

**Before an Independent Hearings Panel**

**The Proposed Waikato District Plan (Stage 1)**

**IN THE MATTER OF** the Resource Management Act 1991 (**RMA**)

**IN THE MATTER OF** hearing submissions and further submissions on the Proposed Waikato District Plan (Stage 1) Hearing 3 **Topic 3: Strategic Objectives**

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**TOPIC 3: STRATEGIC OBJECTIVES  
LEGAL SUBMISSIONS ON BEHALF OF  
HAVELOCK VILLAGE LIMITED AND TATA VALLEY LIMITED**

**1 November 2019**

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**BUDDLEFINDLAY**  
NEW ZEALAND LAWYERS

Barristers and Solicitors  
Auckland

Solicitor Acting: **Vanessa Evitt / Mathew Gribben**

Email: [vanessa.evitt@buddlefindlay.com](mailto:vanessa.evitt@buddlefindlay.com) / [mathew.gribben@buddlefindlay.com](mailto:mathew.gribben@buddlefindlay.com)  
Tel 64-9-358 2555 PO Box 1433 DX CP24024 Auckland 1140

## MAY IT PLEASE THE COMMISSIONERS

### 1. OVERVIEW

- 1.1 These submissions are filed on behalf of Havelock Village Limited<sup>1</sup> (**HVL**) and TaTa Valley Limited<sup>2</sup> (**TVL**) (collectively the "**submitters**"). As outlined in their opening legal submissions and subsequent evidence, the submitters are seeking rezoning of sites within and around south Pokeno. TVL is seeking a bespoke TaTa Valley resort zone and HVL is seeking to rezone 148ha of land in south Pokeno from rural to residential.
- 1.2 For this Hearing Topic, the submitters have filed primary and rebuttal evidence from two experienced planning consultants; Mr Tollemache on behalf of HVL and Mr Scrafton on behalf of TVL. This level of involvement reflects the importance of the provisions addressed within this Topic in setting an appropriate policy framework in the Proposed Waikato District Plan (**PWDP** or **Plan**). It also reflects the submitters' concerns with the notified strategic direction component of the PWDP, its evolution through the section 42A report and the direction now suggested through the evidence of some parties.
- 1.3 It is critical that the objectives of the PWDP are carefully prepared as they will set the framework for all the policies and rules that follow. They will also guide decision-making for future resource consent applications under the plan.<sup>3</sup> The objectives must achieve Part 2 and implement higher order policy documents. This means they need to be broadly cast and balance a number of competing matters. Recent case law has emphasised the role and significance of RMA policy frameworks to all subsequent decision-making. The specific wording of objectives and policies must also be carefully applied. In short, the formulation and wording used in plan objectives matters. Directive language must be used with caution and only where required. There should be a clear policy cascade from issues to directions (if used) to objectives and then to policies and rules.
- 1.4 Given how critical the strategic objectives of the PWDP could be, the submitters are concerned with the apparent confusion and conflicting evidence about the role, status and wording of the proposed objectives, including how they relate to each other and

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<sup>1</sup> Submitter 862.

<sup>2</sup> Submitter 574.

<sup>3</sup> For restricted discretionary, discretionary and non-complying activities.

their function in the hierarchy of the PWDP. In order to resolve the confusion, and ensure the objectives are fit for purpose, TVL and HVL seek either:

- (a) That the Panel direct conferencing between experts to provide it with expert guidance on this significant part of the plan. A potential process for such conferencing was outlined in our memorandum dated 17 October 2019. It is important the process is fair to all parties and that there is an opportunity for the parties to present evidence or appear before the Panel to address any unresolved matters at the conclusion of the conferencing; or
- (b) If conferencing is not advanced, then TVL and HVL seek that the strategic directions are deleted entirely and that there are no strategic objectives. This will ensure that a random selection of repurposed directions and objectives are not given undue weight and priority in all decision-making for the district moving forward. Instead, all objectives should be at the same level and relocated to their original location in the notified version of the plan. If desirable, a district-wide set of objectives could be formulated but this in itself would require further expert input preferably via conferencing; or
- (c) If strategic directions and strategic objectives are to remain in Chapter 1 of the PWDP, the submitters seek at a minimum that:
  - (i) Clause 1.12.2(a) be amended to clearly state that directions should be read as a whole and appropriately balanced when informing subsequent plan provisions. The clause should also specifically state that the directions are not relevant for the assessment of resource consent applications;
  - (ii) Strategic objectives should be renamed as district-wide objectives. A note should be included with these objectives in Chapter 1 that states these "district-wide" objectives should be read alongside the objectives from each other chapter and are not to be given greater weight;
  - (iii) They are amended in accordance with the changes outlined in TVL and HVL's primary evidence, and attached as **Appendix A** to these submissions. This will address the most significant problems but is not a comprehensive rewrite; and
  - (iv) They be aligned as far as practicable with the National Planning Standards, with the caveat that the desire to align the PWDP with

proposed structure of the Standards should not result in some directions or objectives being elevated in status when they were not initially conceived with that priority in mind.

1.5 Finally, HVL and TVL have a number of specific amendments they seek to the objectives and policies addressed in Topic 3:

- (a) For HVL these are outlined in the evidence of Mr Tollemache and include small but important changes to the provisions about urban capacity, the location of growth, references to Future Proof Growth Strategy and the policy direction for Pokeno.
- (b) For TVL these are outlined in the evidence of Mr Scrafton and relate to recognising rural tourism as an appropriate activity within the objective for the rural zone. A similar amendment to the Issues was already requested, and accepted by the section 42A writer, within Topic 1.

## **2. SCOPE OF SUBMISSIONS**

2.1 These submissions will address the following matters:

- (a) Statutory role and importance of objectives;
- (b) The PWDP approach to introducing strategic directions and strategic objectives;
- (c) Outcomes sought by HVL and TVL;
- (d) HVL specific amendments to urban environment objectives and policies;
- (e) TVL specific amendments to the rural objective; and
- (f) Response to Waikato District Council rebuttal evidence.

## **3. STATUTORY ROLE AND IMPORTANCE OF OBJECTIVES**

3.1 The importance of the objectives to the formulation of the PWDP provisions and the subsequent consideration of resource consent applications cannot be understated.

3.2 The statutory requirements for objectives will be well known to the Panel:

- (a) A district plan must state the objectives for the district;<sup>4</sup>

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<sup>4</sup> Section 75(1).

- (b) The objectives should give substance to Part 2 and must implement higher order planning documents;<sup>5</sup>
- (c) Under section 32, there must be an evaluation as to whether the objectives are the most appropriate way to achieve Part 2;<sup>6</sup>
- (d) Once finalised, objectives can then be considered the most appropriate way to achieve the purpose of the Act.<sup>7</sup>
- (e) Policies and rules must implement the objectives.<sup>8</sup>

### **The significance of plan objectives as a result of recent case law**

3.3 In addition to this key statutory role, the priority afforded to plan policy frameworks in RMA decision-making has been greatly increased as a result of recent RMA case law. The Panel will be familiar with the Supreme Court's decision in *King Salmon*, but it is helpful to emphasise the Court's statements that the RMA envisages a hierarchy of planning documents with a cascade from Part 2 down to individual policies and rules:<sup>9</sup>

As we have said, the RMA envisages the formulation and promulgation of a cascade of planning documents, each intended, ultimately, to give effect to s 5, and to pt 2 more generally. These documents form an integral part of the legislative framework of the RMA and give substance to its purpose by identifying objectives, policies, methods and rules with increasing particularity both as to substantive content and locality.

3.4 The objectives in a district plan should therefore give substance to the purpose of the RMA for that district. They provide a critical link between Part 2 and the higher order documents and the policies and rules that then follow in the plan:

3.5 In addition, once settled, the objectives, along with the policies, will be of critical importance to resource consent decisions. The objectives and policies of a plan have always been the central consideration for non-complying activities under section 104D(1)(b). Recently the *Court of Appeal* has confirmed that they are equally critical to all decisions under section 104:<sup>10</sup>

...If it is clear that a plan has been prepared having regard to pt 2 and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies in accordance with s 104(1) should

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<sup>5</sup> Section 75(3). Albeit it is the district plan which must give effect to the higher order documents rather than the objectives specifically.

<sup>6</sup> Section 33(2).

<sup>7</sup> *King Salmon* para [33].

<sup>8</sup> Section 33(1)(b).

<sup>9</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38 at para [30].

<sup>10</sup> *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

be to implement those policies in evaluating a resource consent application. Reference to pt 2 in such a case would likely not add anything. It could not justify an outcome contrary to the thrust of the policies....

- 3.6 There is also Environment Court case law which reinforces that the objectives and policies of a plan affect the relevance and weight of environmental effects when considering a resource consent application.<sup>11</sup>
- 3.7 In practice, these case law developments mean that the objectives and related policies could provide the ultimate reference point for decision-making under the PWDP. They will be critical to the formulation and the substance of all the policies, rules and zoning, and to subsequent resource consent decisions. This is especially so if any objectives are elevated as “strategic objectives” as is currently proposed in the PWDP.

### **The specific wording of objectives is important**

- 3.8 Given the role and prominence of plan policy frameworks, it follows that the specific wording of the objectives (and policies) matters. The Supreme Court in *King Salmon* outlined a number of principles regarding the interpretation of plan provisions which are highly relevant when formulating new plan provisions, such as for the PWDP:
- (a) Careful attention must be paid to how plan provisions are worded;
  - (b) Some policies give decision-makers more flexibility or are less prescriptive than others. By contrast, other policies are expressed in more specific and directive terms;<sup>12</sup>
  - (c) Those expressed in more directive terms will carry greater weight than those expressed in less directive terms. Moreover, it may be that a policy is stated in such directive terms that the decision-maker has no option but to implement it;<sup>13</sup>
  - (d) Particular care must be taken with the use of “avoid” which the Supreme Court held means “not allow” or “prevent the occurrence of”;<sup>14</sup>
  - (e) A directive avoid policy may in effect create an environmental bottom line; and

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<sup>11</sup> *Blueskin Energy v Dunedin City Council* [2017] NZEnvC 150.

<sup>12</sup> *King Salmon* para [127].

<sup>13</sup> *Ibid*, para [129].

<sup>14</sup> *Ibid*, para [67].

- (f) If blanket avoidance of an effect or activity is not intended, then the objectives and policies should be appropriately qualified.

- 3.9 The significance of “avoidance policies” was raised most recently by the High Court in *Port Otago v Otago Regional Council* which observed, in obiter, that the avoidance policies in the NZCPS should naturally lead to prohibited activity status for any activity that could potentially have an adverse effect on the protected values.<sup>15</sup> While policies that direct “protection” or “enhancement” have yet to be subject to the same scrutiny by the Courts, there is certainly a risk that objectives drafted in such direct terms without appropriate qualification could be interpreted in a similar way.
- 3.10 An assessment of a resource consent application against the objectives and policies is a slightly different test and requires “a fair appraisal of the objectives and policies read as a whole”.<sup>16</sup> But the wording of the provisions is still critical as a fair appraisal may mean only one outcome is contemplated.
- 3.11 Regardless of the eventual status of the PWDP’s “strategic objectives”, the wording used in the objectives and policies of the plan requires very close attention. It is critical that they are framed and drafted with care. HVL and TVL are concerned that has not occurred and more significantly, that the use of strategic directions and objectives has resulted in further confusion in the proposed provisions.

#### **4. THE PWDP APPROACH – INTRODUCING STRATEGIC DIRECTIONS AND STRATEGIC OBJECTIVES**

- 4.1 Strategic directions and strategic objectives are a relatively new concept in plan making that are emerging in some second generation plans.<sup>17</sup> As a result, there is currently no commonly understood approach to their role and/or significance.
- 4.2 Given that context, it is not surprising that many submitters are confused about the role of the strategic directions and strategic objectives in the PWDP. The notified PWDP contained a mixture of an overarching strategic direction, individual strategic directions, ‘objectives – strategic’ and objectives. There was a heading for Strategic Objectives<sup>18</sup> but the text referred to matters in paragraph 4 (perhaps in error) and how

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<sup>15</sup> [2019] NZHC 2278 at [55].

<sup>16</sup> *R J Davidson*, para [73].

<sup>17</sup> See National Planning Standard Guidance for District Plan Structure and Chapter Standards (Ministry for the Environment, accessed [here](#)) at page 5.

<sup>18</sup> Clause 1.12.8.

objectives and policies in chapters of the PWDP implement the strategic directions. No individual Strategic Objectives were identified.

- 4.3 The section 42A report has recommended amending the strategic directions, recasting existing “objectives – strategic” as strategic objectives and including those strategic objectives in Chapter 1 of the PWDP. This essentially means that provisions originally conceived as strategic directions with questionable weight could be elevated to a super set of objectives for the district. Given the legal prominence of objectives outlined above, this shift is of great concern to the submitters.
- 4.4 Clause 1.12.8(a) (renumbered as 1.12.2(a) in the section 42A report), describes how the listed directions “provide the overarching directions for the development of the objectives, policies and other provisions within the district plan”. However, this guidance may not be sufficient to accurately explain their role.
- 4.5 It appears that the planning experts for the various parties have competing views on the merits of strategic directions and objectives and as a result have recommended a variety of approaches to the use of such provisions and their relationship to area or zone-specific objectives and the policies. This includes potentially competing views from the section 42A report and Waikato District Council as submitter.
- 4.6 While the section 42A recommendations appear to have added to the lack of clarity with the notified provisions, of most concern is perhaps the evidence from Mr Davey, on behalf of WDC as submitter. Mr Davey, taking his lead from the s42A report's recommendations for a set of strategic objectives, has proposed a suite of new strategic objectives with a high-level of primacy and weight to be afforded to them.<sup>19</sup>
- 4.7 As result, the provisions in Topic 3 have been a “moving feast” and significant uncertainty has been created for all submitters.

### **Legal framework for strategic directions / strategic objectives**

- 4.8 The RMA itself does not assist to provide any guidance or resolve the confusion on the role and function of strategic directions or objectives. Neither “strategic direction” or “strategic objectives” are concepts found within the Act. The terms were used in legislation prepared to enable the rebuild of Christchurch<sup>20</sup> and have been

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<sup>19</sup> Primary evidence of Mark Davey, for Waikato District Council, para 21. The full statement is “The advantage of this approach is that these objectives will apply district-wide, and given where they are located in the Plan, a high-level of primacy and weight will be afforded to them.”

<sup>20</sup> CI 50, schedule 5 of the Greater Christchurch Regeneration Act 2016.



incorporated into the replacement Christchurch District Plan as well as recent plan reviews and changes for Hamilton City and Queenstown Lakes District.

4.9 Neither has there been any comprehensive review of these concepts by the Environment Court. The limited case law discussion to date has focused on the specific wording of each relevant plan provision, but there is some limited guidance that can be taken from the cases as to the importance or priority that can attach to these "strategic" provisions:<sup>21</sup>

- (a) The proper use of strategic directions and objectives is as an integrating and co-ordinating tool.<sup>22</sup> This is consistent with labelling them as "district-wide" provisions rather than strategic;
- (b) Strategic directions have been interpreted as a "super-objective" and used to guide development of the plan;<sup>23</sup>
- (c) Strategic objectives can be used to develop the balance of the objectives and policies but should not be directly relevant to individual consent applications.<sup>24</sup> They are not intended to be "super-objectives" with greater weight;
- (d) Setting "high-level objectives" for the district does not supersede the importance of activity-specific and location-specific objectives in subsequent chapters;
- (e) If strategic direction and objectives are included, a plan should clearly explain their intended purpose, like the Christchurch Replacement Plan<sup>25</sup> (and as discussed later, the Proposed Whangarei District Plan); and
- (f) If such provisions are included they must be very carefully drafted in an integrated and coordinated way because they will be used to help draft the rest of the plan and there is a high risk that planners will use the provisions in an inappropriate way in specific resource consent decisions.<sup>26</sup>

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<sup>21</sup> *Rogers v Christchurch City Council* [2019] NZEnvC 119 citing also *Pickering v Christchurch City Council* [2016] NZEnvC 237, *Yaldhurst Quarries Joint Action Group v Christchurch City Council* [2017] NZEnvC 165, and *Fright v Christchurch City Council* [2018] NZEnvC 111; *Bunnings v Queenstown Lakes District Council* [2019] NZEnvC 59; *Riverside Oak Estate Ltd v Hamilton City Council* [2016] NZEnvC 49.

<sup>22</sup> *Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 150 at [27].

<sup>23</sup> *Ibid* at [26].

<sup>24</sup> *Rogers* at [48] – [49]. "It is disappointing to see a fourth case where the Plan's strategic directions have been applied directly to an application for resource consent by planning witnesses."

<sup>25</sup> See *Rogers*.

<sup>26</sup> *Rogers*, at [50].

## **A new concept in the National Planning Standards**

- 4.10 The concept of Strategic Directions and Objectives has now been included in the newly minted National Planning Standards (**Standards**). These Standards contemplate the inclusion of a Strategic Direction chapter but the inclusion of such a chapter for district plans is discretionary. It is not mandatory.
- 4.11 If such a chapter is included it must include:<sup>27</sup>
- (a) An outline of the key strategic or significant resource management matters for the district;
  - (b) Issues, if any, and objectives that address key strategic or significant matters for the district and guide decision making at a strategic level;
  - (c) Policies that address these matters, unless those policies are better located in other more specific chapters; and
  - (d) An urban form and development chapter must be included under the Strategic direction heading.
- 4.12 This structure contemplates a clear and logical cascade from matters to issues to objectives to policies, all set out in a particular format. The Standards do not seek to elevate any particular objective to the status of “super objective”, instead it allows for inclusion of objectives that address key strategic or significant resource management matters for the district.
- 4.13 Mr Scrafton for TVL has reviewed the notified PWDP and the section 42A version of Chapter 1 and has a number of concerns about the proposed provisions and the lack of alignment with the Standards. In general terms, there appears to have been an ad-hoc attempt to retrofit the notified PWDP to more closely align with the optional strategic direction aspects of the Standards. This is causing considerable confusion. More importantly, the submitters are concerned that this will have unintended consequences and will lead to poor plan outcomes.
- 4.14 The first concern is that the PWDP contains no outline of the key strategic or significant resource management matters for the District. There are Issues described in Chapter 1 but it is not clear if they are intended to represent the key strategic or

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<sup>27</sup> Standard 7 of the National Planning Standard as described in the primary evidence of Mr Chris Scrafton, paragraphs 6.2-6.3.

significant resource management issues for the District. They were not publicly notified as such.<sup>28</sup>

- 4.15 These Issues were discussed in Hearing Topic 1 but few, if any submitters, would have appreciated the potential importance of those Issues and their role in forming the Strategic Directions. The reporting planner for Topic 1 also noted the lack of connection between the two and specifically recommended that any linkage be removed.<sup>29</sup> If the Issues are to form the basis of strategic directions and then strategic objectives, then it follows that submitters should be given a chance to lodge further evidence on the scope and content of these issues. This could occur as part of the wrap up/consequential matters to be considered at the latter part of the hearing process but is not ideal in process terms.
- 4.16 The second concern is that the PWDP has not been structured in a way which clearly identifies the relevant significant matters, develops them in a logical cascade and presents them in a logical format. Mr Scafton describes the Strategic Direction section of the Proposed Whangarei District Council<sup>30</sup> and how it includes the strategic direction and associated objectives within a table clearly identifying the relationship. These tables are located directly below the significant issues for the District. Relevant policies are then outlined below the objectives. There is a plan provision that describes how the objectives and policies in the Strategic Direction chapter are to be read alongside other plan provisions:

The following Objectives and Policies apply when changing and implementing the District Plan. They should be read in addition to the objectives and policies in the relevant zone, as well as any District wide provisions that apply.

- 4.17 In the absence of a clear structure and linkages between the various provisions, the submitters consider that the strategic directions and objectives should simply be removed and the so called "strategic objectives" relocated back to their original chapters as objectives only. While an appropriate set of district-wide objectives may be desirable, formulating a new set of objectives at this point in the process does raise procedural challenges.

### **Concerns with the section 42A report approach**

- 4.18 The section 42A report recommends a number of amendments to the provisions of Chapter 1, and consequential amendments to Chapters 4 and 6 including the

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<sup>28</sup> Primary evidence of Mr Scafton 6.6(b).

<sup>29</sup> See paragraphs [183] – [192], section 42A Report Hearing: Chapter 1: Introduction.

<sup>30</sup> Plan change 148: Part A: Strategic Direction.

identification of strategic objectives for the district and their relocation to Chapter 1. Those amendments fail to resolve the problems in the notified provisions and create new ones:

- (a) There should be a clear cascade and alignment between issues, directions, objectives and policies with a clear explanation of how each level relates to the next one. But this has not been achieved and there are significant gaps and misalignment;
- (b) A number of Issues are identified elsewhere in Chapter 1 but it is unclear how they are translated into directions. The section 42A report for Topic 1 recommended that the link between issues and strategic directions be deleted because they did not match. This misalignment has not been rectified in the section 42A report recommended provisions for Topic 3;
- (c) Clause 1.12.2(a) states that the strategic directions “provide overarching direction to the development of the objectives, policies and other provisions”, but does not specifically describe how the strategic objectives respond to the directions. Clause 1.13.1 describes how the strategic objectives address the directions, but are silent as to how the directions relate to other objectives and policies in the PWDP and no linkages are provided;
- (d) In any event, the now proposed strategic objectives do not align with all of the strategic directions and there are significant gaps. For example, there are seven directions but only four strategic objectives. There are no strategic objectives relating to economic growth, ease of movement or the natural environment;
- (e) Potentially, the balance of the directions are implemented by other objectives and policies in the PWDP but this is not clear from the text and the failure to identify certain objectives as strategic could imply they are less important;
- (f) Clause 1.12.2(a) seems to contain an oversight as it implies that paragraph (b), regarding urban form, is not an overarching strategic direction, when clearly it is;
- (g) While the Strategic Directions are intended to guide the formulation of other plan provisions, their role in relation to resource consent applications is unclear. Case law indicates there is a real risk of these directions being

applied inappropriately in consenting decisions. TVL seeks to further amend the clause to make it explicit that this is not the case;

- (h) There is inconsistency between the summary of the strategic directions and the more detailed directions that follow. For example, 1.12.3 Direction – Natural Environment refers to “protection of natural habitat and ecological values” in absolute terms. This is inconsistent with section 6 of the RMA and the RPS and imposes an unreasonably high level of protection for all ecology regardless of its significance or the management of those values. It is also inconsistent with the summary form of that direction in the clause above, which is more properly concerned with areas of high value.

### **The approach of Waikato District Council, as submitter**

- 4.19 The rebuttal evidence of Mr Scrafton and Mr Tollemache has outlined specific concerns with a number of the amendments proposed by various witnesses. Of particular concern to TVL and HVL is the evidence of Mr Davey for WDC as submitter.
- 4.20 Mr Davey has proposed a whole new suite of strategic objectives that he considers should have additional weight in formulating the plan and in resource consents. The substance of the proposed strategic objectives is problematic as is the introduction of this new suite of provisions by the Council, as submitter, at this stage in the process.
- 4.21 In relation to the substance of Mr Davey's proposed strategic objectives there are a number of apparent gaps including section 6 matters (landscapes, biodiversity, heritage, culture), the directive parts of the NZCPS and the Vision and Strategy for the Waikato River. The wording of the proposed objectives is not nuanced and there appears no obvious connection to the higher order documents like the Waikato RPS or the proposed strategic directions in the PWDP.
- 4.22 The proposed strategic objectives seem to relate largely to urban form and growth and so could be consistent with parts of the National Planning Standard, but the evidence does not support them on those grounds and appears to be another example of ad hoc implementation of the Standards.<sup>31</sup>
- 4.23 TVL and HVL have serious concerns about the procedural appropriateness of the introduction of a full new suite of 'strategic objectives' at this point in the hearing

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<sup>31</sup> The Standards seem to contemplate that some matters like heritage and biodiversity are addressed in separate chapters of a plan and not in the Strategic Direction chapter.

process. Significant natural justice issues arise where members of the public and other submitters have no or limited chance to respond to the proposal.

## **5. OUTCOMES SOUGHT BY HVL AND TVL**

5.1 In order to resolve the current lack of clarity about the role and purpose of strategic directions and objectives and to ensure those provisions are fit for purpose, the submitters seek the following relief:

- (a) Firstly, TVL and HVL reiterate their request for conferencing between experts to provide the panel with expert guidance on this significant part of the plan. A potential process for such conferencing was outlined in our memorandum dated 17 October 2019. It is important the process is fair to all parties and that there is an opportunity for the parties to present evidence or appear before the Panel to address any unresolved matters at the conclusion of the conferencing.
- (b) Secondly, if conferencing is not advanced, then TVL and HVL seek that the strategic directions are deleted entirely and that there are no strategic objectives. This will ensure that a random selection of repurposed directions and objectives are not given undue weight and priority in all decision-making for the district moving forward. Instead, all objectives should be at the same level and relocated to their original location in the notified version of the plan. If desirable, a district-wide set of objectives could be formulated but this in itself would require further expert input preferably via conferencing and the opportunity for Topic 3 submitters to address any outstanding concerns with the Panel.
- (c) Finally, if strategic directions and strategic objectives are to remain in Chapter 1 of the PWDP, the submitters seek at a minimum that:
  - (i) Clause 1.12.2(a) be amended to clearly state that directions should be read as a whole and appropriately balanced when informing subsequent plan provisions. The clause should also specifically state that the directions are not relevant for the assessment of resource consent applications;
  - (ii) Strategic objectives should be renamed as district-wide objectives. A note should be included with these objectives in Chapter 1 that states

these "district-wide" objectives should be read alongside the objectives from each other chapter and are not to be given greater weight;

- (iii) They are amended in accordance with the changes outlined in TVL and HVL's primary evidence, and attached as **Appendix A** to these submissions. This will address the most significant problems but is not a comprehensive rewrite; and
- (iv) They be aligned as far as practicable with the National Planning Standards, with the caveat that the desire to align the PWDP with the proposed structure of the Standards should not result in some directions or objectives being elevated in status when they were not initially conceived with that priority in mind.

## **6. HVL SPECIFIC AMENDMENTS – DEVELOPMENT CAPACITY, FUTURE PROOF AND THE GROWTH OF POKENO**

6.1 The evidence of Mr Tollemache outlines a number of amendments to the objectives and policies sought by HVL. These amendments are designed to ensure the provisions are practical and fit for purpose for residential development.

6.2 Mr Tollemache has also proposed amendments to the growth policies for Pokeno. In essence, the changes proposed remove reference to external, soon to be outdated strategy documents, look beyond minimum NPS targets recognising that Pokeno has consistently outgrown current predictions and continues to do so. The rationale for this more forward-looking 'realistic' approach to the policy framework is based on the following factors:

- (a) The Waikato district is significantly influenced by two separate growth pressures - Auckland and Hamilton. The PWDP appears to be more focussed on pressures from Hamilton than Auckland. This is despite the evidence<sup>32</sup> that shows substantial growth pressure in North Waikato, especially in Pokeno, from Pukekohe, Drury and greater Auckland. Growth in Pokeno has consistently outpaced the previous estimates from the local councils<sup>33</sup> and the market has shown Pokeno to be a desirable location for homes and business.<sup>34</sup>

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<sup>32</sup> Including from Colin Bottica on behalf of Pokeno Village Limited.

<sup>33</sup> Primary evidence of Mark Tollemache, paragraph 3.6.

<sup>34</sup> Ibid, paragraph 3.8.

- (b) PWDP needs to be kept as up to date as possible due the fast changing statutory environment. This includes using the latest census and population information to inform development capacity and zoning<sup>35</sup> and not referring to specific external documents which can quickly become out of date (like Future Proof Growth Strategy 2017) which by its own admission requires a further update to give effect to NPS: UDC, which is due next year.
- (c) External documents such as the Future Proof Growth Strategy 2017 are policy documents created under the Local Government Act 2002 and while they have undergone public consultation, their creation is not contestable in the same way as the statutory planning process under the RMA. There is a risk the location and timing of urban expansion contained within these growth strategies will, over time, be treated as a method of controlling the urbanisation process, effectively by directing when and how land can be developed and infrastructure will be provided. This could inhibit or even prevent worthy proposals for greenfield development without a full assessment of those merits. For these reasons, the Independent Hearing Panel (**IHP**) for the Auckland Unitary Plan (**AUP**) declined to include reference to Auckland's growth strategy within the AUP policy framework. The IHP noted that while these strategies may be relevant policy documents for consideration in a structure planning process, they should not be treated at the same level as rural urban boundaries and deferred zoning because of the lack of contestability.
- (d) This caution with respect to external growth strategies is particularly relevant to Pokeno where there has been a lack of recent strategic planning and the Council has now advised that it is introducing a new growth strategy part way through the PWDP process.
- (e) These combined factors mean that the PWDP needs to have flexibility to accommodate growth in appropriate locations, aligned with infrastructure that can be delivered. In practice, this means the Plan should not “allocate” development capacity to any area or time period and reference to minimum targets should be removed in favour of enabling growth over medium and long term.

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<sup>35</sup> Ibid, paragraphs 3.1 -3.4 and 3.8-3.9.



6.3 On the basis of the above, and other reasoning outlined in Mr Tollemache's evidence, the more substantive amendments sought by HVL include:

- (a) Amend Objective 4.1.1 (now 1.13.2 in the section 42A report) to remove reference to minimum targets and instead refer to accommodating sufficient medium and long term urban growth in accordance with the National Policy Statement on Urban Development Capacity.<sup>36</sup> This ensures the objective implements the NPS but does not imply that the minimum targets are the only capacity that should be enabled;
- (b) Amend Policy 4.1.3(b) to simply refer to the locations for growth, which includes Pokeno, rather than the Future Proof Strategy 2017.<sup>37</sup> The identified locations match Future Proof 2017 but that document could soon be out of date;
- (c) Amend the Pokeno specific policy 4.1.11 to refer to residential and business growth and the promotion of quality living and a diversity of housing densities.<sup>38</sup> A reference to the historic Pokeno Structure plan within the Policy is not necessary.<sup>39</sup> The expansion and growth of Pokeno should not be limited by the Structure Plan boundaries and provisions; and
- (d) Amendments to Objective 4.1.2, Policy 4.1.4(a) and 4.7.6(a)(i) about integration of infrastructure and residential development in order to coordinate and enable development rather than unnecessarily restrict it.<sup>40</sup> Infrastructure does not need be funded and implemented before urban development is approved within a plan. There are options for who delivers the necessary infrastructure and it is unnecessary to identify exactly who is doing so. Mr Tollemache has proposed amendments to the relevant policy to confirm that infrastructure can be provided by the relevant agency, the developer or through other arrangements.<sup>41</sup>

## 7. TVL SPECIFIC AMENDMENTS - RURAL

7.1 TVL's specific requested amendments are focused on the rural provisions and seek amendments to refer to the full range of potential activities that can occur within a

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<sup>36</sup> Ibid, section 6.

<sup>37</sup> Ibid, section 7.

<sup>38</sup> Ibid, section 12.

<sup>39</sup> Rebuttal evidence of Mark Tollemache, paragraphs [6.10] – [6.11].

<sup>40</sup> Ibid, para 3.8-3.11 and 4.5-4.8.

<sup>41</sup> Ibid, para 4.8. This is the amended wording for recommended by Mr Tollemache for Policy 4.1.4(a).

rural environment. The current objective is too narrow. Rural production may be the dominant activity in a rural environment but there are other suitable activities, including rural tourism.

- 7.2 TVL sought a similar amendment to the Issue related to rural environment in Topic 1 to recognise the role of rural tourism. That amendment was accepted by WDC in the reporting officer's rebuttal evidence. A similar amendment to the objective should therefore logically follow.

## **8. RESPONSE TO WAIKATO DISTRICT COUNCIL REBUTTAL EVIDENCE**

- 8.1 The reporting officer's rebuttal evidence addresses only a limited number of the matters raised by the submitters in their evidence and there is no apparent reason why parts of the submitters' evidence has not been addressed. For example, TVL's requested amendment to the rural objective is not addressed at all, but amendments from other submitters like Horticulture New Zealand to the same provision are discussed.<sup>42</sup>
- 8.2 Of particular concern is that there is no clarification of why particular provisions are discussed in Topic 3 rather than being addressed in the matter specific topic like Residential or Rural, which was specifically requested by Mr Scrafton in his primary evidence. From the submitters' perspective, there are a number of policies from the Rural and Urban chapters which have been included in this Topic 3 that might need to be revisited again following the substantive rezoning hearings.
- 8.3 Helpfully the reporting officer agrees with the submitters' request for expert conferencing as the best way to resolve the increasing ambiguity over the strategic directions and objectives provisions.<sup>43</sup> The reporting officer does however signal some concern with the scope for some of the amendments requested in evidence. From HVL and TVL's perspective, the confusion in the structure and role of Chapter 1 must be clarified and scope should be a secondary consideration to that fundamental task.<sup>44</sup> The PWDP should be a workable and coherent planning document.
- 8.4 Similarly, the reporting planner agrees with the substance of HVL's amendment to Objective 4.1.1 and the reasoning in Mr Tollemache's evidence. HVL accepts the revised ordering of that wording in the section 42A rebuttal evidence. Mr Tollemache

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<sup>42</sup> Rebuttal evidence from Mr Matheson, paragraph 17.

<sup>43</sup> Ibid, section 4.

<sup>44</sup> There are general submissions seeking that the PWDP be made clearer, such as that from Pokeno Village Holdings Limited on which HVL and TVL are a further submitter.

also supports the additional policy subclauses proposed by Ms Foley for Waikato Regional Council subject to some refinement.

- 8.5 The reporting planner recommends amendments to Policy 4.1.3 about location of growth and Policy 4.1.5 Density<sup>45</sup> discussed in Mr Tollemache's evidence, but those amendments do not go far enough to address HVL's concerns. As a result, it continues to seek the amendments to those provisions outlined in its evidence.
- 8.6 The reporting officer notes HVL's evidence about the Pokeno specific policy (4.1.11) and to the Subdivision location and design policy (4.7.2). However, the reporting planner has not engaged with the substance of the requested amendments due to an alleged lack of scope. HVL does not agree with this view. HVL's primary submission contained a number of general submission points that provide scope for Mr Tollemache's proposed policy changes for the growth of Pokeno and associated residential policy framework.<sup>46</sup>

## **9. CONCLUSION**

- 9.1 The proposed Chapter 1 provisions provide the critical direction setting part of the Plan. In particular plan objectives provide the link between Part 2 and the higher order documents and the policies and rules of the Plan. Once the objectives are set they are deemed the most appropriate way to achieve Part 2 of the Act. They will be critical to decisions made for this plan and also consent decisions under it.
- 9.2 As result, HVL and TVL have significant concerns about the current formulation and wording of the 'strategic direction/objectives' component of the Plan. There needs to be a proper application of all the relevant statutory requirements, clarity about the role of any strategic directions and/or objectives and a proper policy cascade.
- 9.3 To achieve these outcomes and remedy current deficiencies, TVL and HVL have outlined three potential options for the Panel's consideration.



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**V S Evitt / M G Gribben**  
Counsel for Havelock Village Limited and  
TaTa Valley Limited

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<sup>45</sup> Rebuttal evidence from Mr Matheson, section 10 and 11.

<sup>46</sup> See for example Section 2, part A and B and Section 4 of primary submission, points 41 and 42.

## APPENDIX A

### TVL & HVL's PROPOSED MINIMUM REQUIRED CHANGES TO CHAPTER 1 PROVISIONS

# Chapter 1: Introduction

#### Section 42A report amendments in Red.

Amendments in primary evidence of Christopher Scafton in Blue.

Amendments in rebuttal evidence of Mark Tollemache in Green.

## 1.12 Strategic ~~directions~~ **and objectives** for the district

### 1.12.1 Strategic ~~directions~~ **and objectives**

- (a) ~~Waikato District Council as a Future Proof Partner has made a commitment to the Future Proof Strategy which will manage growth for the next 30 years. Settlement patterns are a key tool used within the Future Proof Strategy. They provide the blueprint for growth and development and aim to achieve a more compact and concentrated urban form over time.~~
- (b) ~~Master plans or structure plans are an important method for establishing settlement patterns of land use and the transport and services network within a defined area. They can provide a detailed examination of the opportunities and constraints relating to the land including its suitability for various activities, infrastructure provision, geotechnical issues and natural hazards. They should identify, investigate and address the potential effects of urbanisation and development on natural and physical resources.~~
- (c) ~~Master plans or structure plans should explain how future development will give effect to the regional policy statement and how any adverse effects of land use and development are to be avoided, remedied or mitigated by proposed plan provisions. This will ensure that all the effects of development are addressed in advance of development occurring. A master planning is an appropriate foundation for the plan change process required to rezone land. The “Rangitahi Peninsula Structure Plan” is the only structure plan used within this Plan.~~
- {s42A Report – Section 6 – Strategic Objectives: Master Plans}*
- (d) ~~The National Policy Statement for Urban Development Capacity 2016 sets monitoring and information requirements for Council to ensure responsiveness and the ability to deliver an adequate supply of development ready land in the right location and at the right time. The intention is to ensure that planning decisions in urban environments are well informed, timely and responsive to changing population growth demands, market conditions and infrastructure delivery.~~
- (e) ~~It is expected that a comprehensive set of key indicators on growth drivers, growth management, and the spatial distribution of growth will include:~~
- ~~(i) Patterns and composition of population change and growth;~~
  - ~~(ii) Balance of growth inside and outside the existing urban area;~~
  - ~~(iii) Shifts in housing preferences, including location and typology;~~
  - ~~(iv) Key bulk infrastructure delivery and funding availability;~~
  - ~~(v) Changes in strategic direction and/or priorities.~~
- (f) ~~Progress will be measured against the anticipated growth settlement patterns and targets identified in the Future Proof Strategy as well as the indicative timeframes for master plans or structure plans and infrastructure provisions, changes in the growth patterns reported in the Future Proof Monitoring Report, National Policy Statement on Urban Development Capacity assessments and monitoring requirements.~~

### 1.12.82 Strategic directions objectives

[s42A Report – Section 4 - Strategic Objectives: Directions & Objectives]

- (a) The matters directions set out in paragraphs 4.1.1—4.1.7 1.12.2(b) and - 1.12.3 – 1.12.8 provide the overarching directions for the development of the objectives, policies and other provisions within the district plan. The directions need to be read as a whole and all directions considered together when developing any objectives, policies and other provisions. They are not a matter for consideration under section 104 or 104D of the Resource Management Act 1991.

[s42A Report – Section 4 - Strategic Objectives: Directions & Objectives]

- (b) In summary, the overarching directions include the following:
- (i) Urban development takes place within areas identified for the purpose in a manner which **utilises and integrates** land and infrastructure most efficiently.  
[s42A Report – Section 11 - Strategic Objectives]
  - (ii) Promote safe, compact sustainable, good quality urban environments that respond positively to their local context.
  - (iii) Focus urban growth in existing urban communities that have capacity for expansion.
  - (iv) Plan for mixed-use development in suitable locations.
  - (v) Encourage community collaboration in urban growth decisions
  - (vi) Protect and enhance green open space, outstanding landscapes and areas of cultural, ecological, historic, and environmental significance.
  - (vii) **Promote the on-going operation and development of rural production activities, including rural tourism, rural industry, services and other activities utilising the resources of the rural area.**
  - (ix) Maximise opportunities for employment and economic growth

[s42A Report – Section 11 - Strategic Objectives]

- ~~(c) The strategic objectives and policies that implement the strategic directions are included within Section 1.13 and cross-referenced to the relevant chapters in Part B of the district plan (where they are relevant) at the beginning of each section. They also assist in providing an objective that encompasses more than one zone (such as Chapter 4 Urban Environment) or a range of matters (such as Chapter 6 Infrastructure).~~

~~[s42A Report – Section 4 – Strategic Objectives: Directions & Objectives]~~

### 1.12.23 Direction - Natural environment

[s42A Report – Section 4 - Strategic Objectives: Directions & Objectives]

- (a) A district that protects its significant natural habitat and ecological values and ~~retains its significant the values of its outstanding~~ landscapes and features.
- ~~(a) A district that retains the natural character of its rural areas and has public open space available and well-used by the community [public open space provision relocated to Community Wellbeing below. Natural character is protected by other Natural Environment Direction]~~

### 1.12A Direction – Rural environment

- (a) A district where a wide range of rural production activities including rural tourism are promoted and enabled.

### **1.12.34 Direction - Built environment**

[s42A Report – Section 4 - Strategic Objectives: Directions & Objectives]

- (a) A district which provides a wide variety of housing forms which reflect the demands of its ageing population and increases the accessibility to employment and community facilities, while offering a range of affordable options.
- (b) A district that encourages and celebrates quality design that enhances and reflects local character and the cultural and social needs of the community.
- (c) A district that has compact urban environment that is focused in defined growth areas, and offers ease of movement, community wellbeing and economic growth.

### **1.12.45 Direction - Ease of movement**

[s42A Report – Section 4 - Strategic Objectives: Directions & Objectives]

- (a) A district which effectively integrates its land use pattern with transport, and encourages the development of an urban form which is less reliant on the private motor vehicle, while reducing the overall effects of transport on the environment.

### **1.12.56 Direction - Community wellbeing**

[s42A Report – Section 4 - Strategic Objectives: Directions & Objectives]

- (a) A district that provides a wide range of easily accessible facilities and activities to serve the community which satisfies the diverse social, cultural and economic needs of the community. A high level of pedestrian amenity, personal safety and the potential for crime is recognised in the design of these public places.
- (b) [A district that has public open space available and well used by the community.](#) [relocated from Natural Environment]

### **1.12.67 Direction - Employment and economic growth**

[s42A Report – Section 4 - Strategic Objectives: Directions & Objectives]

- (a) A district that is recognised as an ideal business location with access to a well-educated and highly skilled workforce and supported by an infrastructure which allows employment and economic growth to be maximised.

### **1.12.78 Direction - Managing change**

[s42A Report – Section 4 - Strategic Objectives: Directions & Objectives]

- (a) A district that effectively consults with and includes its community in decision making while co-operating with other authorities on regionally strategic policy, A district that manages development with master plans that matches ~~the~~ community aspirations, the capacity of the environment and infrastructure and avoids the adverse effects of that infrastructure on communities.

### **1.12.8 Strategic objectives**

- ~~(i) The matters set out in paragraphs 4.1.1 – 4.1.7 provide the overarching directions for the development of the objectives, policies and other provisions within the district plan.~~
- ~~(ii) In summary, the overarching directions include the following:
  - ~~(i) Urban development takes place within areas identified for the purpose in a manner which utilises land and infrastructure most efficiently.~~
  - ~~(ii) Promote safe, compact sustainable, good quality urban environments that respond positively to their local context.~~
  - ~~(iii) Focus urban growth in existing urban communities that have capacity for expansion.~~
  - ~~(iv) Plan for mixed-use development in suitable locations.~~
  - ~~(v) Encourage community collaboration in urban growth decisions.~~~~

- (vi) ~~Protect and enhance green open space, outstanding landscapes and areas of cultural, ecological, historic, and environmental significance.~~
- (iii) ~~The objectives and policies that implement the strategic directions are included within Part B of the district plan (where they are relevant) at the beginning of each section. They also assist in providing an objective that encompasses more than one zone (such as Chapter 4 Urban Environment) or a range of matters (such as Chapter 6 Infrastructure).~~

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## ~~1.13 Strategic objectives for the district~~ [Relocate following objectives to Chapter 4]

### ~~1.13.1 Introduction~~

- (a) ~~This section sets out the District Plan’s strategic objectives addressing the directions set out in sections 1.12.3 – 1.12.8. These high level objectives are elaborated on by more detailed objectives and policies within the Part B chapters relating to zones and specific topics.~~

### ~~1.13.1 Strategic Objective – Tautoko te Whakatupuranga~~

- (a) ~~To support Iwi aspirations to grow a prosperous, healthy, vibrant, innovative and culturally strong people~~

~~(Addresses:~~

- ~~• Issue 1.4.5 – Maori Freehold Land;~~
- ~~• Matters set out in section 1.6 – Ngaa Iwi o Tainui kit e Waikato Takiwa; and~~
- ~~• Matters set out in section 1.7 – Settlements Acts / Co-management / Rivers – Vision and Strategies / Joint Management).~~

### ~~1.13.2 Strategic Objective – Urban Environment and Urban Development~~ ~~Capacity Minimum Targets~~

- (a) ~~Liveable, thriving and connected communities that are sustainable, efficient and co-ordinated.~~
- (b) ~~The minimum targets for~~ Sufficient, feasible development capacity for medium and long-term housing ~~targets in the Waikato District area is provided to accommodate residential growth are met, in accordance with the requirements of the National Policy Statement on Urban Development Capacity 2016.~~
- (c) ~~Most of the District’s new housing is located in or around towns and villages.~~
- (d) ~~Urban development is integrated with infrastructure provision.~~

| Area             | Minimum Targets (number of dwellings)        |   |        |
|------------------|--|---|--------|
|                  | Short to Medium<br>1-10 years<br>(2017-2026) | Long term<br>11-30 years<br>(2027-2046) | Total  |
| Waikato District | 7,100  | 12,300                                  | 19,400 |

~~(Addresses:~~

- ~~• Issue 1.4.1 – Demographic trends;~~
- ~~• Issue 1.4.2 – Economic growth; and~~
- ~~• Issue 1.4.4 - The urban environment)~~

**1.13.3: Strategic Objective – Rural Environment** [Relocate following objective to Chapter 5]

(a) Subdivision, use and development within the rural environment zones where:

- (i) High class soils are protected for productive rural activities from inappropriate subdivision, use and development;
- (ii) ~~Productive rural activities are supported, while maintaining or enhancing the rural environment;~~ A range of appropriate land uses in the Rural Zones, including rural production activities, rural tourism, rural residential, rural lifestyle, commercial, industrial, strategic rural industries, activities ancillary to farming or forestry and mineral extraction activities are provided for;
- (iii) Urban subdivision, use and development, that does not rely on a rural location, within the rural environment is avoided.

(Addresses Issue 1.4.3 – The Rural Environment)

**1.13.4 Strategic Objective – Infrastructure and Renewable Energy** [Relocate following objective to Chapter 6]

(a) Infrastructure and renewable energy is developed, operated and maintained to benefit the social, economic, cultural and environmental well-being of the district.

(Addresses matters set out in sections:

- 1.5.1 – Compact urban form;
- 1.5.2 - Planning for urban growth and development;
- 1.5.5 – Services and general infrastructure;
- 1.5.6 – Transport and logistics;
- 1.5.7.3 – Water; and
- 1.5.7.7 – Energy)

[s42A Report – Section 4 - Strategic Objectives: Directions & Objectives]