

**BEFORE THE HEARINGS COMMISSIONERS FOR THE WAIKATO DISTRICT
COUNCIL**

UNDER the Resource Management Act 1991

AND

IN THE MATTER of hearing submissions and further submissions
on the Proposed Waikato District Plan

Hearing 25 – Zone Extents

PARTIES REPRESENTED **CSL TRUST & TOP END PROPERTIES**

**STATEMENT OF LAND DEVELOPMENT EVIDENCE FROM SIR WILLIAM
BIRCH FOR CSL TRUST AND TOP END PROPERTIES**

17 February 2021

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MAY IT PLEASE THE PANEL

Introduction

1. My full name is William Francis Birch. I am a consultant at Birch Surveyors Limited (**BSL**), a consulting firm with surveyors, planners and engineers based in Auckland but with satellite offices in Hamilton, Tauranga and Tairua.
2. This is a statement of evidence on behalf of CSL Trust and Top End Properties relating to the zoning of land on Helenslee Road, Pokeno (**the site**). These properties are at the northern end of the catchment which is subject to the district plan review process of the Proposed Waikato District Plan (**PWDP**).

Qualifications and experience

3. I am a Registered Professional Surveyor and a Fellow of the New Zealand Institute of Surveyors and a member of the New Zealand Urban Design Forum.
4. My relevant professional experience spans my professional lifetime between 1952 and the present time. My professional career was interrupted somewhat by 27 years as a Member of Parliament between 1972 and 1999 during which time I served for 15 years as a Senior Cabinet Minister including portfolios such as Energy, National Development, Regional Development, Science and Technology, Labour, Treasurer, Finance and Revenue. Since leaving Parliament, I have been continuously involved as a consultant involved in Planning and Land Development primarily across the Auckland and Waikato regions.
5. My recent experience that is relevant to wider strategic development in the southern part of Auckland and Pokeno West includes:
 - a. Preparing various submissions and providing evidence on the Notified Auckland Unitary Plan (AUP);
 - b. Managing the preparation of a request for a Plan Change to the Auckland Council to rezone 82.6has of land in Pukekohe from

Future Urban / Special Purpose Zone to residential / light industrial zone;

- c. Managing the preparation for another private plan change request in Pukekohe (yet to be lodged) to rezone some 80ha of land from Future Urban Zone to residential/light industrial use; and the
- d. Preparation and lodgements of numerous applications to Auckland Council and other Councils for development approval and Resource Consents under the Resource Management Act. In most of the numerous land development projects that I have been involved in over many years, I have supervised the planning applications, overseen the detailed design of the project and supervised the construction through to final certification by the consenting authorities.

Involvement in the project

6. My involvement in this part of the catchment commenced in 2018 when I was instructed by CSL Trust and Top End Properties Ltd to advise on the rezoning of the land.
7. Since my involvement began, I have become heavily involved in the project. These responsibilities have included organising and attending numerous meetings with the technical staff at the Waikato District Council. These consultations and others are referred to later in my evidence.
8. Co-ordinating work by a wide range of consultants so that technical reports were available to Council to demonstrate to Council the feasibility of the properties for residential development and to provide housing to meet the demands of the population growth in Pokeno.
9. I subsequently led the project team in the preparation of a Master Plan and the subsequent technical reports culminating in the Submissions to the Hearing Panel on the PWDP. In this work I was ably assisted by Mr James Oakley who is also providing evidence.
10. Mr James Oakley and I have worked closely together on the project and I will avoid duplicating his comprehensive evidence on many of the Planning and otherwise technical issues associated with this project.

Purpose and scope of evidence

11. The purpose of this evidence is:

- a. to provide context around the project and the role that it will potentially play in meeting the growing demands for housing in the Pokeno Village;
- b. to provide details on the comprehensive investigative process that was followed from a land development viewpoint both leading up to and after the proposed district plan was notified.
- c. to confirm the suitability and feasibility of the properties for live zoning and to respond to submissions by Pokeno Village Holdings Ltd. that the land should not be live zoned.
- d. to address issues that have arisen or require a response as a result of the s42A reports by Dr. Mark Davey dated 19th January 2021 and Jonathan Cleese dated 26 January 2021 particularly around the provision of infrastructure and staging of the development.

Expert Witness Code of Conduct

12. I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses and agree to comply with it. I confirm that I have considered all of the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my areas of expertise, except where I state that I am relying upon the evidence of another person.

Other relevant evidence

13. My evidence relies on, and should be read alongside the evidence of the following technical experts:

- a. Adam Thompson – economics.
- b. Will Moore – engineering
- c. Fraser Walsh – geotechnical.

- d. Jennifer Shanks – ecology.
- e. Leo Hills – traffic.
- f. Rob Pryor – landscape/visual.
- g. Billy Ho – urban design.
- h. James Oakley – Planning

The rezoning proposals contribution to the growth of Pokeno and role in meeting the housing needs of its growing population

14. The following is a summary of the context and background of the role that the rezoning proposal can play on the development of Pokeno,
15. The forecast population growth of Pokeno is one of the fastest in the Waikato Region. The subject of population growth is well canvassed in the evidence of Adam Thompson from Urban Economics and also summarised under the subject of Growth Strategies in the s42A report of Dr. Mark Davey dated 19th of January 2021 when he discusses the Role of Weighting of Future Proof and Waikato 2070. Dr Davey concludes that “Waikato 2070 is a key document for the Council in respect of informing the Asset Management Planning process within the Council, which in turn informs the 30-year Infrastructure Strategy and the LTP.”
16. The natural catchment of the surrounds is Helenslee Road in the east and Ridge Road in the west. The site is contiguous with the recent developments to the west of Helenslee Road which provides the best opportunity for residential development to meet the forecast growth needs. This evidence supports extending the live zoning to include the properties owned by CSL Trust and Top End Properties Ltd. on the grounds that the properties are in the same natural catchment and will provide additional capacity to meet the forecast demand for housing in Pokeno. The property owners and the areas involved in Top End Properties Ltd which has 7.7has. and CSL Trust which has 87.3 has.
17. That judgement of a preferred location for the provision of housing for Pokeno has been further confirmed by the extensive engineering and other technical investigations referred to previously and funded by the

property owners plus discussions with the staff of the WDC and its consultants over the past three years approximately.

18. A number of the specialist reports referred to in my Pokeno West evidence were prepared on a whole of catchment basis and wastewater and water supply in particular can be extended to include the whole of the catchment.
19. The site also has the benefit of being in close proximity to the Pokeno Primary School in Helenslee Road.
20. The location also has the material advantage of being in a single stormwater catchment and provides the opportunity for a whole of catchment design for stormwater management and flood control – see evidence of Will Moore from Maven Consultants.

This whole of catchment approach also is advantageous in facilitating the expansion of existing wastewater infrastructure and permits a logical and efficient extension of the wastewater reticulation without the use of an extensive pumping network.

Summary of Work Completed

21. Since the time of notification in 2018, initial and further submissions have been lodged to Council to support Residential / Country Living zoning on the land and to respond to other submitters whom have expressed opposition to it for reasons addressed later in this evidence.
22. Additional technical support and ground proofing has also been obtained to further reinforce the suitability of the site for future residential development. In turn, this has resulted in various minor amendments and modifications to the concept plan for the site but no variation to the underlying relief that is sought. To add to the fieldwork and topographical data gathered in the early stages and which formed the basis of the original Master Plan, aerial photogrammetry was commissioned from Precision Aerial Surveys Limited from Auckland. This work was undertaken in 2020 and resulted in a set of accurate contour plans which informed the final Master Plan and other technical documents.
23. The Master Plan for this part of the catchment has been designed by Billy Ho and proposes that the site which comprises approximately 95.0has of

land be rezoned to a combination of Residential Zone and Country Living Zone. It is noted some of this land has been identified as Medium Density Residential Zone (**MDRZ**). The proposal to establish this zoning in the plan is being led by Kāinga Ora. They have not identified any MDRZ to be on the site but it is considered that there are logical areas on-site that lend themselves to be MDRZ. In the event that the Kāinga Ora proposal is not successful it is sought that the areas identified as MDRZ be retained as Residential Zone.

24. A Neighbourhood Centre is proposed to provide for the day-to-day needs of future residents. This is a logical response to a residential development of the proposal scale. The location of the centre is intended to be identified on the planning maps.

Suitability and Development Feasibility of the site for Live Zoning and response to PVHL submissions

25. The rezoning proposal is subject to the statutory framework of the RMA as follows and details of compliance with this framework are set out in the evidence of Mr James Oakley and will not be repeated here other than to confirm the various sections of the RMA that have been addressed in his evidence.

- a. Part 2 – purpose and principles (s5 – 8);
- b. s31 – functions of territorial authorities under this Act;
- c. s32 – requirements for preparing and publishing evaluation reports;
- d. s32AA – requirements for undertaking and publishing further evaluations;
- e. s74 – matters to be considered by territorial authority; and
- f. s75 – contents of district plans.

26. In addition to meeting the requirements of the RMA, Council has had the benefits of receiving the technical reports previously summarised in this evidence demonstrating the feasibility of the future development.

27. What these reports demonstrate is that the land within the catchment is not only suitable for development but it is capable of development for the most part without the extensive earthworks recently undertaken by PVHL in the vicinity of Hitchens Road. The geotech reports and other specialists reports identify that development can take place on site apart from the very steep gully edges where slopes exceed 5%.
28. It is also useful to note para.136 of Dr. Mark Davey's Sec 42A Framework report of 19th January 2021 in which he records the Long-Term Plan (LTP) process of evaluating the effects of infrastructure costs on Council prior to the release of the LTP for consultation.
29. Clearly all the costs of the extension of infrastructure to service private developments will be met by the property owners who embark on the development of land that is live-zoned for residential purposes. The same property owners can also expect to make contributions through Development Contribution's, Infrastructural growth charges or by way of Development Agreements under the Local Government Act to capacity upgrades of existing infrastructure.
30. I have reviewed Pokeno Village Holdings Ltd. (PVHL) submissions in opposition to the Live zoning of the rezoning proposal of 9th October 2018. I recognise their significant involvement in the preparation of the Franklin District Council Plan Change 24 as a major land owner and developer in Pokeno. In fact, as a wholly owned subsidiary company of Dines Group and Fulton Hogan with significant land holdings in Pokeno, it is fair to observe that the company is in the position of being an (almost) monopoly developer in this community. It has certainly been the dominant land owner and the two companies have certainly been the principal developers in Pokeno in the past 10 years.
31. Putting their competitive interests aside we have carefully examined their submissions and opposition to the live zoning of the proposal.
32. The major points of concern appear to be:
- i. Notable omissions. *Response – Earlier in my evidence I have summarised the extensive specialist reports that have been submitted to the Council both prior to notification and in the case of the*

Landscape report more recently. Discussions and reports have been held with Council and its consultants throughout the process and are continuing in regard to Catchment Management Plans and the upgrading of infrastructure. Dr. Mark Davey notes in para 233 of his s42A Framework Report "There is an expectation that reticulated water and waste water services are either available or can be made available to all sites zoned in the PWDP". In this case, the site borders the land to the south which has been identified as Residential Zone in the PWDP.

- ii. *Urban Development Capacity. Response – This has become a changing feast over the life of the PWDP hearings. However, it is well covered in Dr. Davey's s42A Framework report where he notes in para74(b) "NPS-UD which requires sufficient supply (+20% above demand) in high growth areas and responsive planning policies to enable competitive land markets."*

Section 42A Framework Report by Dr Mark Davey and Section 42A Future Urban Zone and Residential Medium Density Zone by Jonathan Clease

- 33. My key reason for submitting evidence on the Section 42A Framework Report for Hearing 25 by Dr. Mark Davey is because of the proliferation of National Policy Statements and the tension between these higher order regulations and the RPS and other RMA requirements.
- 34. In his report of 100 pages Dr Davey, narrows these conflicts that surface when assessing Relevant Objectives and Policies down in para 74 of his report to those between
 - i. WRPS which promotes certain developments within certain boundaries
 - ii. NPS-UD which requires sufficient supply (+20% above demand) and
 - iii. RMA in respect to enable people and communities to provide for their social, economic and cultural wellbeing while sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations.

35. In Para 75 of his report Dr. Davey notes that the position reached is that urban development in rural environments should only occur around existing towns which are identified in the WRPS and within the boundaries set by the Future Proof Strategy Planning For Growth 2017.
36. This conclusion is further qualified when considering in Lens 2: "Consistency with higher order policy documents and strategies" by his observation in Para.130 that "The Hearing Panel is required to have regard to Waikato 2070 as per RMA section74(2)(b)(1) and the findings of case law"
37. This careful analysis by Dr Davey is particularly helpful by providing guidance to the Hearing Panel and the submitters in reconciling the proliferation of National Policy Statements, Regional Policy Statements and other various policy documents that are required to be taken into account by law.
38. Turning now to the Section 42A report by Jonathan Cleese for Hearing 25
39. This 115-page document focuses on two broad subjects: Future Urban Zone and Residential Medium Density Zone and my evidence encompasses both subjects.
40. On the question on the use of Residential Medium Density Zone (RMDZ) we are comfortable with the PWDP as it provides flexibility to increase densities in locations where it is desirable and/or otherwise justified. On the other hand we are also comfortable with the Kainga Ora approach of a specific RMDZ. The yield will clearly increase as the density of the development increases.
41. My evidence is that there is no merit in using Future Urban Zones as a tool to control the timing of development of land if it involves subsequent structure planning and worse involves a further Plan Change to create a live residential zone such as the case of the Auckland Unitary Plan. This would be the worst possible option for the sequencing of the construction of infrastructure.
42. Such a process involves huge expenditure and expensive time delays to the extent that such a process has led to serious shortage of live zoned

residential and industrial land and become a major cause of the current housing crisis in Auckland.

43. The Pukekohe community is a useful case in point. Shortly after the creation of Auckland as a super city, the Local Franklin Area Board generated via the Auckland Council Planning Staff a Local Area Plan (LAP) for the organic growth of Pukekohe which up until that time was a rapidly growing regional centre. This Local Area Plan was subject to wide consultation with the Pukekohe Community and subsequently adopted by the Auckland Council in October 2014. During the process of the preparation of the Auckland Unitary Plan, the Pukekohe LAP was for the most part included in the Proposed Auckland Unitary Plan (PAUP) without material alteration but the land identified as suitable for much needed residential development and industrial expansion was zoned Future Urban on the PAUP and subsequently Future Urban on the AUP (Operative in Part) and it continues to have that status today with an underlying zone of rural.
44. Nearly four years ago the Auckland Council initiated a Structure Plan process for a Pukekohe/Paerata Structure Plan managed by the Auckland Council Planning staff but with inputs from the Council Controlled Organisations (CCO's). This involved further endless public consultation organised by the Council staff and further submissions to the Council.
45. The resultant Structure Plan for Pukekohe/Paerata was very high level and basic with very little detail of how the infrastructure would be provided but it was approved by the Council in 6 August 2019.
46. At about this time the Auckland Council decided that it was not prepared to initiate Plan Changes that are required under the AUP to live zone the Future Urban land and that any plan changes required to live zone Future Urban Land would have to be initiated by private land owners and/or developers and that a full and formal Plan Change process would be required. This is an expensive and time consuming process that is not without risks for landowners in terms of any surity of the final outcome.
47. The net result of that long winded process is that that there has been no significant live zoning of residential or Industrial land in Pukekohe now for

more than 10 years apart from the Belmont subdivision that was initiated by the Franklin District Council and implemented through the Special Housing Areas Legislation.

48. This example has had serious negative consequences for the Pukekohe community which is identified in the AUP as a fast growing satellite city but the organic growth that traditionally has taken place has now been attracted to areas such as Paerata Rise, Pokeno and Patumahoe where live zoned residential land has been provided.
49. The lesson from this example is simply that imposing further structure planning and subsequent plan changes as tools to control development timing after Councils have previously undertaken a Plan Change process such as the Waikato District Wide Plan Review and identified land suitable for developments is unnecessary and imposes huge costs and time delays. In my opinion, such arrangements are a major contributor to the current housing crisis.
50. Council has already available to it a mechanism under an Urban Development Policy of the PWDP as per Policy 4.1.4 (below) to ensure that the extension to essential infrastructure is available prior to or during the course of the development. This also ensures that areas that are live zoned are not eligible for development until infrastructure is provided to the satisfaction of the Council or will be built as part of the development,
51. Jonathan Cleese in paras 60 -129 of his s42A report discusses the need for infrastructure to be available at the time that development proceeds and this is a pre-requisite for efficient and well-planned development.
52. I agree that Council needs to have the tools available to enforce such sequencing but, in my experience, compulsory Structure Planning and/or further Plan Changes are not tools that will lead to efficient development and adequate supply of residential land. Live zoning provides more certainty for long term planning by infrastructure providers than FUZ or indicative structure plans.
53. A much more efficient and cost-effective tool is for the Council to require an applicant requesting consents for subdivision and development to demonstrate that the required services will be available before consent is

granted by the Consenting Authority. Unavailability of infrastructure is a developer risk that landowners generally understand and take into account.

54. Council already has that power by virtue of Policy 4.1.4 . The effective use of that power will lead to structure plans being required by Council and being prepared where appropriate by the applicants for the Resource Consents. That policy also for example will mean that existing infrastructure in the lower catchment will be extended in the first stages of the development and gradually extended to the upper catchment overtime and as demand requires.

55. What may be useful in the PWDP is a similar reference to the guidelines like as are present in the Auckland Unitary Plan. This would be useful as to what processes should be followed by the applicants for Resource Consents if Structure Plans are required by the Council.

4.1.4 Policy – Staging of development

(a) Ensure that subdivision, use and development in new urban areas is:

- (i) located, designed and staged to adequately support existing or planned infrastructure, community facilities, open space networks and local services; and
- (ii) efficiently and effectively integrated and staged to support infrastructure, stormwater management networks, parks, and open space networks.

Sir William Birch

17 February 2021