

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

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

**Decision [2024] NZEnvC 357**

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

BETWEEN POKENO WEST LIMITED  
WEST POKENO LIMITED  
(ENV-2022-AKL-000084)  
Appellant

AND WAIKATO DISTRICT COUNCIL  
Respondent

AND MANFEI COMPANY LIMITED  
PARMINE INVESTMENTS  
LIMITED  
AS MAPLE HOMES LIMITED  
PERRY GROUP LIMITED  
Section 274 Interested Parties

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

Last case event: 13 December 2024

Date of Order: 23 December 2024

Date of Issue: 23 December 2024



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## CONSENT ORDER

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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 planning maps be amended in accordance with **Appendix A** to this Order;
- (2) a new Pookeno West Precinct (PREC35) be inserted into the Proposed Waikato District Plan as APP17 – Pookeno West Precinct in accordance with **Appendix B** to this Order; and
- (3) paragraphs 25(c) to (e) of Pokeno West Limited and West Pokeno Limited’s appeal allocated to Topic 13.1 are otherwise dismissed, resolving the appeal in its entirety.

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

## REASONS

### Introduction

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

[2] This consent determination concerns the relief sought at paragraphs 25(c) to (e) of the appellants’ notice of appeal which relates to residential upzoning of the appellants’ land and is assigned to Topic 13.1: Urban form and development. The remainder of the appeal was resolved by way of consent order dated 28 August 2024.<sup>1</sup>

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<sup>1</sup> NZEnvC 208 [2024].

## Background

[3] The appeal relates to the zoning and level of development on a 160-ha block of land located west of Helenslee Road and north of Huia Road in Pookeno (the **Land**). The Land is zoned General residential zone (**GRZ**) in the PDP. The appeal sought to rezone a portion of the GRZ Land to Local centre zone (**LCZ**) and to upzone the remainder of the GRZ Land to incorporate the Medium Density Residential Standards (**MDRS**).

[4] Pursuant to s 274 of the RMA, the following parties have given notice of an intention to become party to the parts of the appeal resolved in this consent order:

- (a) Manfei Company Ltd;
- (b) Parmine Investments Ltd;
- (c) As Maple Homes Ltd; and
- (d) Perry Group Ltd.

[5] The consent order dated 28 August 2024 introduced a LCZ on the Land.

[6] On 22 October 2022, the Council made decisions on Variation 3 to the PDP which rezoned the balance of the Land from GRZ to Medium density residential zone 2 (**MRZ2**), incorporating the MDRS. These provisions were made operative on 30 October 2024.

[7] The parties agreed<sup>2</sup> to insert a new policy to manage non-residential uses in the MRZ2, in the event the Land was zoned MRZ2 through the Council's decisions on Variation 3. As the MRZ2 zoning over the Land is now operative, this consent order enables the new policy to be introduced into the PDP by way of a precinct overlay.

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<sup>2</sup> Consent memorandum dated 9 August 2024, filed in support of the consent order made on 28 August 2024.

### **Agreement reached**

[8] The parties have agreed to resolve the appeal by:

- (a) amending the planning maps to insert a 'Pookeno West Precinct' overlay over the Land as shown in **Appendix A** to this Order; and
- (b) inserting a new Pookeno West Precinct (**PREC35**) in Part 4 of the PDP (as APP17 – Pookeno West Precinct) as shown in **Appendix B** to this Order, which includes PREC35-P1 non-residential activities – Pookeno West.

### **Planning assessment**

[9] The parties have considered the statutory framework applicable to plan changes under the Act and are of the view that the zoning and associated agreed amendments satisfy the relevant requirements which are discussed below, where relevant.

### ***General requirements***

[10] The Council must prepare and change its district plan to accord with, and assist it to carry out, its functions so as to achieve the purpose of the Act. The parties consider that the agreed amendments are consistent with the Council's functions, and will assist the Council in carrying these out, for the following reason:

- (a) The non-residential uses policy provides greater certainty to the community in relation to the built form and land use outcomes within their wider areas. Specifically, the policy will better enable the Council to efficiently manage potential adverse effects of non-residential uses within the Pookeno West residential area.

[11] When preparing its district plan (change) the Council must give effect to any national policy statement, and the New Zealand coastal policy statement and the national planning standards. The relevant planning documents are addressed below.

### ***National Policy Statement on Urban Development***

[12] The National Policy Statement on Urban Development (**NPS-UD**) is relevant to the appeal as it sets out the objectives and policies for planning for well-functioning urban environments under the Act. The parties agree that the amendments give effect to the relevant objectives and policies of the NPS-UD, for the following reasons:

- (a) the inclusion of a non-residential uses policy will provide the future community, the Council and developers with an enhanced understanding of the land use and built form outcomes within the Pookeno West area in relation to non-residential uses; and
- (b) the policy further provides an enabling framework for non-residential uses within the Residential zone, where appropriate. This gives effect to Objectives 1 and 2 and Policy 1 of the NPS-UD as it will ultimately enable the creation of a well-functioning urban environment which can service the community with a wider range of uses. It further provides for a responsive outcome where it signals that non-residential uses can be anticipated, and could be established, if required and appropriate.

### ***Waikato Regional Policy Statement***

[13] Pursuant to s 75(3)(c) of the Act, the Council must give effect to the Waikato Regional Policy Statement (**WRPS**). The parties consider that the agreed amendments give effect to the following provisions of the WRPS, including Change 1 to the WRPS which is currently under appeal:

- (a) UFD-O1 which seeks to develop the built environment in an integrated manner that enables positive outcomes, including the minimisation of land use conflicts, providing for a range of commercial development and planning for well-functioning urban environments;
- (b) UFD-P13 which seeks to provide for varying levels of commercial development to meet the wider community's social and economic needs; and

- (c) APP11 which outlines general development principles for new developments and includes principles which seek to promote a compact urban form and not result in incompatible adjacent land uses.

[14] The parties consider that the inclusion of a non-residential land use policy will give effect to these provisions as it will enable the efficient management of potential conflicts between residential and non-residential land uses within the Pookeno West area.

### ***Growth Strategies***

[15] The Council must also have regard to any relevant management plans and strategies under other Acts.<sup>3</sup>

[16] Future Proof Strategy 2022 (**Future Proof**) is a relevant strategy as it provides a framework for managing growth within the Waikato Region. Future Proof was embedded within the WRPS through Change 1. For the reasons discussed in respect of the WRPS, the appeal is considered generally consistent with Future Proof.

### **Section 32AA assessment**

[17] Section 32AA of the Act requires a further evaluation of any changes to a proposed plan since the initial s 32 evaluation report and the IHP's decisions. A s 32AA assessment has been undertaken to evaluate the inclusion of the new precinct and the precinct specific policy.

[18] In summary, the assessment concludes that:

- (a) The scale and significance of the amendments are low given:
  - (i) relative to the decisions version of the PDP, the new policy for non-residential activities does not result in significantly different outcomes, but it is considered appropriate and necessary to guide

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<sup>3</sup> Section 74(2)(d) and (e) (inserted, on 30 November 2022, by s 21 of the Resource Management Amendment Act 2020).

development within Pookeno West and support a wider range of activities that contribute to wellbeing;

- (ii) the amendment itself does not introduce any compliance costs or other financial impacts on third parties; and
  - (iii) the amendment is supported by a sufficient level of information to inform decision-making and there is a corresponding low risk of acting.
- (b) The objectives of the proposed amendments are the most appropriate way to achieve the purpose of the RMA as the new policy enables social and economic wellbeing of local residents and employment/business opportunities (which also facilitates social and economic wellbeing), whilst ensuring that potential amenity effects can be addressed.
- (c) The proposed new policy is the most efficient and effective means for achieving the objectives of the PDP as it will provide a more complete framework of provisions to support non-residential activities that can be accommodated in Pookeno West in a way that does not undermine the role of the LCZ or Pookeno's Town Centre Zone, subject to the management of adverse effects.

### **Consideration**

[19] In making this Order, the Court has read and considered:

- (a) the notice of appeal dated 1 March 2022;
- (b) the joint memorandum dated 9 August 2024; and
- (c) the joint memorandum dated 13 December 2024.

[20] The Court is making this Order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297.

[21] 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.

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

[23] I am satisfied that the agreement reached is one that represents the various interests of the parties. It is clear the parties have considered other reasonably practicable options and assessed costs and benefits. I conclude the parties have taken a nuanced and balanced approach, and the agreed amendments are the most appropriate way to achieve the purpose of the Act and the objectives in the Plan. Overall, I consider the sustainable management purpose and the other relevant requirements of the Act are broadly met.

### **Orders**

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

- (a) the Proposed Waikato District Plan planning maps be amended in accordance with **Appendix A** to this Order;
- (b) a new Pookeno West Precinct (PREC35) be inserted into the Proposed Waikato District Plan as APP17 – Pookeno West Precinct in accordance with **Appendix B** to this Order; and
- (c) paragraphs 25(c) to (e) of Pokeno West Limited and West Pokeno Limited's appeal allocated to Topic 13.1 are otherwise dismissed, resolving the appeal in its entirety.



[25] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

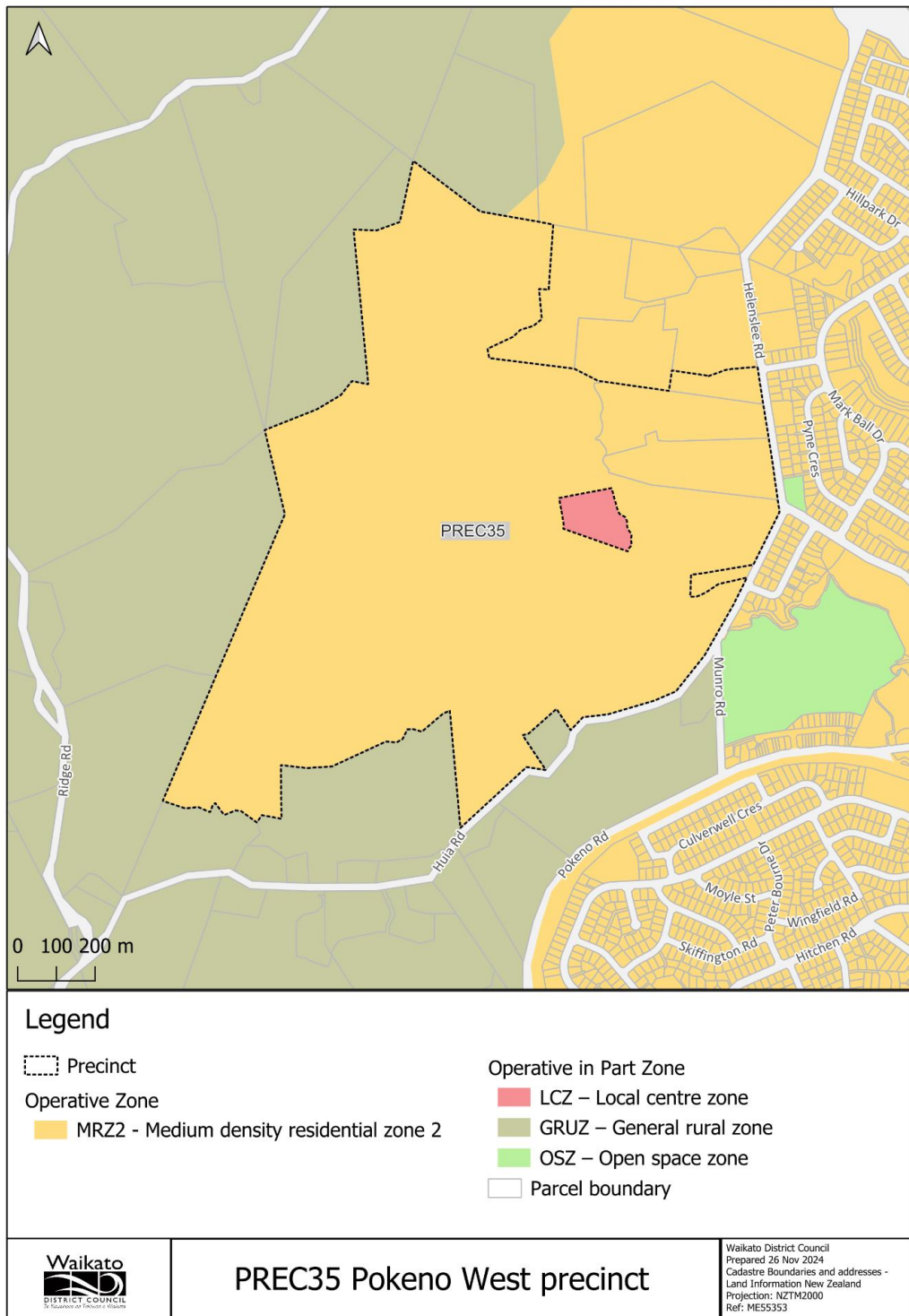


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**S M Tepania**  
Environment Judge | Kaiwhakawā i te Kōti Taiao



Appendix A – Amended planning map for the appeal area



Appendix B – New Pokeno West Precinct (PREC35) to be included in Part 4  
of the PDP (as APP17 – Pokeno West Precinct)

## PREC 35 – Pokeno West Precinct

### Policies

#### PREC35-P1 Non-residential activities – Pokeno West

- (1) Maintain Pokeno West primarily for residential activities while also:
- (a) Ensuring non-residential activities:
    - (i) Are in keeping with the scale and intensity of development anticipated by the zone and contribute to the amenity of the neighbourhood;
    - (ii) Support the social and economic well-being of the residential community; and
    - (iii) Do not undermine the role and function of the Pokeno West Local Centre Zone and the Pokeno Town Centre Zone.
  - (b) Avoiding the establishment of new non-residential activities (except home occupations) on rear sites, or sites located on cul-de-sacs; and
  - (c) Ensuring that the design and scale of non-residential activities and associated buildings mitigates adverse effects related to traffic generation, access, noise, vibration, outdoor storage of materials and light spill.

PREC35-P1 implements MRZ2-O4.