, is not consistent with:

*Objective UFD-01 – Urban environment*

*A compact urban form that provides for connected liveable communities.*

*SD-04 – Housing variety*

*A variety of housing types are available to meet the community's housing needs.*

22. Medium Density Residential Standards (**MDRS**) in the Enabling Housing Act are now mandated for residential zones (s 77G). The Respondent is required to prepare an intensification planning instrument (**IPi**), and a variation to the Proposed Plan for notification by 20 August 2022, to apply MDRS in the District.
23. It is considered that the MDRS provisions can be incorporated into the Proposed Plan now through this appeal under clause 34 of Schedule 3 (new Part 5 inserted into Schedule 12 of the Act) of the Enabling Housing Act. The Respondent is a Tier 1 territorial authority, the Pokeno township is an “urban environment” (s 77F), and there are currently understood to be no qualifying matters that would preclude the application of the MDRS (s 77I). The Submission sought medium and high density residential development.
24. Further reasons are outlined in the original submission, further submission, and in the detailed legal submissions and expert evidence, presented during the Hearings process.

## RELIEF SOUGHT

25. The Appellant seeks the following relief:

- a) That the Decision be overturned, in part, in accordance with the grounds outlined in this appeal, original submission, and the relief sought.
- b) For the avoidance of doubt, the Appellant supports that part of the Decision that confirmed the Notified Proposed Plan change in the zoning of its' site from rural (legacy Plan) to residential activities.
- c) That the Proposed Plan be amended, insofar as it does not provide the Appellant with the;
  - objectives and policies;
  - rules;
  - activity status;
  - standards;
  - and zoning relief,

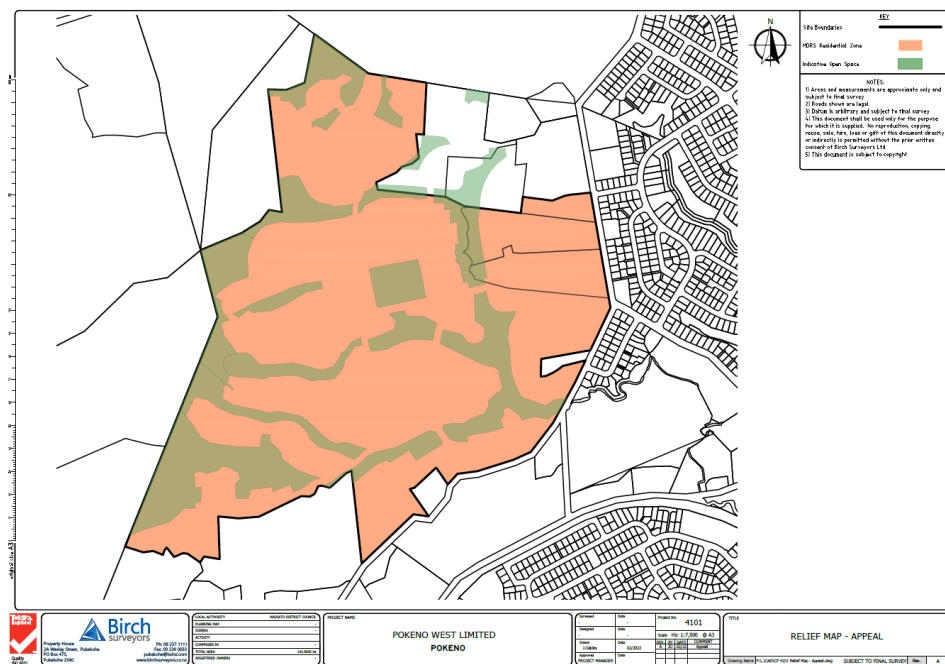
to achieve the medium and higher density residential development, sought in its submission and attached Master Plan.

- d) The Proposed Plan be amended to incorporate the MDRS provisions of the Enabling Housing Act, on the Appellants' land shown as GRZ in the Decision, and appropriate related planning provisions (s 80E).
- e) In the alternative to MDRS, that the GRZ (or its successor name) for the Appellants' land contains planning provisions (objectives, policies and rules including assessment criteria) to enable medium density development by way of:
  - allowing a minimum lot size of less than 450m<sup>2</sup> (SUB-R11(a)(i)).
  - allowing up to three dwellings in the GRZ as a Permitted Activity; and
  - reintroducing the "multi-unit development" activity and provisions for the GRZ from the legacy Operative Waikato District Plan: Franklin

Section, or reintroduction of the deleted multi-unit development rules in the Decision.

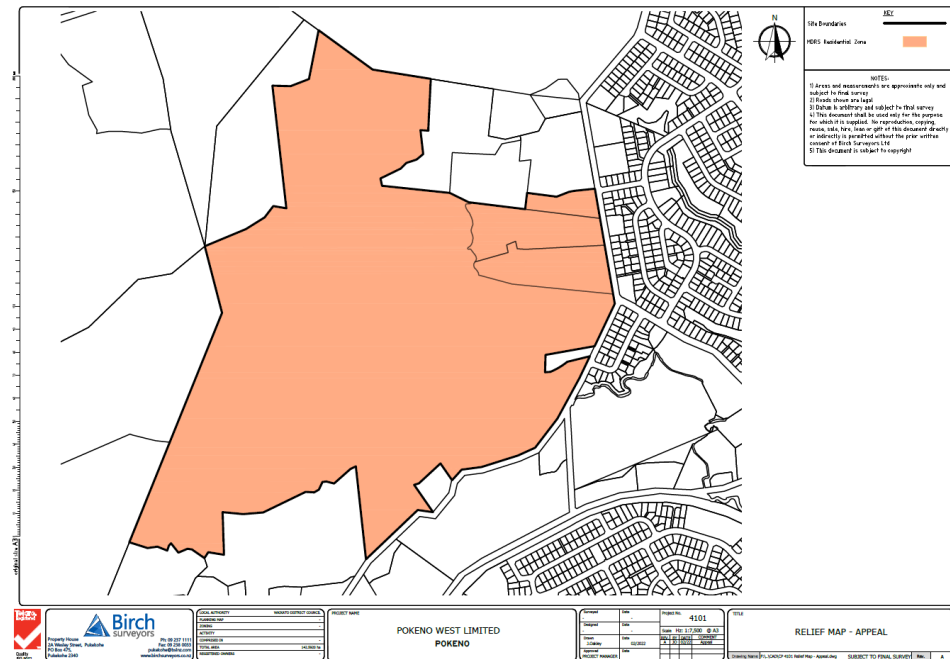
- introducing the Medium Density Residential zone.
- f) That the provisions enabling the creation of local and neighbourhood centres for commercial activities (Structure and Master Planning) are retained across the final residential zone.

26. The following plan is to replace the Munro Block Green Network Figure 22 [SUB - R22] because the Decision mistakenly inserted an earlier version.



**Figure 5 – Munro Block Green Network Plan**

27. A zoning plan of the Pokeno West relief being sought is provided below:



**Figure 6 – Pokeno West zoning relief**

28. Other such relief, and consequential amendments, as considered appropriate to meet the purpose of the Act and the higher level statutory planning requirements.
29. Costs of and incidental to this appeal.

## MEDIATION

30. The Appellants consent to engaging in mediation, or any other dispute resolution activity that may be appropriate, to try and settle its appeal.

## DOCUMENTS ATTACHED

31. The following documents are attached to this notice:
  - a) The Appellants' original submission and further submission on the Proposed Plan (**Appendix A**).
  - b) The zoning Decision report of the Respondent for the Pokeno area (**Appendix B**). Other parts of the Decision can be provided on request.
  - c) A list of names and addresses of persons to be served with a copy of this notice (**Appendix C**).

**DATED** this 1st day of March 2022



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**Peter Fuller**  
**Counsel for Pokeno West Limited & West Pokeno Limited**

**Address for service:**

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*LLB, MPlan, DipEnvMgt, BHortSc*  
Barrister  
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## **Advice to recipients of copy of notice of appeal**

### How to become a party to proceedings

You may be a party to the appeal if;

- (a) within 15 working days after the period for lodging a notice of appeal ends you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

### How to obtain copies of documents relating to the appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

### Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

**APPENDIX A – APPELLANTS’ ORIGINAL AND FURTHER SUBMISSIONS**

**APPENDIX B – POKENO DECISION REPORT**



**APPENDIX C – LIST OF PARTIES TO BE SERVED****Respondent – Waikato District Council**

District Plan Hearings Administrator  
Waikato District Council  
Private Bag 544  
Ngaruawahia 3742  
Email: Districtplan@waidc.govt.nz

**Waikato Regional Council**

Waikato Regional Council  
Attn: Andrew Tester  
Senior Policy Advisor  
Private Bag 3038  
Waikato Mail Centre  
Hamilton 3240  
Email: andrew.test@waikatoregion.govt.nz  
Cc: waikatoregion.govt.nz

**Submitters**

<b>List of names and addresses of persons to be served with a copy of this notice</b>			
<b>Submitter</b>	<b>Contact/s</b>	<b>Postal Address</b>	<b>Email Address</b>
Anna Noakes	John Manning	9 Berkley Avenue Hillcrest Hamilton 3216	<a href="mailto:john@planmanconsultants.co.nz">john@planmanconsultants.co.nz</a>
CSL Trust & Top End Properties Limited	Sir William Birch	PO Box 475 Pukekohe 2340	<a href="mailto:sirwilliam@bslnz.com">sirwilliam@bslnz.com</a>
Havelock Village Limited	Vanessa Evitt	PO Box 1433 Auckland 1140	<a href="mailto:vanessa.evitt@buddlefindlay.com">vanessa.evitt@buddlefindlay.com</a>
Hynds Pipe Systems Limited	WS Loutit and K M Stubbing	Level 27 88 Shortland Street Private Bag 92518 Auckland 1141	<a href="mailto:bill.loutit@simpsongrrierson.com">bill.loutit@simpsongrrierson.com</a> <a href="mailto:kate.stubbing@simpsongrrierson.com">kate.stubbing@simpsongrrierson.com</a>
Kwanghoon Yang	Kwanghoon Yang	7 Munro Road RD2 Pokeno 2472	<a href="mailto:crusoe@hanmail.net">crusoe@hanmail.net</a>
Mercury NZ Limited	Catherine Somerville- Frost/Alana Lampitt	PO Box 2206 Auckland 1140	<a href="mailto:catherine.somerville-frost@chapmantripp.com">catherine.somerville- frost@chapmantripp.com</a>
Ngati Tamaoho Trust	Lucille Rutherford	PO Box 61156 Otara Auckland 2159	<a href="mailto:rmaofficer@tamaoho.maori.nz">rmaofficer@tamaoho.maori.nz</a>
Pokeno Village Holdings Limited	SJ Simons / KA Storer	PO Box 3144 Shortland St Auckland 1140	<a href="mailto:kate@berrysimons.co.nz">kate@berrysimons.co.nz</a>
Se Gi Noh	Se Gi Noh	166 Pokeno Rd Pokeno 2472	<a href="mailto:seoulmotors24@gmail.com">seoulmotors24@gmail.com</a>
Withers Family Trust	John Manning	9 Berkley Avenue Hillcrest Hamilton 3216	<a href="mailto:john@planmanconsultants.co.nz">john@planmanconsultants.co.nz</a>