

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) – INDUSTRIAL - HEARING 7

Dated 16 JANUARY 2020

1. **INTRODUCTION**

- 1.1 Pokeno Village Holdings Limited ("PVHL") made a primary and further submission on the PWDP. 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.
- 1.2 At previous hearings, PVHL's witnesses have explained that PVHL's primary interest in the Proposed Waikato District Plan ("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 manner that is consistent with the vision and is supported by sufficient infrastructure.
- 1.3 In terms of the matters encompassed by this hearing, PVHL's concerns relate to the range of activities enabled in the Light Industry zone in Pokeno and in particular, the absence of some activities that were anticipated for this area in the Pokeno Structure Plan ("PSP").

- 1.4 To provide for the specific circumstances arising in Pokeno, PVHL proposes the application of a "Development Area" to the Industrial zoned land in Pokeno that would reflect the range of uses anticipated by the PSP.
- 1.5 PVHL acknowledges Ms Macartney's suggestion that the application of a Development Area to Pokeno is a broader matter that should be addressed at Hearing 26 – Zone Extents.¹ Indeed, PVHL will present a comprehensive suite of evidence at that hearing in relation to the appropriate planning framework for Pokeno.
- 1.6 Nevertheless, PVHL considers it is appropriate to signal its specific concerns about the operation of the Industrial zones in Pokeno at this hearing and to seek a bespoke solution. In this regard, the section 42A report for this hearing addresses the application of bespoke industrial provisions for another area (the Horotiu Business Park Development Area) so there appears to be no barrier to this approach.

Evidence pre-circulated

- 1.7 In accordance with the Chairman's directions, PVHL filed the evidence of Adam Jellie on 10 December 2019. A summary of Mr Jellie's evidence was filed on 16 January 2020 and he is available to answer any questions the Panel may have.

Scope of submissions

- 1.8 Against that background, these submissions reiterate the importance of the PSP and the need to ensure that its provisions, including in relation to industrial activities, are reflected in the PWDP. It is proposed to address the following matters:
 - (a) A brief overview of particularly relevant aspects of the statutory framework (Section 2);
 - (b) The value of structure planning generally and the Pokeno Structure Plan in particular (Section 3); and
 - (c) Activities in the Light Industry zone in Pokeno (Section 4).

2. THE STATUTORY FRAMEWORK

- 2.1 A comprehensive summary of the statutory framework relevant to the preparation of district plans was set out in detail in PVHL's opening legal

1 Section 42A Report - Rebuttal, Hearing 7, 13 January 2020, page 45.

submissions and its legal submissions for Hearing 3.² For the purpose of this hearing, it suffices to say that under section 32(1)(b) of the RMA the local authority is required to identify the “most appropriate” policies, rules and methods to meet the objectives (and in turn the purpose of the RMA).³ The words “most appropriate” in section 32(1)(a) indicate that a comparative analysis of the potentially available options is required⁴ and a value judgment in terms of what is the most “suitable” option.⁵

3. THE VALUE OF THE POKENO STRUCTURE PLAN

3.1 PC24 to the operative Waikato District Plan – Franklin (and more recently PC21) determined that planning framework for Pokeno reflected in the PSP represents the most appropriate means to meet the purpose of the RMA. PVHL submits that this remains the case, given:

- (a) The range of benefits offered by structure planning generally (as opposed to *ad hoc* development);
- (b) The fact that the PSP has only been partially implemented and therefore remains relevant to Pokeno’s growth;
- (c) The absence of evidence or analysis indicating that the PSP and the outcomes enabled by it are no longer appropriate.

Benefits of structure planning

3.2 As notified, the PWDP anticipates that development in Pokeno will occur *ad hoc*, controlled only by the general provisions of the plan and the zone rules. PVHL submits that this approach risks poor planning outcomes and is out of step with best practice.

3.3 The multiple benefits of structure planning and their value in furthering the RMA’s purpose of sustainable management are increasingly recognised in district plans.

3.4 For example, the Auckland Unitary Plan (AUP) specifically aims to avoid urbanisation without appropriate structure planning.⁶ Structure planning in

2 Legal submissions of counsel for Pokeno Village Holdings Limited, dated 1 November 2019.
3 32(1)(a) and 32(1)(b).

4 *Li v Auckland Council* [2018] NZEnvC 87 at [564]-[566].

5 *Rational Transport Soc Inc v New Zealand Transport Agency* HC Wellington CIV-2011-485-2259, 15 December 2011.

6 AUP B2.9.

accordance with the AUP's Structure Plan Guidelines is now a mandatory requirement prior to:

- (a) Rezoning of future urban zoned land;⁷
- (b) Relocation of the Rural Urban Boundary;⁸
- (c) Establishment of new metropolitan, town and local centres;⁹ and
- (d) Establishment of new or significant expansions of existing rural and coastal towns and villages.¹⁰

3.5 The section 32 evaluation for the Proposed Auckland Unitary Plan explicitly recognised that structure planning is an effective means of achieving sustainable management, for example stating:¹¹

"The Auckland population is anticipated to grow and the use of the precinct for well planned residential and employment uses will assist the local communities to provide for their social, economic and cultural well being in accordance with s5(2). A comprehensive well planned development is far more likely to achieve this than ad hoc development based on individual parcel and land ownership patterns."

[Emphasis added]

3.6 The evaluation reports recognised that structure planning achieves multiple purposes and benefits, including to:¹²

- (a) Provide integrated management of complex environmental issues;
- (b) Coordinate the staging of development;
- (c) Ensure coordination and compatible patterns and intensities of development;
- (d) Provide a coordinated approach to infrastructure provision and other services across land parcels in different ownership;

7 AUP B2.2.2(3).

8 AUP B2.2.2(2)(f).

9 AUP B2.2.2(4).

10 AUP B2.6.2(3).

11 Auckland Council *Greenfield urban precincts – section 32 evaluation for the Proposed Auckland Unitary Plan* at 5.

12 Auckland Council *Greenfield urban precincts – section 32 evaluation for the Proposed Auckland Unitary Plan* at 4.

- (e) Provide higher levels of certainty to landowners, Council and the community regarding the layout, character and costs of development;
- (f) Ensure that new development achieves quality urban design by defining the layout pattern and density of new development and transport linkages; and
- (g) Address economic, cultural and social issues alongside environmental considerations.

Value of the PSP

- 3.7 PVHL submits that the PSP has achieved, and is continuing to achieve, all of these benefits for Pokeno. It has only been partially implemented and therefor remains relevant to Pokeno's growth.
- 3.8 No evidence or analysis have been provided in WDC's s32 and s42A reporting to support the absence of the PSP (or equivalent) from the PWDP or to demonstrate that reliance on district wide and zone provisions to control Pokeno's development is the most appropriate way to achieve the RMA's purpose.
- 3.9 In opening submissions and at Hearing 3, PVHL explained the history of the PSP and its implementation. To recap, the PSP was the product of many years of consultation and collaboration between key stakeholders including developers, infrastructure providers, members of the community, local authorities and others. The development of the PSP was therefore not a top-down exercise that simply placed lines on a map; rather it was developed in consultation with the Pokeno community and in response to their priorities and concerns. As such it sets out a blueprint for Pokeno that reflects the wishes of its inhabitants.
- 3.10 The masterplanning process considered all of the complex factors that influence how good quality planning outcomes are achieved, including:
 - (a) Infrastructure availability;
 - (b) Demand for and timing of business and residential development;
 - (c) The types of industry that would likely locate in Pokeno, their needs and how they would function together;
 - (d) Achievement of high levels of amenity for residents;

- (e) Stakeholder aspirations; and
- (f) Geotechnical and other constraints on development.

3.11 The result is a town that has been carefully designed to support the needs of its occupants. Its rapid growth is testament to this success.

4. **ACTIVITIES IN THE LIGHT INDUSTRY ZONE IN POKENO**

4.1 One key element of the PSP is the manner in which community activities critical to the good functioning of the town have been provided for. The PSP provides for activities including hospitals, schools and community facilities to locate as of right in the area zoned "Light Industry" between the town centre and the Industry 2 zone.

4.2 As Mr Jellie explains in his evidence:

"The Light Industrial Zone was developed to include activities anticipated within the PSP area. This included activities which could service the wider residential area, such as commercial and community facilities, which provide for a mix of employment opportunities for Pokeno residents.

Furthermore, the Light Industrial Zone acted as a buffer between residential and heavy industrial activities, whilst protecting heavy industrial activities from reverse sensitivity effects. This was done in two ways in Pokeno:

- a) *By the application of the zones, i.e. the Light Industrial Zone between the Industrial 2 Zone and the Residential 2 Zone; and*
- b) *The inclusion of interface controls which restrict commercial and non-industrial activities from locating near Industry 2 zoned sites, encouraging these activities to locate closer to the boundary of the Residential 2 Zone."*

4.3 While these are not industrial activities, it was determined through the PSP process that the area zoned "Light Industry" was an appropriate place for these activities to locate. The area is suitable in terms of its proximity to the residential zone, and also functions as a buffer between residential and heavy industrial activities.

4.4 As Mr Jellie explains in his evidence, the use of the "Light Industry" zone to enable these and other activities reflected the zoning structure employed in

the Manukau City Plan. The planning framework applying to the Light Industry zone at Pokeno is therefore a product of the historic planning process specific to Pokeno.

- 4.5 The "Industry zone" in the PWDP does not enable all of these activities. As such a key part of the vision for Pokeno reflected in the PSP has been lost and the locations where such activities could locate are more limited.

Use of Development Area

- 4.6 PVHL submits that in light of the careful and detailed work undertaken by the Pokeno stakeholders over many years, it is appropriate to provide for a "bespoke" solution for Pokeno.
- 4.7 PVHL's submission sought that the PSP be incorporated into the PWDP. Nevertheless, in his evidence Mr Jellie has proposed an alternative solution in which the elements of the PSP that are not currently provided for in the PWDP could be implemented by way of a Development Area.
- 4.8 This approach offers an approach that is consistent with that adopted in the National Planning Standards. As Mr Jellie notes in his evidence¹³ the author of the section 42A report has proposed the use of a Development Area to regulate industrial activities in the Horotiu Business Park.
- 4.9 PVHL considers that the Development Area tool could also be used to provide for other aspects of the PSP (including the planning framework for the Residential zone) that are not reflected in the PWDP. In accordance with the framework set out in the National Planning Standards, PVHL will address those matters at the appropriate hearings.

DATED at AUCKLAND this 16th day of January 2020

POKENO VILLAGE HOLDINGS LIMITED

by their solicitors and duly authorised agents
BERRY SIMONS



S J Simons / K A Storer

¹³ EIC Jellie, paragraph 2.21.

