

IN THE MATTER of the Resource Management Act 1991 ("**the Act**")

AND

IN THE MATTER of a submission pursuant to Clause 6 of Schedule 1 of the Act in respect of the **PROPOSED WAIKATO DISTRICT PLAN**

LEGAL SUBMISSIONS OF COUNSEL FOR POKENO VILLAGE HOLDINGS LIMITED (SUBMITTER NO 386 / FURTHER SUBMITTER NO 1281) – POKENO REZONING – HEARING 25

Dated 17 MAY 2021

1. INTRODUCTION

- 1.1 These submissions are made on behalf of Pokeno Village Holdings Limited ("PVHL") in support of its primary and further submission on the PWDP.
- 1.2 PVHL is developing land at Pokeno and has been instrumental in the development of Pokeno from a small rural village to a significant growth hub.
- 1.3 As set out in detail in PVHL's submission and in the evidence of Mr Botica and Mr Scafton prepared for the purpose of Hearings 3 (Strategic Objectives) and Hearing 25,¹ Pokeno's rapid growth is the result of many years of rigorous technical analysis, stakeholder consultation and community building pursuant to a 2008 structure planning process and Plan Changes 24 and 21.² PVHL has led that work and continues to play a central role in Pokeno's development.
- 1.4 Consequently, PVHL's primary interest in the PWDP relates to Pokeno and how the PWDP controls and enables its growth. At its heart, PVHL's submission is that the PWDP should:
 - (a) Recognise and build upon the operative planning framework for Pokeno which aims to deliver an agreed "vision" for the town developed by stakeholders over many years; and
 - (b) Provide a framework to ensure that future expansion of the town occurs in a logical manner that delivers good planning outcomes.

1 EIC Scafton Hearing 3, paragraphs 4.3-4.8; EIC Botica, Hearing 3 paragraph 3.1, and Hearing 25, Section 3.

2 To the Franklin District Plan and Waikato District Plan: Franklin Section respectively.

Evidence pre-circulated

- 1.5 In accordance with the Chairman's directions, PVHL filed the evidence of the following six witnesses on 10 March 2021;
- (a) Colin Botica, Director and Project Manager of Pokeno Village Holdings Limited;
 - (b) Fraser Colegrave, economist;
 - (c) Rachel de Lambert, landscape architect;³
 - (d) Wes Edwards, transport engineer;
 - (e) Dale Paice, stormwater engineer;
 - (f) Chris Scrafton, Planning Consultant.
- 1.6 PVHL filed rebuttal evidence prepared by Rachel de Lambert, Wes Edwards and Chris Scrafton on 3 May 2021. Summaries of these statements of evidence were circulated on 12 May 2021.
- 1.7 PVHL's witnesses are available to provide an overview of their evidence and answer any questions that the Panel may have.

Scope of submissions

- 1.8 Against that background, these submissions address the following matters:
- (a) The Pokeno Structure Plan and PVHL's interest in the rezoning hearings (Section 2);
 - (b) The approach to rezoning adopted in the Section 42A reports (Section 3);
 - (c) The statutory framework relevant to consideration of district plans (Section 4);
 - (d) Factors relevant to planning for Pokeno (Section 5);
 - (e) Infrastructure provision (Section 6); and
 - (f) PVHL's principal submission (Section 7).

2. THE POKENO STRUCTURE PLAN AND PVHL'S INTEREST IN THE REZONING HEARINGS

- 2.1 Mr Botica and Mr Scrafton have explained at length the rigorous process that was undertaken to formulate the Pokeno Structure Plan and deliver the growth of Pokeno that has occurred to date.
- 2.2 By way of recap, the Pokeno Structure Plan identifies key infrastructure including stormwater management areas, key link roads, sports facilities, parks and open space and the primary school, as well as areas for residential commercial and industrial development. It includes:

3 Ms de Lambert's evidence was filed on 17 March 2021 jointly with Hynds Pipe Systems and the Hynds Foundation.

- (a) Specific objectives and policies which implement the PSP and recognise locally significant landforms, vegetation, watercourses and wetlands;
- (b) Assessment matters, which require that all subdivision applications (a restricted discretionary activity) be assessed against the relevant subdivision design assessment criteria. These include:
 - (i) Road, reserve and access networks;
 - (ii) Block size, lot type and orientation;
 - (iii) Roads and accessways;
 - (iv) Pedestrian links and routes;
 - (v) Reserves;
 - (vi) Stormwater reserves; and
 - (vii) Interface Design.

2.3 These provisions established a framework for the development of Pokeno tailored to the specific needs of that community. PVHL has played a central role in the development and implementation of the Pokeno Structure Plan process and is continuing to do so. As set out in Mr Botica's evidence PVHL has constructed 1,200 dwellings in Pokeno to date and there is capacity for a further 650. In total, there is capacity for a further 1,150 dwellings in Pokeno, which are likely to be constructed in the next 3-5 years.⁴

2.4 PVHL's interest in the rezoning hearings is not about preventing further development. To the contrary PVHL supports the continued growth of the town.

2.5 PVHL also acknowledges that some time has passed since the promulgation of the Pokeno Structure Plan. There is no doubt that the District Plan Review process is the appropriate time to review the premises that the Pokeno Structure Plan was based on, and to depart from those if appropriate.

2.6 PVHL's concern, however, is that while the PSP was not incorporated into the PWDP, the reasons for that were not explained and no other framework to govern the growth of Pokeno and ensure high quality planning outcomes has been developed to replace it. As the Environment Court has observed, structure planning is an important tool to enable the integrated management of the effects of use and development and coordinate infrastructure provision, particularly of fast growing urban areas and greenfield land.⁵

2.7 In respect of Pokeno, it appears that there has been no holistic assessment of the overall implications of growth and what is required to ensure good planning outcomes, including for example in terms of:

- (a) The capacity of the transport network;
- (b) Stormwater catchment analysis;
- (c) Social infrastructure, for example, schools and community facilities;

⁴ EIC Botica Hearing 25, paragraphs 3.10-3.13.

⁵ *Omokoroa Ratepayers Association Inc v Western Bay of Plenty District Council* A102/2004 at [72].

- (d) Water and wastewater provision; and
 - (e) The appropriate balance of commercial and residential land.
- 2.8 Instead, the approach in the PWDP (and indeed in the section 42A reports) appears to be that areas individually assessed as potentially appropriate for development would be live zoned, with development subject only to the standard, district wide planning framework.
- 2.9 PVHL's submission is that without strategic planning analysis, the Panel does not have sufficient information to determine whether "live zoning" land for development in Pokeno represent the "most appropriate" provisions, in terms of the relevant statutory tests.⁶
- 2.10 It is not enough to suggest that these matters can be left to resource consent stage, when there will already be a presumption that development can proceed. Enabling development on an *ad hoc* basis is likely to lead to poor quality planning outcomes, including inefficient infrastructure provision or a failure to provide infrastructure (including community infrastructure) and ultimately, poorer amenity for residents and a town that does not function well.

3. THE SECTION 42A REPORTS AND WDC'S APPROACH TO REZONING

Future Urban zone

- 3.1 At Hearing 3, PVHL suggested that the reintroduction of a Future Urban zone would go some way to filling the gap in the planning framework.
- 3.2 A Future Urban zone was not included in the PWDP on the basis that the "Deferred" zone originally proposed in the Draft Plan was unlawful. PVHL's submission was that the decision to delete the Deferred zone and instead live zone all of the Deferred zone land in the PWDP was essentially "throwing the baby out with the bathwater" and meant that there was no mechanism in the PWDP to identify future growth areas while ensuring that land is not made available for development before the necessary planning has been undertaken.
- 3.3 WDC's subsequent acknowledgement that there is a need for a Future Urban zone is therefore a positive step. In this regard, the Section 42A report – Future Urban and Medium Density zones states:⁷

"The key focus of submissions that might logically lead to the inclusion of a FUZ in the Waikato District Plan is a need for integration in order for new urban areas to be successful. Such integration is necessary in a spatial sense so that new greenfield growth areas are logically connected to the adjacent urban area so they create a single coherent township and collectively provide access to the range of employment, social, and community facilities necessary for successful communities.

The key mechanisms for ensuring effective spatial integration is first the 'in principle' decision as to whether a rural area should be rezoned for urban purposes, and secondly the use of Structure Plans or Master Plans that provide a greater level of detail. Structure Plans typically show elements such as the general location and provision of roads, walkways and

6 *Royal Forest & Bird Protection Society of NZ v Whakatane District Council* [2017] NZEnvC 051.

7 Section 42A Report dated 26 January 2021, Hearing 25: Zone Extents – Future Urban Zone and Residential Medium Density Zone, Section 3.

cycleways, areas of different housing density, the protection of important cultural or natural features, and the location of neighbourhood centres for the provision of local shops and community and recreation facilities.

The second means by which new urban areas are integrated is via connection to network infrastructure, primarily the three waters⁶ networks and the roading network. In order for development to occur at scale, the network infrastructure needs to have sufficient capacity to meet the demand generated by the new development.

These two integration mechanisms, namely structure plans and infrastructure provision, are key prerequisites to enabling urban development to occur in a coordinated manner.”

- 3.4 PVHL wholeheartedly agrees with these conclusions, but in terms of the Section 42A recommendations for Pokeno, their impact is minimal given that the author has recommended that nearly all of the submissions seeking residential zoning for large land areas are accepted.
- 3.5 Growth at this scale would represent a very significant expansion of the size of the town. It is submitted that for the reasons set out in these submissions, more use of the Future Urban zone should be employed in Pokeno to ensure that growth is properly managed.

Supply and demand analysis

- 3.6 A very strong driver for the Section 42A recommendations for rezoning in Pokeno appears to be the supply and demand analysis prepared by Dr Davey, the latest iteration of which suggests that all of the land recommended for rezoning in Pokeno in the Pokeno Section 42A report is required to meet demand.
- 3.7 Mr Colegrave has reviewed the various versions of the analysis on behalf of PVHL. In respect of the projections for Pokeno, he observes:⁸

"Pokeno has grown strongly in recent years, and this is set to continue. However, the Council's projections of Pokeno's future growth have increased exponentially, which has confounded efforts to determine likely supply requirements. For example, the 10-year household projection has increased from just over 1,050 in the 2017 Housing Capacity Assessment (HCA) adopted in my evidence (including NPS buffer) to nearly 2,850 in the framework report update (April 2021).

While I accept that Pokeno's location and other attributes make it highly attractive to prospective residents, the latest demand projections appear aspirational. They are derived by allocating projected district growth to townships based on recent growth patterns. This is acceptable in principle but, in this case, results in the recent Pokeno boom period being naively projected to continue for the next 15 years. In my view, this is unlikely given natural property market cycles.”

- 3.8 Ultimately, Mr Colegrave's conclusions are encapsulated in the following section of his summary statement:⁹

"The supply figures promulgated for Pokeno and other townships have...changed a lot, particularly between the HCA

8 Summary Statement of Fraser Colegrave, Hearing 25, 12 May 2021, paragraphs 6 and 7.
9 Summary Statement of Fraser Colegrave, Hearing 25, 12 May 2021, paragraphs 8 and 9.

and the two framework reports (Jan 2021 and April 2021). Unfortunately, despite significant time and effort spent to reconcile the different versions and understand the nature of the underlying changes, it has been practically impossible due to the rather opaque nature of the framework reports. This has been exacerbated by definitional and label changes in the underlying capacity spreadsheets which, frankly, I have found to be both unnecessary and counterproductive.

In short, it is unclear now whether the proposed rezonings for Pokeno are appropriate given likely future demand, or whether they are still too much, as per my earlier evidence."

- 3.9 As a result, it is submitted that the Panel should exercise caution when considering the WDC supply and demand analysis.
- 3.10 Furthermore, as these submissions will set out, the requirements of the statutory framework in respect of the provision of development capacity are about more than just the *ad hoc* rezoning of land to deliver a sufficient number of lots. What is required is focussed and integrated planning to achieve identified planning outcomes that will ultimately result in the creation of places that people want to live and work in.

4. **THE STATUTORY FRAMEWORK**

- 4.1 As the Panel noted in its minute and directions in relation to the Section 42A Framework report dated 15 March 2021, the settled statutory tests relevant to the consideration of plan provisions are set out in full in Appendix 1 to the Opening Legal Submissions of counsel for WDC dated 23 September 2019, (with one addition, being a reference to section 31(1)(aa) of the RMA relating to the provision of sufficient development capacity.) PVHL adopts Appendix 1 of those submissions, and highlights only the particularly relevant aspects of the statutory framework below.
- 4.2 The provisions of primary relevance to the rezoning proposal are sections 72 to 76 in Part 5 (standards, policy statements, and plans) of the RMA. Those provisions respectively set out the purpose of district plans, matters to be considered by the territorial authority in the preparation of district plans and the content of district plans. The Panel needs to be satisfied that the relief sought by rezoning submitters:
- (a) Is in accordance with:
 - (i) The Council's functions as set out in section 31 of the RMA;
 - (ii) The purpose and principles in Part 2 of the RMA; and
 - (iii) The Council's duty under section 32 of the RMA.
 - (b) Gives effect to:
 - (i) Any relevant national policy statement;
 - (ii) Any relevant national environmental standard; and
 - (iii) The WRPS¹⁰.

10 Section 75(3) of the Act.

Section 31

4.3 In terms of Section 31, the most relevant aspects with respect to PVHL's submission are as follows:

- "(1) *Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*
- (a) *The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
- (aa) *The establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:*
- (b) *The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of:*
- (i) *The avoidance or mitigation of natural hazards;*
- (ii) *[Repealed]*
- (ia) *The prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:*
- (iii) *The maintenance of indigenous biological diversity:*
- ...
- (2) *The methods used to carry out any functions under subsection (1) may include the control of subdivision.*

[emphasis added]

4.4 The introduction of section 31(1)(aa) by way of the Resource Legislation Amendment Act 2017 provides statutory recognition of the importance of ensuring sufficient residential and business land supply to meet the needs of the district, but of course that does not equate to the elevation of this principle above all others. That provision must be read alongside section 31(1)(a) which requires territorial authorities to achieve "integrated management" of the use and development of land.

4.5 Although the RMA does not include a definition of "integrated management" it is described in the WRPS as follows:¹¹

Integrated management requires the adoption of an approach that recognises and accounts for:

- *the natural processes and basic principles that support life;*

11 Waikato Regional Policy Statement, 3.10.4.

- *the complex interactions between air, water, land and all living things;*
- *the needs of current and future generations;*
- *environmental, social, economic and cultural outcomes; and*
- *the need to work with agencies, landowners, resource users and communities.*

4.6 The need for such integration is also identified in section 30(1)(gb) which concerns the functions of regional councils, one of which is:

(gb) the strategic integration of infrastructure with land use through objectives, policies, and methods.

4.7 It is submitted that in the context of rezoning decisions in a district plan review, integrated management means considering rezoning submissions in a holistic way, including in terms of the overall impact of such rezoning on existing communities, what impact changes in the balance of commercial and residential land will have and what infrastructure, including community infrastructure, is needed to new development.

4.8 The importance of integrated land use and infrastructure provision was emphasised in *Norsho Bulc Ltd v Auckland Council*¹², in which the Environment Court said:

“[92]... It is a relevant resource management consideration to seek to manage the effects of activities on such resources in a way or at a rate that enables people and communities to provide for the various aspects of their well-being while sustaining their potential to meet the reasonably foreseeable needs of future generations. As the Court has said [in Foreworld Developments]:

It is bad resource management practice and contrary to the purpose of the [Act] ... to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it.

[93] It is accordingly open to a Council to refuse a plan change on the grounds that it would cause unnecessary expense to the ratepayers. It is also a lawful basis on which to refuse an application for resource consent.”

4.9 That observation is also made in a large number of other Environment Court decisions, including *McIntyre v Tasman District Council*,¹³ *Prospectus Nominees v Queenstown-Lakes District Council*,¹⁴ *Bell v Central Otago District Council*¹⁵ and confirmed by the High Court in *Coleman v Tasman District Council*.¹⁶

12 [2017] NZEnvC 109.

13 W83/94.

14 C 74/97.

15 C 4/97.

16 [1999] NZRMA 39.

Higher order planning documents

- 4.10 The National Policy Statement on Urban Development 2020 and the Waikato Regional Policy Statement also emphasise the need for integrated management in the context of developable land supply.
- 4.11 Under sections 75(3)(a) and (c) of the RMA WDC is required to give effect to these instruments. In *Environmental Defence Society v King Salmon*, the Supreme Court said that the term “give effect to”:¹⁷

“...simply means “implement”. On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it. As the Environment Court said in Clevedon Cares Inc v Manukau City Council:

[51] The phrase “give effect to” is a strong direction. This is understandably so for two reasons:

[a] The hierarchy of plans makes it important that objectives and policies at the regional level are given effect to at the district level; and

[b] The Regional Policy Statement, having passed through the [RMA] process, is deemed to give effect to Part 2 matters.

- 4.12 It follows that the Panel must be satisfied that the zones and associated provisions applied to Pokeno “implement” the NPSUD and the WRPS. Key considerations relevant to that analysis are addressed below.

National Policy Statement on Urban Development 2020

- 4.13 The NPSUD came into force on 20 August 2020. Mr Scafton describes it in his evidence as follows:¹⁸

“In my view the NPS:UD is the most directive, recent and highest order policy direction relevant to enabling urban growth. Broadly, the objectives of the NPS:UD relate to guiding the outcomes of urban environments in New Zealand to ensure they result in well-functioning urban environments; guiding the outcomes of planning decision makers; and ensuring decisions are based on evidence.”

- 4.14 The NPSUD recognises the national significance of “well-functioning urban environments”. Objective 1 states:

New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

- 4.15 “Well functioning urban environments” are described in Policy 1, which states:

“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:

¹⁷ [2014] NZSC 38.

¹⁸ EIC Scafton, Hearing 25, paragraph 2.2.

- (i) *meet the needs, in terms of type, price, and location, of different households; and*
- (ii) *enable Māori to express their cultural traditions and norms; 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; and*
- d) *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; and*
- f) *are resilient to the likely current and future effects of climate change.”*

4.16 Accordingly, the NPSUD is not just about delivering a specified number of lots. It requires planning decisions which are intended to result in the creation of communities that people will want to live in.

Infrastructure provision

4.17 A key function of the NPSUD is to direct local authorities to ensure sufficient development capacity to meet demand. “Development capacity” is described as follows:

Development capacity means the capacity of land to be developed for housing or for business use, based on: the zoning, objectives, policies, rules, and overlays that apply in the relevant proposed and operative RMA planning documents; and the provision of adequate development infrastructure to support the development of land for housing or business use

development infrastructure means the following, to the extent they are controlled by a local authority or council controlled organisation (as defined in section 6 of the Local Government Act 2002): network infrastructure for water supply, wastewater, or stormwater land transport (as defined in section 5 of the Land Transport Management Act 2003)

4.18 In order to be “sufficient”, development capacity must:

- (a) plan-enabled (live zoned for short and medium term demand and future urban zoned for long term demand); and
- (b) infrastructure-ready; and
- (c) feasible and reasonably expected to be realised.

4.19 “Infrastructure-ready” means:

- a) *in relation to the short term, there is adequate existing development infrastructure to support the development of the land*

b) in relation to the medium term, either paragraph (a) applies, or funding for adequate infrastructure to support development of the land is identified in a long-term plan

c) in relation to the long term, either paragraph (b) applies, or the development infrastructure to support the development capacity is identified in the local authority's infrastructure strategy (as required as part of its long-term plan).

4.20 It is submitted that notwithstanding the conclusions of the Section 42A authors that the rezoning decisions recommended will meet the requirements of the NPSUD in terms of land supply, insufficient information has been provided to date to demonstrate that the land is in fact "infrastructure ready."

4.21 In this regard, the section 42A Framework report states:

A key assumption made in this analysis is that all the areas identified for live zoning through either the as-notified PWDP or the s42A recommendations are 'infrastructure-ready'. Therefore, the analysis here has focused on the commercially feasible and the reasonably expected to be realised yields. It is the latter which is of most importance for decision-makers to focus on with respect to the statutory tests under the NPS-UD.

4.22 The basis of that assumption is not entirely clear.

The WRPS

4.23 The WRPS includes a number of provisions directing the manner in which development of the built environment is to occur.

- (a) Policy 6.1 of the RPS directs (amongst other things) development of the built environment to occur in a planned and co-ordinated manner and to have regard to the development principles set out at Section 6A of the RPS.
- (b) The sequencing of new development is coordinated with the development of new infrastructure (Policy 6.3 and associated methods);
- (c) Development does not occur until appropriate infrastructure is in place (Policy 6.3 and associated methods);
- (d) Implementation method 6.1.1 confirms that local authorities shall have regard to the development principles in Section 6A when preparing, reviewing or changing district plans;
- (e) Implementation method 6.1.7 encourages territorial authorities to ensure that, prior to providing new urban zoning, urban development planning mechanisms such as structure plans and town plans are produced to allow for proactive decisions about future urban development and allow for the information in Implementation method 6.1.8. to be considered.
- (f) Implementation method 6.1.8 sets out the information requirements that are required to support new urban zoning including the location, type, scale, funding and staging of infrastructure required to service the area.

- 4.24 Policy 6.12 directs that growth in Pokeno should be managed in accordance with the Franklin District Growth Strategy ("FDGS"), which in turn reflects the Pokeno Structure Plan. As Mr Scafton explains in his evidence, all of the growth areas identified in the FDGS have been live zoned therefore the requirements of the RPS in this regard have largely been achieved.¹⁹ It must be concluded, therefore, as Mr Scafton observes in his evidence,²⁰ that this element of the WRPS does not give effect to the NPSUD.
- 4.25 It is submitted that the remainder of policy framework requiring the planned and coordinated delivery of development does give effect to the NPSUD and therefore the PWDP must, in turn, give effect to these provisions.

Section 74(2)(b) - other plans and strategies

- 4.26 Under section 74(2)(b), the territorial authority is required to "have regard to" any relevant management plans and strategies prepared under other Acts. The requirement to "have regard to" such documents is of course a less directive requirement than the instruction to "give effect to" the WRPS, requiring that the matter must be given material consideration, but the rules or policies that are in the specified document need not necessarily be followed.²¹
- 4.27 The Section 42A Framework report and the Section 42A author appears to place a significant degree of weight on the Waikato Growth and Economic Development Strategy ("Waikato 2070"), which was prepared under the Special Consultative Process under the Local Government Act 2002.
- 4.28 Waikato 2070 provides for extensive new development in Pokeno, consistent with a number of submissions on the PWDP (for example, Havelock Village and Pokeno West). The Framework Report refers to such areas as "growth cells" - funding for servicing of which will be allocated in the next Long Term Plan.
- 4.29 It is inappropriate for WDC to treat "growth areas" identified in Waikato 2070 as a *fait accompli* when the proposals have not yet been the subject of a Schedule 1 process and indeed it is unclear what technical analysis has in fact informed their identification.
- 4.30 On 28 January 2021 PVHL filed a memorandum raising concerns that in a number of places in the report, the Section 42A Framework Report Author appeared to treat the "growth cells" in the same way as existing zoned areas, for example in Appendices 8 and 9 which show "Growth Cell Capacity", despite the fact that the question of whether those areas are appropriate for development has not yet been tested through the Schedule 1 process.
- 4.31 PVHL submits that the Section 42A reports place too much weight on Waikato 2070, insofar as they appear to rely on it as a basis for determining that all of the strategic planning considerations relevant to decision making for Pokeno have been taken into account. In this regard, paragraph 125 of the Framework Report states:

"Waikato 2070 was informed by a range of technical inputs and data from various divisions within Council, including: flood mapping, high class soil mapping, topography/slope analysis, pedestrian catchment modelling, 3-waters capacity assessment, employment and economic demand and land analysis, land capacity modelling, household and population projection modelling, field research and analysis, technical

19 EIC Scafton, Hearing 25, paragraph 3.16.
 20 EIC Scafton, Hearing 25, paragraphs 3.16-3.20.
 21 *Winstone Aggregates Ltd v Papakura DC* EnvC A096/98.

reports including research that was carried out to inform the PWDP and previous structure plans."

- 4.32 By way of its memorandum dated 28 January 2021, PVHL requested that these "technical inputs" be specifically identified and made available by WDC. In response, WDC released some details of the land capacity modelling but no further information was released. It therefore remains unclear precisely what technical analysis has informed Waikato 2070.
- 4.33 The Section 42A reports appear to proceed on the assumption that land identified for rezoning in Waikato 2070 will be serviced with the necessary infrastructure in the forthcoming Long Term Plan. That document will not, however, be available in time for the rezoning hearings.
- 4.34 Given that it appears that the necessary analysis has not been undertaken to establish what infrastructure is required to service identified growth areas in Pokeno PVHL submits that it is inappropriate for the Section 42A authors (and the Panel) to assume that inclusion in Waikato 2070 is sufficient to demonstrate that the necessary infrastructure will be funded.

5. **PLANNING FOR POKENO – RELEVANT FACTORS**

- 5.1 As foreshadowed above, PVHL fully supports the continued growth of Pokeno. PVHL submits that factors that have led to Pokeno's success to date should be carefully considered when making decisions about how and when Pokeno should grow.
- 5.2 In particular, a key focus of the work that informed the Pokeno Structure Plan was ensuring that the zoning pattern offered a good balance of commercial/industrial and residential development to ensure that Pokeno became more than just a "dormitory town", and instead a fully functioning community. The importance of this issue is recognised in Policy 1(c) of the NPSUD which directs that well functioning communities are those which have good access to employment.
- 5.3 The Section 42A rezoning recommendations for Pokeno provide for a very significant increase in the number of dwellings in Pokeno without any commensurate increase in commercial land supply. Accepting the Section 42A recommendations for Pokeno would therefore result in a very significant reduction in the number of jobs per dwelling, given that few submissions have been lodged seeking Business/Industrial zoning in Pokeno. That is an issue identified by Dr Davey in the supplementary Framework Report dated 28 April 2021 who concludes:²²

"I do not believe that there is sufficient supply of employment land being put forward for zoning in either the as-notified PWDP or s42A recommendations in the Waikato District to meet demand."

- 5.4 Despite the acknowledgement of the issue, no solutions are proposed.

Separation of industrial and residential activities

- 5.5 The submission by Havelock Village Ltd seeks to introduce residential activities in close proximity to existing heavy industrial zoned land. Through the PSP process, the industrial zone was carefully located to ensure separation between industrial and other land uses. Mr Hynds' evidence is

22 Hearing 25 Framework Report Supplementary Evidence dated 28 April 2021, paragraph 69.

that this was one of the key reasons why Hynds chose to locate its operations in Pokeno.²³

- 5.6 The reverse sensitivity issues raised by the Havelock proposal are addressed in the evidence and legal submissions of Hynds Pipe Systems and PVHL adopts the legal submissions made on behalf of Hynds in relation to this issue.
- 5.7 PVHL submits, however, that rezoning decisions which result in a very significant reduction in the number of jobs per dwelling while simultaneously devaluing Pokeno's existing industrial capacity would be the antithesis of good planning practice and would certainly not be consistent with the requirement in the NPSUD that planning decisions contribute to well functioning urban environments.

The rural backdrop

- 5.8 Pokeno's identity as an "urban village in a rural setting" is a key feature of the Pokeno Structure Plan and has informed the location of development to date. The hills surrounding Pokeno make up its rural backdrop and keeping development away from the upper extents of those hills is what has protected Pokeno's identity. A development limit of RL 100 was identified as in consultation with mana whenua to ensure that development did not extend onto the ridgelines.
- 5.9 The submissions by Pokeno West Ltd, CSL Trust and Top End Properties Ltd and Havelock Village Ltd seek to enable proposals which include development above RL100. Ms de Lambert's view is that discounting the value of Pokeno's rural backdrop would be a mistake that would fundamentally alter the character of the town for the worse. She says:²⁴

"In my opinion it is important and appropriate for Pokeno to retain its southern and western rural open space backdrop, rather than simply rezoning this land for further urban residential development for a number of well-founded reasons including:

- i) The rural backdrop is key to the rural village identity of Pokeno;*
- ii) The ridgelines to the south and west have cultural landmark values that are respected by retaining their rural landuse;*
- iii) The rural backdrop provides a critical landuse buffer for the settlement's important and complementary industrial employment sector;*
- iv) The valued rural backdrop to Pokeno and its function in protecting the settlement's industrial employment base from reverse sensitivity effects go hand in hand such that there is a compounding value in its retention as rural open space; and*
- v) There is opportunity to expand Pokeno elsewhere to meet future growth requirements whilst retaining its southern and western rural hill backdrop."*

- 5.10 In the Section 42A report, Mr Mead records his agreement with Ms de Lambert's conclusions as follows:²⁵

Pokeno Village Holdings Ltd. [386.12] outlines major concerns with possible development on the ridgelines and landform above RL 100m. These areas were identified as important landscape components guided by consultation from residents

23 Evidence of Adrian Hynds, Hearing 25, Section 3.
24 EIC de Lambert, Hearing 25, paragraph 5.9.
25 Section 42A Report - Zone Extents - Pokeno, paragraph 241.

and iwi through the Pokeno Structure Plan process. While I hold similar views about the value of retaining a rural landscape setting, I note that the RL 100m principle is not part of the PWDP."

- 5.11 The absence of reference to the RL100 principle in the PWDP is not in itself sufficient reason to justify departure from it – the reasons that it was identified remain relevant. PVHL's submission is that (as Mr Mead appears to accept) expansion of the urban area onto the ridgelines will adversely impact on the character of the town. Further, the evidence of Mr Flavell on behalf of Ngati Te Ata and that of Ngati Tamaoho for Hearing 25 confirms that tangata whenua remain firm in their view that development on those ridgelines is culturally inappropriate.

6. **INFRASTRUCTURE PROVISION**

- 6.1 We turn next to issues relating to the provision of infrastructure to new development areas in Pokeno. In this regard, PVHL's main concern is not that it is not possible to service these areas, but that the work simply has not been done to assess what the overall implications of such significant growth will be on existing infrastructure and what new infrastructure is required to service it.
- 6.2 There is no framework in place to ensure that the infrastructure required for development will actually be delivered in a logical and timely way. As Mr Botica explains in his evidence, Pokeno's success in terms of infrastructure provision has been as a result of the fact that it has been led by one major developer, the Pokeno Landowners Consortium (Dines, Hynds and Fulton Hogan) with the ability to deliver the necessary infrastructure itself. He says:²⁶

"The infrastructure required for PC24 growth was underwritten via a Development Contributions Agreement between Waikato District Council and PVHL. PVHL has designed, built, and funded much of the infrastructure in Pokeno to date. The positive working relationship between WDC and PVHL has enabled the efficient roll out of infrastructure and has provided the solid platform for growth.

- 6.3 It is unclear how WDC will be able to ensure that infrastructure is provided in a timely and efficient way when a number of developers are all proceeding with development at the same time. It cannot be assumed that these developers will have the same financial capacity or expertise to be able to roll out bulk infrastructure in an integrated and timely way as the Pokeno Landowners Consortium was able to do.

Transport infrastructure

- 6.4 From a transportation perspective, PVHL's primary concern is that submitters seeking to rezone land in Pokeno have undertaken their own transport assessment but (so far as PVHL is aware) no transport study has been undertaken which assesses the implications of all development areas on the functioning of Pokeno's transport network and accordingly, what infrastructure is required to service them.
- 6.5 In his Section 42A report, Mr Mead states that he agrees that traffic modelling which accounts for development of all newly zoned land is required, but suggests that this can be undertaken at resource consent stage. As Mr Edwards notes, that approach does not guarantee that

26 EIC Botica, Hearing 25, paragraph 3.14.

development of the land in Pokeno would be undertaken efficiently or effectively. He says: ²⁷

"That approach also places a significant assessment burden on the first development proposal of any scale and is likely to deter and delay the development of the land.

...

A comprehensive structure planning exercise, including the use of transport modelling, and investigation of potential infrastructure upgrades and new connections, could provide the missing evidence and identify areas that are impractical or uneconomic to develop, at least at the intensity currently proposed. In my view, that is also the only way to properly address the transport infrastructure that may need to be delivered by third parties including the Transport Agency and KiwiRail.

Without such an exercise, in my view, the Panel cannot be satisfied that the land proposed to be zoned can be serviced by transport infrastructure in an appropriate, timely or cost-effective manner.

- 6.6 Mr Edwards' view is that it is impossible to conclude that the capacity that would be realised by rezoning the land sought in submissions is "infrastructure ready" as required by the NPSUD.
- 6.7 Having regard to the above, it is submitted that the Panel does not have the necessary information before it to determine that all of the land recommended for rezoning in the Section 42A report can be adequately serviced from a transportation perspective.
- 6.8 Simply assuming that the collective transportation implications of rezoning can be dealt with later (at a time when landowners will already have the expectation that they can develop their land), is not a sufficient basis for the Panel to determine that transport issues have been addressed.

Stormwater infrastructure

- 6.9 PVHL is unaware of any catchment analysis of the overall impacts of the proposed rezonings on the stormwater network. As Mr Botica explains in his evidence, there is a current Pokeno Stormwater Catchment Management Plan ("PSCMP") that was prepared alongside the Pokeno Structure Plan.
- 6.10 The PSCMP identifies six significant stormwater infrastructure requirements to avoid flooding. To date, only one of those has been completed. As a result, there is an existing flooding issue in Pokeno, which as explained in the evidence for Hynds Pipe Systems, affects the industrial area in particular.
- 6.11 The submissions by Havelock Village Ltd and Pokeno West Ltd seek to substantially increase the size of the Tanitewhiora catchment (in the latter case onto land previously considered inappropriate for development for stormwater reasons), in circumstances where the existing stormwater infrastructure is inadequate and no assessment has been undertaken of the overall implications for stormwater management.
- 6.12 Mr Mead's view is that these issues "*can be suitably managed once the zoning requests for Pokeno are settled and more comprehensive planning around 'downstream' (or off-site) stormwater ... infrastructure can be*

27 Summary statement of Wes Edwards, Hearing 25, 12 May 2021, paragraphs 25-28.

undertaken.”²⁸ In summary, the proposal is that these issues can be addressed through the resource consent process.

- 6.13 On behalf of PVHL, Ms Paice has reviewed the submissions and the analysis produced by WDC. Her view is that leaving such analysis to the resource consent stage is likely to lead to inefficient infrastructure provision and worsen existing flood risk. She says:²⁹

"It appears site-by-site approaches have been proposed through individual submissions and that no catchment-wide studies have been undertaken yet. ...

In my opinion this is a gap that could result in either unnecessary infrastructure being constructed, vested and maintained or increased flood risk in the catchment.

Some specific areas of risk that I have identified for Pokeno are:

(a) Maintaining adequate flood protection to the floor levels of existing buildings alongside the Tanitewhiora stream (including residential buildings recently constructed within the PVHL developments).

(b) Avoiding increases to floodplain extents and flood levels associated with the Tanitewhiora stream and low-lying tributaries between McDonald's Road through to downstream of Te Ara Aukati Terrace. The 2010 SMP indicates that floodplain extents in this area can be sensitive to increases in peak flows.

(c) Maintaining or achieving adequate flood level protection at structures (that is, bridges and culverts) crossing the stream including the North Island Main Trunk railway, State Highway 1 and Great South Road where freeboard may be reduced."

- 6.14 No evidence has been provided which demonstrates that these issues can be satisfactorily addressed at resource consent stage. PVHL submits, therefore that it must be concluded that the Panel has insufficient evidence to determine that the rezoning proposals can be collectively managed from a stormwater perspective.

7. **PRINCIPAL SUBMISSION**

- 7.1 In summary, PVHL agrees that there is a need to enable growth in Pokeno to meet demand. Necessarily, that will require a departure from the Pokeno Structure Plan to some degree.

- 7.2 PVHL submits that growth should not be enabled at the expense of the features that have contributed to Pokeno's success to date. This means:

- (a) Retaining Pokeno's rural backdrop by avoiding the development of the surrounding ridgelines;
- (b) Ensuring an appropriate balance of commercial and residential land supply so that Pokeno remains a fully functioning community and not just a dormitory town;

28 Section 42A Report, Zone Extents - Pokeno paragraph 274.
29 EIC Paice Hearing 25, paragraphs 7.2-7.4.

- (c) Ensuring an appropriate separation between industrial and residential activities so that Pokeno's heavy industrial land remains commercially attractive.
- 7.3 PVHL also submits that for the Panel to be satisfied that rezoning areas of greenfield land to enable growth is the "most appropriate" planning decision, it must have a proper understanding of the overall implications of that decision in terms of infrastructure requirements.
- 7.4 If that information is not available, it is submitted that Future Urban zoning is the most appropriate to enable those issues to be resolved.

DATED at AUCKLAND this 17th day of May 2021

POKENO VILLAGE HOLDINGS LIMITED

by their solicitors and duly authorised agents
BERRY SIMONS



S J Simons

Counsel for Pokeno Village Holdings Limited