

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2024] NZEnvC 208

IN THE MATTER OF an appeal under clause 14 of Schedule 1
to the Resource Management Act 1991

BETWEEN

POKENO WEST LIMITED

WEST POKENO LIMITED

(ENV-2022-AKL-000084)

Appellants

AND

WAIKATO DISTRICT COUNCIL

Respondent

AND

MANFEI COMPANY LIMITED

PARMINE INVESTMENTS
LIMITED

AS MAPLE HOMES LIMITED

PERRY GROUP LIMITED

Section 274 Interested Parties

Court: Judge S M Tepania, sitting alone under s 279(1)(b) of the Act

Last case event: 9 August 2024

Date of Order: 28 August 2024

Date of Issue: 28 August 2024



CONSENT ORDER

A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the Proposed Waikato District Plan zoning maps be amended in accordance with **Appendix A** to this order;
- (2) Rule SUB-R22 in the Proposed Waikato District Plan be amended in accordance with **Appendix B** of this order; and
- (3) paragraphs 25(a) to (b), 25(f), and 26 to 27 of Pokeno West Limited and West Pokeno Limited's appeal allocated to Topic 2 and Topic 13.1 are otherwise dismissed.

B: Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to an appeal against the decisions of Waikato District Council on the Proposed Waikato District Plan (**PDP**) in relation to submissions by Pokeno West Limited and West Pokeno Limited (the **Appellants**).

Background

[2] The specific relief sought by the Appellants with respect to Topic 2: Pōkeno West Zoning and Topic 13.1: Urban residential development – Urban form and development, and the decision by the Independent Hearings Panel (**IHP**) are addressed below.

[3] The Appellants collectively own 142.6 ha of land at 53 Munro Road, and 87, 109 and 119 Helenslee Road, Pōkeno (the **Properties**), west of the Pōkeno Town

Centre. When the PDP was notified, the Properties were rezoned from Rural to General Residential zone (**GRZ**).

[4] Annie Chen Shiu made a submission on the PDP seeking to retain the GRZ zoning of 160 ha of land located west of Helenslee Road and north of Huia Road in Pōkeno (the **Submission Area**). The Submission Area includes the Properties owned by the Appellants plus four other properties in different ownership, which includes properties owned by two of the three s 274 parties to the appeal.¹ Ms Chen's submission outlined that the Submission Area had previously (prior to notification of the PDP) been subject to the early stages of a plan change process to rezone the Submission Area from Rural to Residential before, instead, being included within the PDP as a live Residential zone.² The original submission also referred to a possible neighbourhood centre to support the day-to-day retail and service needs of the residents and medium density housing within the Submission Area.

[5] The Appellants took over Ms Chen's submission and interest in the PDP during the PDP hearings process.³ Ms Chen was previously a shareholder of one of the Appellant companies but is no longer involved in either company.

[6] The properties within the Submission Area are detailed below, with the properties owned by the Appellants highlighted red for reference:

Properties within the Submission Area	
53 Munro Road	Lot 2 DP 459108
55 Munro Road	Lot 1 DP 459108
87 Helenslee Road	Lot 1 DP 211605
109 Helenslee Road	Lot 3 DP 211605
119 Helenslee Road	Lot 2 DP 176807
133 Helenslee Road	Lot 1 DP 176807

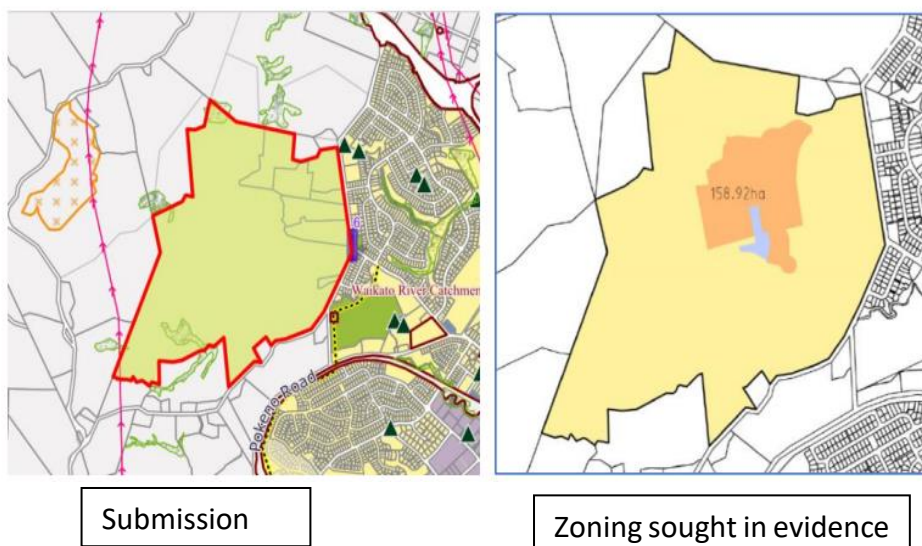
¹ Manfei Company Ltd own the property at 145C Helenslee Road and Parmine Investments Ltd own the property at 133 Helenslee Road.

² Section 42A Report – Hearing 25: Zone Extents Pōkeno at [229].

³ Statement of Land Development Evidence from Sir William Birch for Pokeno West Limited dated 17 February 2021 at [6].

145A Helenslee Road	Lot 3 DP 133200
145C Helenslee Road	Lot 2 DP 133200

[7] Prior to the PDP hearings, Pokeno West Limited submitted primary evidence in support of retaining the GRZ zoning, including a refined concept plan for the Submission Area. In addition to the GRZ, the concept plan identified zones for a neighbourhood centre to provide for the day-to-day retail and service needs of the residents, to be located centrally within the Submission Area, and a Medium density Residential zone (**MRZ**) surrounding the centre. Should the zone changes not be supported, the evidence sought that these areas instead be retained as GRZ.⁴ The figures below show the area zoned GRZ as notified (yellow), and the areas to be rezoned MRZ (orange) and Business Town Centre/Neighbourhood Centre (blue) as set out in the evidence.



[8] In Decision Report 28I: Zoning – Pōkeno (**Decision Report**) the IHP accepted the reasoning that the zoning of the Submission Area should be solely GRZ, and areas of MRZ and Neighbourhood Centre Zone should not be applied within the area at that time.⁵ Having determined that the GRZ should be retained over the Submission Area, the IHP then considered the ecological effects and whether the proposal gives effect to Te Ture Whaimana o te Awa o Waikato (Vision and Strategy

⁴ Section 42A Report – Hearing 25: Zone Extents Pōkeno at [229] – [230].

⁵ Ibid, at [123].

for the Waikato River). After hearing ecological evidence presented on behalf of the Appellants, the IHP also added a provision into the PDP to secure the delivery of the riparian planting by requiring the consideration of planting stream margins at the subdivision consent stage.⁶ The new rule also required the consideration of consistency with the layout of the Appellants' proposed 'green network' (significant natural areas, watercourses and open space areas).⁷

[9] The Submission Area therefore remained GRZ in the decisions version of the PDP with the addition of a new rule into the Subdivision chapter, SUB-R22 Subdivision – Munro Block, Pōkeno.⁸

[10] It is noted that whilst the Decision Report refers to a 'Neighbourhood Centre Zone', this zoning does not exist under the Operative District Plan or the PDP. Instead, the PDP in GRZ-R7 provides for neighbourhood centres as a permitted activity in the GRZ, if they are within an area identified in a Council approved Structure Plan or Master Plan.⁹

The appeal

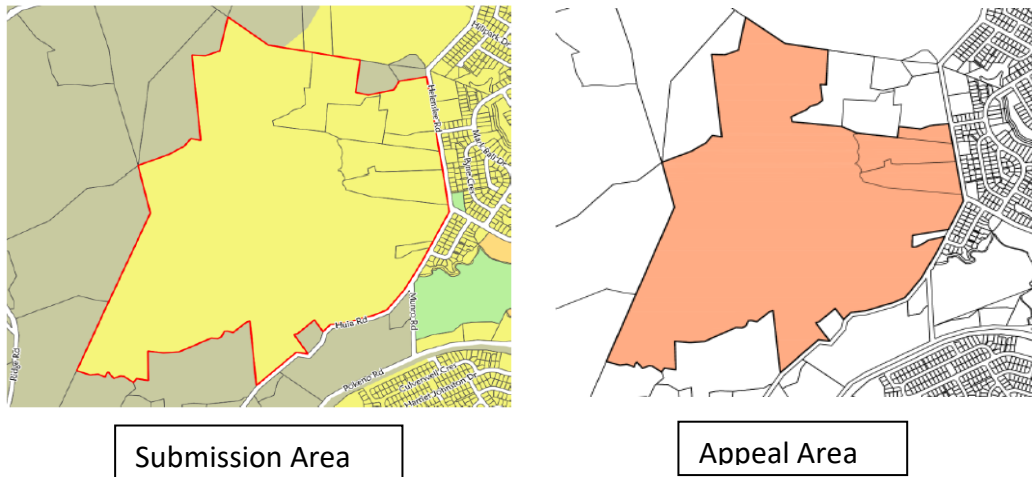
[11] On 1 March 2022, the Appellants appealed the Decision under clause 14 of Schedule 1 to the Act (**Appeal**). While the original submission concerned the entire Submission Area, the Appeal is limited to the four properties owned by the Appellants (the **Appeal Area**). The figures below show the different properties in the Submission Area and the Appeal Area.

⁶ Ibid, at [128] and pages 62-64.

⁷ Ibid, at pages 62-64.

⁸ Rule 16.4.19 of the notified version of the PDP.

⁹ See rule GRZ-R7.



[12] The Appeal supported, in principle, the rezoning of the Appeal Area in the PDP, however it sought medium and high-density housing as well as the retention of the provisions that enable the creation of a local and neighbourhood centre for commercial activities, as requested in the original relief. The original concept plan for the master-planned development outcome as included in the Appeal, is set out below.

[13] Manfei Company Ltd, Parmine Investments Ltd and As Maple Homes Ltd (**MPA**) and Perry Group Ltd have given notice of an intention to become a party to the parts of the Appeal resolved in this draft consent order, under s 274 of the Act.

Agreement reached between the parties

[14] Following the filing of the Appeal, the Appellants and the Respondent (together referred to as “the **parties**”) have entered into direct discussions. Whilst discussions on other parts of the Appeal remain ongoing, the parties have now agreed to a suite of changes that will partially resolve the Appeal. The proposed changes have been circulated to the s 274 parties who are also in agreement. The agreement reached on each appeal point is detailed below:

- (a) amend the PDP planning maps to show the location and extent of the Local Centre Zone (**LCZ**) in the Appeal Area, as outlined in Appendix A; and

- (b) amend SUB-R22 in the SUB chapter of the PDP as set out in Appendix B to this order (additions marked as underlined and deletions as strikethrough).

Section 32AA evaluation

[15] Section 32AA of the Act requires a further evaluation of any changes to the proposed plan change since the initial s 32 evaluation report and the Decision. Council has prepared a stand-alone s 32AA evaluation, which is included in Appendix D to the memorandum of counsel dated 9 August 2024.

[16] In summary, the s 32AA assessment concludes that:

- (a) The agreed amendments do not introduce any new objectives into the PDP and the existing PDP objectives will continue to apply to the Appeal Area.
- (b) The agreed amendments do not propose to introduce any new rules into the PDP. While an amendment is proposed to existing rule SUB-R22, the parties agree that the outcome which will be achieved through the rule remains unchanged from the decisions version of the rule, which was assessed at that time. The agreed amendments do include the provision of a new policy (which will be the subject of a later consent order).
- (c) The scale and significance of the agreed amendments are considered low as:
 - (i) the amendments address relevant resource management issues relating to Council's RMA functions;
 - (ii) the new LCZ will apply to a net area of approximately 1 ha which is not excessive in scale but, nevertheless its size and configuration are supported from a planning, economics and urban design perspective, and this zone will enable the efficient use and

development of natural and physical resources in a way that will meet the needs of the community;

- (iii) the amendments themselves do not introduce any compliance costs or other financial impacts on third parties; and
 - (iv) the amendments are supported by a high level of information to inform decision-making and there is a corresponding low risk of acting.
- (d) In terms of a cost/benefit assessment, the benefits of the LCZ largely relate to social and economic benefits through local employment opportunities and optimising trade and exchange, and by being a place where residents can meet and socialise. The proposed policy will provide greater clarity and certainty for applicants and Council staff as to the outcomes and matters which need to be addressed in the resource consent process.
- (e) Some environmental benefits are anticipated through the agreed amendments. For the LCZ, these include reduced vehicle movements, reduction in traffic and emissions, outside of Pōkeno West to access day-to-day needs. The proposed new policy specifically identifies adverse environmental and social effects that have the potential to compromise residential amenity such as traffic, access, noise, vibration, light spill and visual effects from the outdoor storage of materials.
- (f) Economic and employment growth is also anticipated through the proposed LCZ, which will provide local employment opportunities and optimise trade.
- (g) The information available is sufficient to provide an informed assessment of the planning alternatives and costs and benefits.

[17] In summary, the parties consider that the agreed amendments are the most appropriate way to achieve the purpose of the Act and the objectives of the PDP.

Consideration

[18] In making this order the Court has read and considered:

- (a) the notice of appeal dated 1 March 2022; and
- (b) the joint memorandum of the parties in support of draft consent orders dated 9 August 2024.

[19] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits.

[20] The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction and conform to the relevant requirements and objectives of the Act, including in particular Part 2.

[21] The Court is satisfied that the changes sought are within the scope of the Appellants' submission and appeal.

Order

[22] The Court orders, by consent, that:

- (a) the Proposed Waikato District Plan zoning maps be amended in accordance with **Appendix A** to this order;
- (b) Rule SUB-R22 in the Proposed Waikato District Plan be amended in accordance with **Appendix B** to this order;
- (c) paragraphs 25(a) to (b), 25(f), and 26 to 27 of Pokeno West Limited and West Pokeno Limited's appeal allocated to Topic 2 and Topic 13.1 are otherwise dismissed;

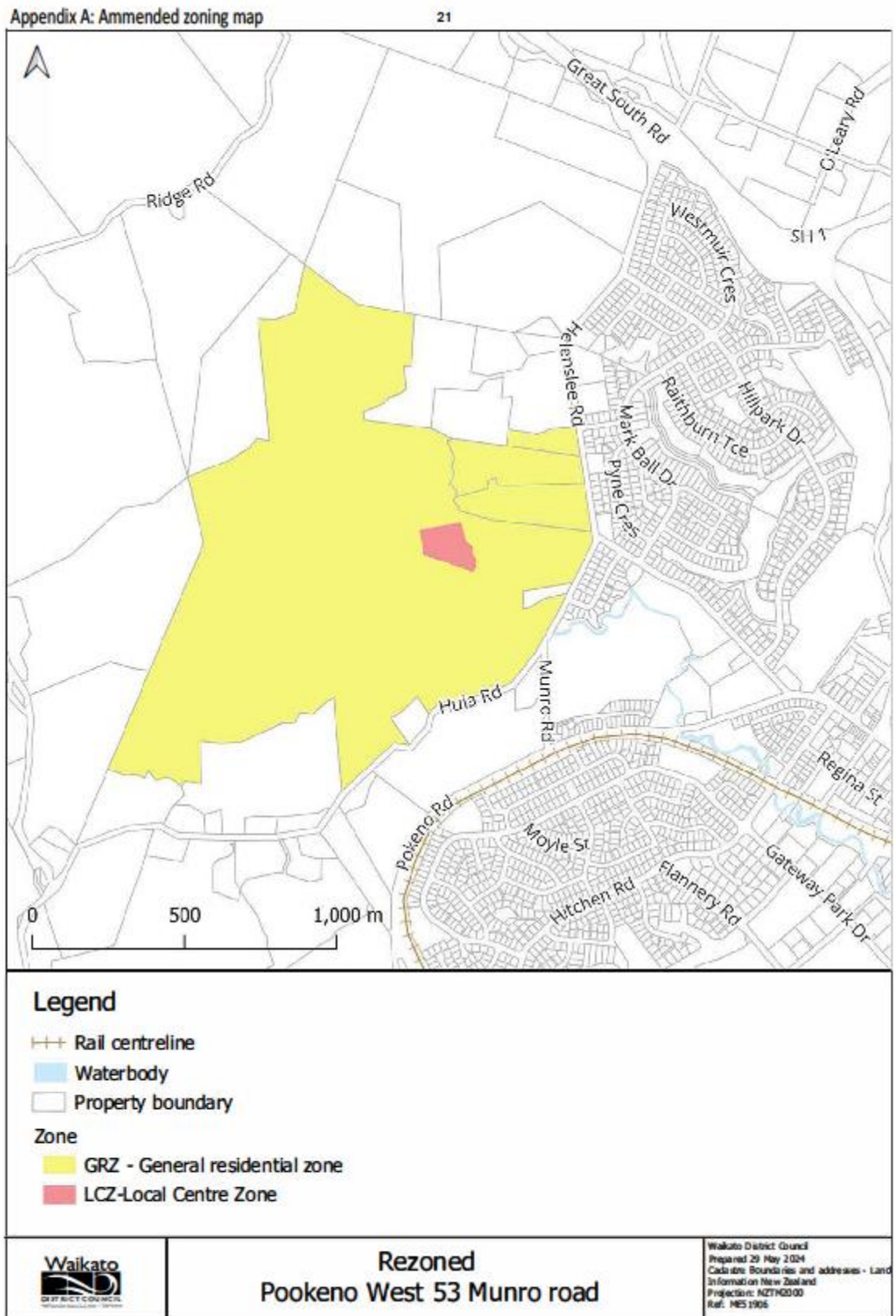
- (d) the part of the appeal allocated to Topic 13.1 with respect to paragraphs 25(c) to (f) of the notice of appeal remains unresolved; and
- (e) under s 285 of the Act, there is no order as to costs.

S M Tepania

S M Tepania
Environment Judge



Appendix A – Amended zoning map of Appeal Area



Appendix B – Tracked change version of the proposed amendment to SUB-R22 of the PDP

22

Appendix B: Tracked change version of the proposed amendment to SUB-R22 of the PDP decisions version

SUB-R22	Subdivision – Munro Block, Pokeno	
GRZ – General residential zone	<p>(1) Activity status: RDIS</p> <p>Activity specific standards:</p> <p>(a) Any subdivision within the Munro Block, Pokeno (see Figure 21 below)</p> <p>Council's discretion is restricted to the following matters:</p> <p>(a) Type, density and scale of riparian planting of the margins of permanent and intermittent streams.</p> <p>(b) <u>Location, size and design of recreation reserves. Consistency with the layout of the green network in Figure 22 below.</u></p> <p>(c) <u>Provision of recreation trail network adjoining the permanent stream.</u></p>	<p>(2) Activity status where compliance not achieved: n/a</p>

Figure 22 – Munro Block green network

