

BEFORE THE WAIKATO DISTRICT COUNCIL INDEPENDENT HEARING PANEL

IN THE MATTER of Proposed Variation 3, under clause 16A of Schedule 1 of the Resource Management Act 1991, to the Proposed District Plan Change

AND
IN THE MATTER of submissions by Pokeno West, West Pokeno, CSL Trust and Top End Properties Limited, at Munro and Helenslee Roads, Pokeno (the **Submitters**)

**To: The Hearings Co-ordinator
Waikato District Council**

**REBUTTAL PLANNING EVIDENCE OF JAMES GILBERT OAKLEY FOR THE
SUBMITTERS**

19 July 2023

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MAY IT PLEASE THE PANEL

1. INTRODUCTION

1.1 My full name is the James Gilbert Oakley and I am a Senior Planner at Birch Surveyors Limited (**Birch**).

1.2 My qualifications and experience were set out in my primary statement of evidence dated 6 July 2023. I repeat the confirmation in said statement that I have read and agree to comply with the Code of Conduct for Expert Witnesses.

2. SCOPE

2.1 In this rebuttal statement, I respond to evidence filed by:

- a) Katja Huls on behalf of Waikato District Council (**WDC**) (dated 20 June 2023);
- b) Melissa McGrath on behalf of Pokeno Village Holdings Limited (**PVHL**) (dated 4 July 2023);
- c) Urban design evidence of Cameron Wallace on behalf of Kainga Ora (dated 4 July 2023);
- d) Michael Campbell on behalf of Kainga Ora (dated 4 July 2023); and
- e) A statement from Anna Noakes and stormwater evidence from Matthew Davis dated 7 July 2023.

2.2 This statement also addresses the National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**) and the opportunity raised in Direction #19 from the Independent Hearing Panel to provide written comments. The NPS-IB was gazetted on the 7 July 2023 and will come into force on 4 August 2023.

3. KATJA HULS, WAIKATO DISTRICT COUNCIL - RESPONSE

3.1 The primary evidence of Ms Huls and the overall WDC approach to stormwater and flooding in the district was the subject of expert conferencing on the 11th-13th July. I was in attendance for the primary session on the 11th and the targeted session on the 13th on the planning provisions.

Flood Mapping

3.2 The mapping of floodplains was discussed at the conferencing. However, an agreed position between the experts on whether mapping should be a statutory layer within the District Plan (as proposed through the Stormwater Constraints Overlay (**SCO**)) or sit outside of it in the Council GIS (or other system) was not reached.

3.3 Having heard discussion from both sides, I continue to maintain support for an outcome that provides for the flexibility in being able to update the data to recognise and respond to the dynamic and changing environment in which development occurs. Notwithstanding that, I do acknowledge that it is a complex issue to balance. I appreciate that information not contained in the District Plan being subject to change is inherently more fluid in its potential to impact the ability to use land under the plan.

3.4 In my primary evidence I made reference to the Auckland context and how floodplains are addressed in the region. To assist the panel, I have unpacked the approach below with the table showing columns from left to right, the name of the layer contained in the Auckland Council GIS system (**GeoMaps**), the District Plan chapter and then an example activity from said chapter that regulates the mapped area.

TABLE 1		
GeoMaps Layer	Auckland Unitary Plan Chapter	Example Activity
1% AEP floodplain	Chapter E38 Subdivision – Urban	A11: Subdivision of land within any of the following natural hazard areas: 1 per cent annual exceedance probability floodplain (RD)
1% AEP Floodplain	Chapter E36 Natural hazards and flooding	A23: Fences and walls in the 1 per cent annual exceed probability (AEP) floodplain (P)
Overland flow path	Chapter E36 Natural hazards and flooding	A39: Fences and walls located within or over an overland flow path that do not obstruct the overland flow path (P)

3.5 The examples above are not exhaustive but are provided to demonstrate how the provisions in a plan can interact with the hydrological information when not included as a statutory layer. In addition to the above there is a technical definition of “floodplain” in Chapter J1 (Definitions) and a note explaining the nature of the floodplain information available in GeoMaps.

3.6 I am aware that Auckland Council have paused their Intensification Planning Instrument as they look more closely at natural hazards.

Subdivision in Floodplains

- 3.7 In my primary evidence I responded to the proposed SCO mechanism put forward by Ms Huls and her amendments to the general subdivision rule (SUB-R153). The thrust of my response was in relation to Ms Huls new proposed restriction as per SUB-R153 (c) that where the site is within the SCO the minimum site size is 450m².
- 3.8 I offered an alternative approach utilising a building platform requirement which would replace the separate minimum lot size requirement in the SCO.
- 3.9 This was the subject of discussion at the conferencing session on the 11th and 13th and has resulted in a drafted standard as below which is recorded in the JWS as a potential option (Note: The blue text denotes amendments made at the conferencing session on the 12th and the purple text denotes amendments made at the session on the 13th).
- (iii) Where the site is within the sw constraints overlay a building platform of 8m x 15m is required and must be outside of the Stormwater Constraints Overlay.
- 3.10 I consider that the option above is a suitable approach to addressing flood risk when subdividing as it will ensure that new lots can accommodate a suitable flood-free building platform. Amended matters of discretion are noted in the 13th July JWS (such as (k) below) which will work in conjunction with the building platform approach to address issues such as ingress/egress.
- (k) The likely effectiveness of the stormwater system to avoid manage flooding (including safe access and egress), nuisance or damage to other infrastructure, buildings and sites, including the rural environment;
- 3.11 Fundamentally, the approach above is targeted to demonstrating that a suitable building platform can be achieved away from the floodplains. This

provides certainty that a future dwelling will also be located away from a floodplain. While I can see the intent of the minimum lot size approach that was initially put forward by Ms Huls, I consider the implementation of a building platform requirement is more efficient.

- 3.12 The requirement to identify a building platform on new vacant lots avoids the potential awkward situation where a new vacant lot on a scheme plan would be required to have a minimum area of 450m² by virtue of being within the SCO regardless of the extent/location of the encroachment. This is evident below in the SCO plan for Pokeno which identifies isolated pockets which could reasonably be included inside the boundaries of a new vacant lot subject to not being within the floodplain. This would result in a more efficient use of land rather than the blanket 450m² approach.

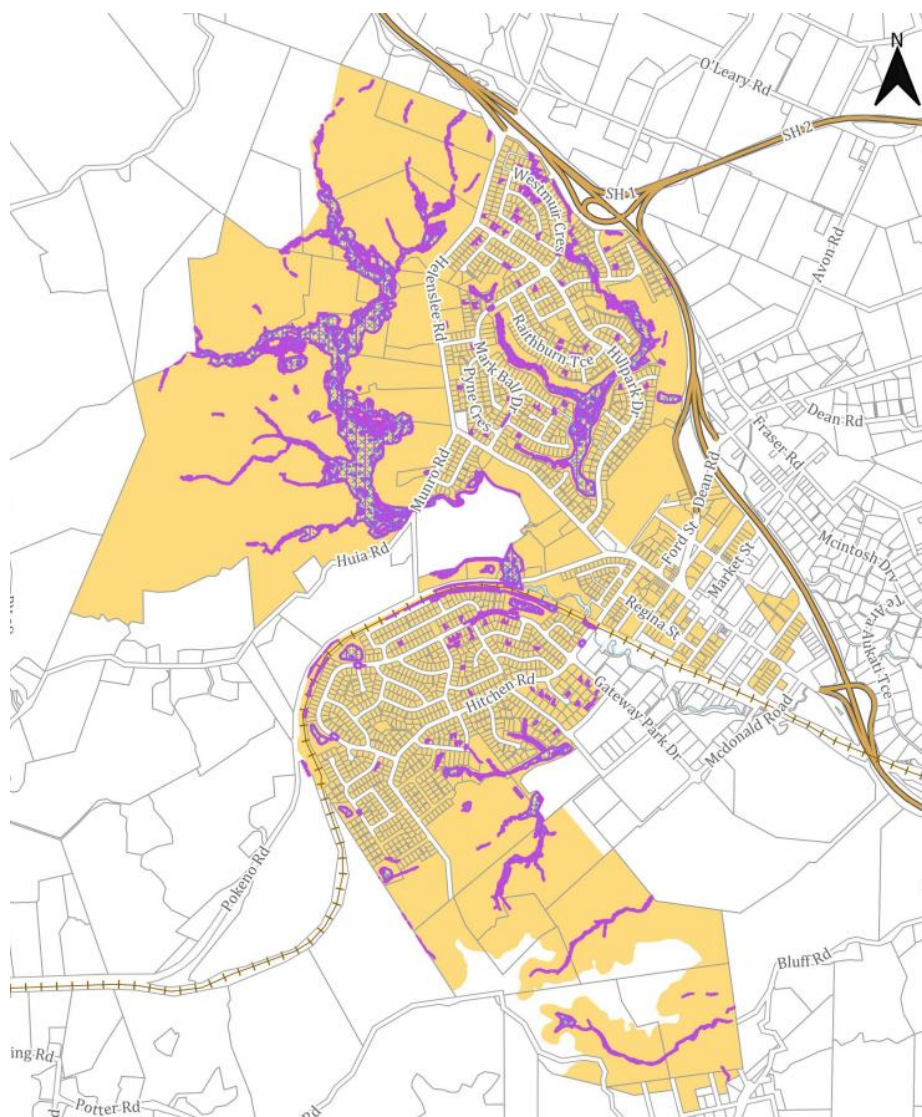


Figure 1: SCO map for Pokeno showing the various floodplain extents from Te Miro Water. (Source: Primary evidence of Katja Huls dated 20 June 2023)

- 3.13 Finally, the building platform approach is tried and tested with many Councils (including the WDC) requiring building platforms (or shape factors) to be identified for subdivision.

Land Use in Floodplains

- 3.14 The proposed amendments to the MRZ2 development controls for land in the SCO were not specifically discussed as part of any of expert conferencing sessions.

- 3.15 Similar to the approach by Ms Huls for subdivision in the SCO, I can see the intent of making specific standards less enabling in response to flooding. However, I continue to question the effectiveness of the proposed amendments to MRZ2-S4 (Setbacks) and MRZ2-S5 (Building Coverage) when MRZ2-S10 (Impervious Surfaces) is unchanged.
- 3.16 It would appear to me that imposing greater yard setback requirements and more restrictive building coverage requirements would have limited effectiveness if the potential remains for large impervious areas e.g. driveways, manoeuvring areas, paths, paved outdoor living areas (for barbeques etc.).
- 3.17 The amount of impervious area is fundamentally what impacts flooding (and stormwater) through factors including (but not limited to):
- a) Limiting the ability of stormwater runoff to infiltrate into soil;
 - b) Increasing the concentration of runoff and the flow rate; and
 - c) Providing areas for contaminants to accumulate.
- 3.18 While setbacks and building coverage do have a relationship with flooding risk, I consider that the relationship is weaker than that with impervious area and MRZ2-S13 (Building Setbacks – Water Bodies).

4. MELISSA MCGRATH, PVHL - RESPONSE

Minimum Lot Size in Urban Fringe

- 4.1 Ms McGrath agrees with the s42A reporting planners and supports the retention of the minimum 450m² vacant lot size for land subject to the former urban fringe by way of the new Minimum Lot Size Restriction Area (**MLSRA**) mechanism. Ms McGrath considers that the reporting planners' rationale for the MLSRA is valid.
- 4.2 Minimum lot size was the subject of a conferencing session on the 18 July attended by WDC and a number of the submitter's experts. Whilst

agreement was not reached on how to address the matter, it was useful to hear both sides. I also acknowledge that Ms McGrath nor any other representative for PVHL was present.

4.3 Following the conferencing session, I remain of the opinion that the MLSRA is not an effective approach to giving effect to the National Policy Statement for Urban Development 2020 (**NPS-UD**) and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Amendment Act**).

4.4 The focus of the NPS-UD and Amendment Act is fundamentally about enabling growth that improves housing affordability and provides for a variety of lifestyle options and residential typologies. By contrast, the MLSRA actively restricts development and while it is not a full reincarnation of the former Urban Fringe Qualifying Matter (**UF QM**), it would have a comparable impact.

4.5 As part of the conferencing, it was also discussed that the proposed MLSRA does not implement SUB-P3(3) (Lot Sizes).

SUB-P3(3) Within the MRZ2 – Medium density residential zone 2, subdivision enables medium density residential outcomes except where there is a relevant qualifying matter.

4.6 Requiring a minimum area of 450m² for vacant lots is not considered to enable medium density residential outcomes. As per the JWS that came out of the conferencing session I support a minimum lot size of 300m² if one were to be recommended by the Hearings Panel, and subject to the further comments below.

4.7 In the scheme of the Pokeno settlement, it is areas such as Pokeno West and Havelock where future growth will occur and the MLSRA would unduly restrict the ability to provide capacity. These are large greenfield sites with limited landowners and thus lend themselves to accommodating future growth as they can be comprehensively masterplanned.

- 4.8 I understand that the origins of the MLSRA stems from the approach by Council in undertaking their duties under s77G of the RMA (among other matters). However, the MLSRA mechanism is not considered efficient or effective and also falls foul of Schedule 3A(7) of the RMA which requires:

“Any subdivision provisions (including rules and standards) must be consistent with the level of development permitted under the other clauses of this schedule, and provide for subdivision applications as a controlled activity.”

5. MICHAEL CAMPBELL, KAINGA ORA - RESPONSE

Minimum Lot Size in Urban Fringe

- 5.1 Mr Campbell, with reference to the primary evidence of the urban designer (Mr Cameron Wallace) for Kainga Ora proposes that no minimum vacant lot size (200m² or otherwise) be applied to land within the MRZ2. I have read and considered the analysis he set out in paragraphs 7.11 to 7.24 of his primary evidence. To a large extent his approach is a matter of planning law and legal interpretation of the statutory provisions, and Mr Fuller will comment on that further in his legal submissions.
- 5.2 Regarding my preference for a minimum lot size of 300m² as expressed in the conference of 18 July, I acknowledge that should the interpretation of the Standards outlined by Mr Campbell be correct (refer to par 7.16 in particular), there would be no minimum lot size in the final provisions *per se*. The lot size would be the end result of applying the development standards, while ensuring that a dwelling is presumably still functional and not “fanciful”.
- 5.3 It is noted that Mr Campbell does accept that if there were to be a minimum lot size across the entire MRZ2 zone, then it could be 200m² (par 7.31). I concur with this position if it best meets the statutory requirements from a planning and legal perspective.
- 5.4 Kainga Ora have recommended a shape-factor led approach be adopted to provide more flexibility, and they have suggested a shape of 8m x 15m,

which is a lot size of 120m². Whilst I appreciate the shape-factor approach has been tested by Mr Wallace I remain of the opinion that a minimum lot size is a better mechanism for vacant lot subdivision.

- 5.5 If a shape factor were to be adopted, in my understanding, vacant lots would need a greater minimum frontage width to accommodate a single bay or double bay garage. Without these minimums the quality of the street risks being a poor amenity outcome.
- 5.6 Finally, because land is a significant component of the final cost of housing, it is acknowledged that smaller lots have the benefit of providing more affordable housing, as outlined in the evidence of Mr Thompson.

Boundary Fencing and Walls

- 5.7 I concur with Mr Campbell that it would be beneficial to incorporate provisions to manage excessive height of boundary fencing and walls (par 7.7 to 7.10 of his evidence).

One or Two Medium Density Zones

- 5.8 I have read the evidence of Mr Campbell on the notified approach of having two medium density zones and I concur with Mr Campbell that it would be preferable to have only 1 zone. I agree that the exceptions of Raglan and Te Kauwhata could be accommodated in the Plan for the reasons Mr Campbell provides for seeking a single zone (par 6.2 to 6.6).

6. NOAKES STATEMENT AND EVIDENCE - RESPONSE

- 6.1 I have read the Statement from Anna Noakes and the evidence of Mr Davis in support of concerns about the impact of stormwater on their farming operations. I have also read the evidence of Mr Patel in reply for the Submitters, and I attended some of the stormwater expert conferences.
- 6.2 The Noakes relief seeks substantive changes to the notified provisions to address alleged adverse effects of stormwater because of urbanisation on the Noakes land, and wider rural areas, that are downstream of urban development.
- 6.3 Considering the technical response of Mr Patel, from a planning perspective, the relief sought by Ms Noakes to the provisions is not supported. In my opinion the proposed provisions, and engineering best practice/standards, are adequate to address the adverse effects of stormwater arising from urbanisation. Most importantly, development of the submitters land will actually reduce downstream peak flows to 70% of current levels, so will be an improvement over the status quo.

7. NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

- 7.1 The NPS-IB has been reviewed as it relates to Variation 3 and specifically for submitters land. It is acknowledged as per s75 of the RMA that the district plan is required to give effect to any NPS.
- 7.2 The objective of the NPS-IB is:

(a) to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and

(b) to achieve this:

(i) through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and

(ii) by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and

(iii) by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and

(iv) while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.

- 7.3 It is considered that Variation 3 gives effect to the NPS-IB as fundamentally the changes are about further enabling development opportunities in relevant residential zones and subject to qualifying matters. This is contrasted with rezoning land from rural to urban zones.
- 7.4 Any future development of land affected by Variation 3 will be subject to the NPS-IB and the provisions in the plan relating to Significant Natural Areas (**SNA**) such as Chapter 22 (ECO – Ecosystems and Indigenous Biodiversity).
- 7.5 Whilst the full implementation of the NPS-IB is forthcoming, Chapter 22 and the mapping of the SNA provide a starting point to gauge the impact of the NPS.
- 7.6 Importantly, the NPS-IB does not preclude subdivision and development as evidenced by references to social, economic and cultural wellbeing and specifically mentioned in:
- a) Clause 3.5(1)(b) (Social, economic, and cultural wellbeing);
 - b) Clause 3.10 (Managing adverse effects on SNAs of new subdivision; use, and development); and
 - c) Clause 3.11 (Exceptions to clause 3.10(2))
- 7.7 In terms of the submitters land specifically, there are scattered areas of identified SNA as shown below. Previous master planning of the site largely identifies these areas as incorporated into the development as open space which aligns with the policy direction of the NPS-IB.

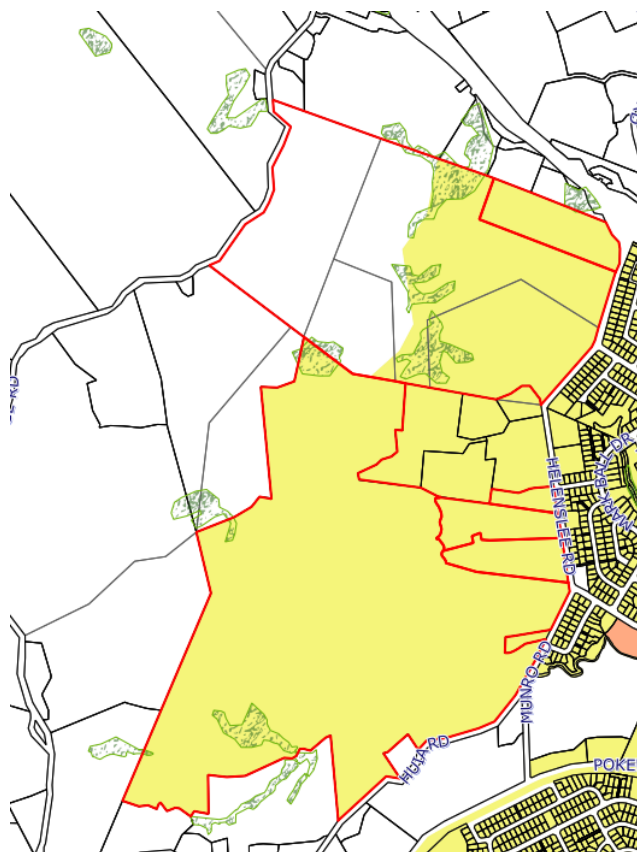


Figure 2: SNA (green hatches) across the submitters land. (Waikato District IntraMaps)

- 7.8 If development is sought that affects SNA on-site this will be addressed in the consenting process under the provisions of the District Plan and against the NPS-IB.
- 7.9 It is noted that the ecological values for the submitters land have been previously assessed by Ms Jennifer Shanks of JS Ecology Ltd. In her primary evidence¹² for the Hearing 25 (Pokeno Rezoning) she commented

¹ https://www.waikatodistrict.govt.nz/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/hearings/hearing-25/pokeno/submitter-evidence/sub-89---csl-trust-and-top-end-properties-ltd---evidence-of-j-shanks.pdf?sfvrsn=2a218fc9_2

² https://www.waikatodistrict.govt.nz/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/hearings/hearing-25/pokeno/submitter-evidence/sub-97---pokeno-west-ltd---evidence-of-j-shanks.pdf?sfvrsn=d9218fc9_2

that the ecological values of this area are low due to historic and current land use practices.

- 7.10 Ms Shanks concluded that whilst changing land use from rural to urban will potentially generate other ecological effects, these can be appropriately managed and that there is also the opportunity to integrate these areas into the development which will help restore the currently degraded environment.

8. CONCLUSION

- 8.1 Regarding the evidence of Ms Huls, progress has been made through conferencing regarding the approach to subdivision in the SCO. The status of the SCO as either a statutory layer in the District Plan or kept out of it was not resolved. The specific land use provisions (building setbacks and building coverage) were not discussed so my position is currently unchanged on the proposed approach that they be more restrictive.
- 8.2 The relief sought by Ms McGrath and Mr Campbell was the subject of conferencing which they did not attend. Whilst a consensus approach on the minimum vacant lot size area has not been reached, I support a minimum lot size approach, subject to clarification of the legal position on this method. If a shape factor approach were to be adopted, in my view it should have minimum frontage lengths that are greater than that proposed by Kainga Ora.
- 8.3 The relief sought by Ms Noakes is not considered necessary or practicable and when the Submitters land is developed it will significantly reduce the downstream peak flows.

- 8.4 Regarding the NPS-IB, it is considered that Variation 3 and the application of the MDRS to the submitters land both give effect to the NPS-IB and no further changes are needed at this stage.

James Gilbert Oakley

19 July 2023