

**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**

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**MEMORANDUM OF COUNSEL FOR POKENO VILLAGE HOLDINGS LIMITED  
HEARING 25 – ZONE EXTENTS  
Dated 9 March 2021**

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## TO THE HEARING COMMISSIONERS

### Introduction

1. This memorandum is filed on behalf of Pokeno Village Holdings Limited ("PVHL") in response to:
  - (a) The memorandum of counsel for CSL Trust, Top End and Pokeno West Ltd dated 4 March 2021 ("Pokeno West memorandum") concerning the "three lens" approach to consideration of rezoning submissions set out in Waikato District Council ("WDC")'s section 42A Framework Report; and
  - (b) The Panel's directions dated 5 March 2021 inviting submitters to file memoranda addressing:

*whether the procedure set out in the Framework Report and, in particular compliance with Lens 1, should be generally adhered to, and, if not, the reasons why.*
2. The purpose of this memorandum is to confirm that PVHL shares the concerns raised in the Pokeno West memorandum about the appropriateness of the three lens approach, and Lens 1 in particular.

### Section 42A Framework Report

3. In its memorandum to the Panel dated 28 January 2021, PVHL stated:

*"The Section 42A Framework Report for the Zone Extents hearing ("Framework Report") has been prepared to "promote a consistent approach among the Council staff and its consultants preparing RMA section 42A reports on zoning submissions." PVHL agrees that a consistent approach is appropriate and necessary.*

*There are, however, many aspects of the Framework Report which draw into question its credibility. PVHL will address these issues in detail at the hearing."*
4. The appropriateness of the three lens approach, which does not reflect the correct legal test for consideration of district plan provisions, is one of the issues identified by PVHL which PVHL's planning consultant, Mr Scrafton, addresses in his evidence.
5. The proper interpretation of the statutory requirements for district plan making in sections 72, 74, 75 and 32 of the RMA is settled law. The generally

accepted formulation of the approach to be adopted in assessing proposed planning provisions can be found in *Long Bay-Okura Great Park Society v North Shore City Council*<sup>1</sup>, (updated by the Environment Court to reflect legislative amendments in *High Country Rosehip Orchards Ltd v Mackenzie District Council*<sup>2</sup> and *Colonial Vineyard Limited v Marlborough District Council*)<sup>3</sup> in the following terms:

"A. *General requirements*

1. *A district plan (change) should be designed to **accord with**<sup>4</sup>, and assist the territorial authority to **carry out** - its functions<sup>5</sup> so as to achieve, the purpose of the Act<sup>6</sup>.*
2. *The district plan (change) must also be prepared **in accordance with** any regulation<sup>7</sup> (there are none at present) and any direction given by the Minister for the Environment;<sup>8</sup>*
3. *When preparing its district plan (change) the territorial authority **must give effect to**<sup>9</sup> any national policy statement or New Zealand Coastal Policy Statement:*
3. *When preparing its district plan (change) the territorial authority shall:*
  - (a) ***have regard to** any proposed regional policy statement<sup>10</sup>;*
  - (b) ***give effect to** any operative regional policy statement.<sup>11</sup>*
- ...
6. *When preparing its district plan (change) the territorial authority must also:*
  - ***have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations<sup>12</sup> to the extent that their content has a bearing on resource management issues of the district; and to*

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1 A078/08 (EC).

2 [2011] NZ EnvC 387.

3 [2014] NZEnvC 55.

4 Section 74(1) of the Act.

5 As described in Section 31 of the Act.

6 Section 72 and 74(1) of the Act.

7 Section 74(1) of the Act.

8 Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.

9 Section 75(3) of the Act.

10 Section 74(2)(a)(i) of the Act.

11 Section 75(3)(c) of the Act.

12 Section 74(2)(b) of the Act.

*consistency with plans and proposed plans of adjacent territorial authorities<sup>13</sup>;*

- *take into account any relevant planning document recognised by an iwi authority<sup>14</sup>; and*
- *not have regard to trade competition<sup>15</sup> or the effects of trade competition;*

7. *The formal requirement that a district plan (change) must<sup>16</sup> also state its objectives, policies and the rules (if any) and may<sup>17</sup> state other matters.*

...”

6. It is submitted that this statutory framework reflects the approach that the Panel must take to determination of submissions. The attempt to provide a simple and consistent framework for the area specific section 42A report authors to apply is laudable but the three lens framework represents a departure from the statutory framework, raising a concern that the section 42A reports will be of limited assistance to the Panel.
7. PVHL agrees with counsel for Pokeno West that Lens 1 is the most problematic. The section 42A framework report suggests that submissions which fail Lens 1 because they are not “consistent with the intent of the PWDP”<sup>18</sup> should be rejected. There is no basis for this approach.
8. PVHL’s planning consultant, Mr Scrafton, will address the difficulties which arise from the use of Lens 1 in his statement of evidence for Hearing 25, which will be filed on Wednesday 10 March 2021.
9. As Mr Scrafton points out, a related issue is the absence in the PWDP of any framework to govern future growth. Although WDC has belatedly proposed the introduction of a Future Urban zone which provides one useful mechanism for strategic planning, there remains a void in terms of the policy framework to guide urbanisation.

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13 Section 74(2)(c) of the Act.

14 Section 74(2A) of the Act.

15 Section 74(3) of the Act.

16 Section 75(1) of the Act.

17 Section 75(2) of the Act.

18 Framework report, paragraph 46.

**Pre hearing conference**

10. PVHL intends to participate in the pre hearing conference to address this issue on Friday 12 March 2021, represented by counsel and Mr Scrafton.
11. PVHL is grateful for the Panel's attention to this matter.

DATED at AUCKLAND this 9th day of March 2021

**POKENO VILLAGE HOLDINGS LIMITED**

by their solicitors and duly authorised agents  
**BERRY SIMONS**



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**S J Simons**  
**Counsel for Pokeno Village Holdings Limited**