

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) – STRATEGIC OBJECTIVES - HEARING 3

Dated 1 November 2019

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 As set out in detail in PVHL's submission and in the evidence of Mr Botica and Mr Scrafton,¹ Pokeno's rapid growth is the result of many years of rigorous technical analysis, stakeholder consultation and community building pursuant to a 2008 structure planning process and Plan Changes 24 and 21.² PVHL has led that work and continues to play a central role in Pokeno's development.
- 1.3 Consequently, PVHL's primary interest in the 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

¹ EIC Scrafton, paragraphs 4.3-4.8, EIC Botica, paragraph 3.1.

² To the Franklin District Plan and Waikato District Plan: Franklin Section respectively.

- (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.
- 1.4 In terms of the matters encompassed by this hearing, PVHL's concerns relate to:
 - (a) The absence of any mechanism in the PWDP to ensure that growth is properly planned and sequenced and integrated with infrastructure provision;
 - (b) The failure to carry over the Pokeno Structure Plan into the PWDP;
 - (c) The inappropriateness of the minimum density requirement in Policy 4.1.5(b) as it relates to Pokeno.
- 1.5 The section 42A report does not identify (a) and (b) as encompassed by this hearing. In terms of (a), PVHL's submission focussed primarily on the appropriate zoning for the land west of Pokeno. However, its further submission recorded support for a number of other submitters who sought the implementation of a Future Urban zone or equivalent planning framework in the PWDP, including Auckland Council, the Future Proof Implementation Committee, Waikato Regional Council, NZTA and Watercare.³
- 1.6 In terms of (b), this submission point has been allocated to Hearing 26 – Other Matters. The Pokeno Structure Plan is the cornerstone of the operative planning framework for Pokeno and it is submitted that this should remain so in the PWDP, including by reference to it in Objective 4.1.11. On that basis it is appropriate to address the inclusion of the Pokeno Structure Plan in the PWDP at this hearing. PVHL proposes to address the content of the Structure Plan at the Residential Zone hearing where it can be considered alongside the residential zone provisions.

Evidence pre-circulated

- 1.7 In accordance with the Chairman's directions, PVHL filed the evidence of the following two witnesses on 15 October 2019:
 - (a) Colin Botica, Director and Project Manager of Pokeno Village Holdings Limited;

³ Other submitters who made similar submissions include Waikato Tainui, Waikato District Health Board, Burton Trust and Jackie Colliar.

(b) Chris Scafton, Planning Consultant.

Summaries of both these statements of evidence were circulated on 1 November 2019.

1.8 Both witnesses are available to provide an overview of their evidence and answer any questions that the Panel may have.

Scope of submissions

1.9 Against that background, these submissions address the following matters:

(a) The statutory framework relevant to consideration of district plans (Section 2);

(b) Relevant planning instruments (Section 3);

(c) The need for a Future Urban zone in the PWDP (Section 4);

(d) The need to incorporate the Pokeno Structure Plan into the PWDP (Section 5); and

(e) The appropriate density requirements for Pokeno (Section 6).

2. THE STATUTORY FRAMEWORK

2.1 The requirements of the RMA in terms of the preparation of District Plans were touched upon in PVHL's opening submissions. To assist the Panel, this section contains a fuller summary of those requirements, particularly as they relate to the matters arising at this hearing.

RMA requirements for district plans

2.2 The statutory tests for a district plan will of course be well known to the Panel. They were recently summarised by the High Court in *Gock v Auckland Council*⁴ as follows:

"[29] The statutory considerations when considering the contents of the District Plan are set out in the relevant version of the RMA10 at ss 31, 32, and 72-77D. In summary, those requirements include whether the District Plan provisions:

4 [2019] NZHC 1603.

(a) Are designed to accord with and assist the Council to carry out its functions, so as to achieve the purposes of the RMA (ss 31, 72, 74.1)

(b) Are in accordance with any regulations, including national and environmental standards (s 74(1))

(c) Give effect to any national policy statement or the New Zealand Coastal Policy Statement (NZCPS) (s75(3))

(d) Give effect to the RPS (s75(3)(c))

(e) Are not inconsistent with an operative regional plan for any matter specified in s 30(1) (s 75(4)) and have regard to any proposed regional plan on any matter of regional significance (s 74(2)(a)(ii))

(f) Have regard to any relevant management plans and strategies under other Acts and to any relevant entry in the New Zealand Heritage list to the extent their content has a bearing on the resource management issues of the region (s74(2)(b)(i)).”

2.3 In relation to the consideration of the purpose of the RMA, the decision of the Supreme Court in *King Salmon v Environmental Defence Society* makes clear that there is a hierarchy of planning documents under the RMA such that where lower order planning documents address the matter in question, there is no need to refer back to the higher order planning instrument or Part 2 of the RMA to interpret and apply the lower instrument unless there was a challenge based on invalidity, incompleteness or uncertainty in relation to the lower instrument.⁵

2.4 It is submitted that the provisions of the RPS relating to urban growth as identified in PVHL’s submission, the evidence of Mr Scrafton⁶ and discussed further in Section 3 below are particularly relevant in the present case. In addition, because the NPS:UDC was promulgated later in time than the RPS, it is appropriate to specifically refer to that instrument as well. Beyond that, PVHL submits that no issues with invalidity, incompleteness or uncertainty arise such that recourse to Part 2 is required.

2.5 In addition, in terms of the requirement to have regard to relevant management plans and strategies under section 74(2)(b)(i), it is submitted

5 See also *Appealing Wanaka* [2015] NZEnvC 139 and *Royal Forest and Bird Protection Society of NZ Ltd v Whakatane District Council* [2017] NZEnvC 51.

6 EIC Scrafton paragraph 3.22.

that the Future Proof Growth Strategy 2017 should be considered by the Panel.

Section 32 RMA

- 2.1 In exercising its functions under the RMA, the Council must undertake evaluations and further evaluations of objectives, policies and other methods in accordance with section 32 of the Act.
- 2.2 In *Gock* the High Court summarised the requirements of section 32 as follows:

"[30] Under s 32 of the RMA the question is whether:

(a) the objectives are the most appropriate way to achieve the purpose of the RMA; and

(b) the policies and other provisions that implement or give effect to the objectives are the most appropriate way to achieve the objectives, including assessing their efficiency and effectiveness by:

(i) identifying and assessing, and if practical, quantifying the benefits and costs of the environmental, economic, social and cultural effects that are anticipated; and

(ii) assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions"

- 2.3 If changes are made to the proposal following notification, a further evaluation must then be made available at the time of the decision in accordance with section 32AA RMA and the decision-maker must have particular regard to that further evaluation. Section 32AA aims to ensure any changes to plan provisions during the hearings process are subject to a similarly high level of analytical rigour and transparency as the original evaluation.

- 2.4 Under section 32(1)(b) the local authority is required to:

"(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—

(i) identifying other reasonably practicable options for achieving the objectives; and

(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

(iii) summarising the reasons for deciding on the provisions; and

(c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.”

- 2.5 What is “reasonably practicable” was considered by the Environment Court in *Royal Forest and Bird Protection Society v Whakatane District Council*. With reference to the use of the term in other legislation and other courts, the Court held that:⁷

“the obligation to do something which is “reasonably practicable” is not absolute, but is an objective test which must be considered in relation to the purpose of the requirement and the problems involved in complying with it, such that a weighing exercise is involved with the weight of the considerations varying according to the circumstances;...”

- 2.6 Accordingly, the section 32 analysis must consider all options which are feasible having regard to the context of the matter and the costs involved.

- 2.7 Under section 32(1)(b) 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).⁸ The words “most appropriate” in section 32(1)(a) indicate that a comparative analysis of the potentially available options is required⁹ and a value judgment in terms of what is the most “suitable” option.¹⁰

3. **RELEVANT PLANNING FRAMEWORK**

National Policy Statement on Urban Development Capacity

- 3.1 The strategic objectives for urban growth in the PWDP must give effect to the requirements of the National Policy Statement on Urban Development Capacity (“NPS:UDC”) in terms of the provision of sufficient development capacity, supported by infrastructure. As the Panel will be aware, the

7 [2017] NZEnvC 51 at [51].

8 32(1)(a) and 32(1)(b).

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

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

Government has recently consulted on the replacement of the NPS:UDC with a new National Policy Statement on Urban Development (NPS:UD). However, the NPS:UD is at an early stage of development and is therefore irrelevant to this process. The NPS:UDC remains the operative instrument and the PWDP must give effect to it. In any event, the NPS:UD is unlikely to depart significantly from the NPS:UDC in terms of the need to ensure that urban development is well planned and supported by infrastructure.

3.2 The NPS:UDC preamble states:

"Development capacity must be provided for in plans and also supported by infrastructure. Urban development is dependent on infrastructure, and decisions about infrastructure can shape urban development. This national policy statement requires development capacity to be serviced with development infrastructure, with different expectations from this infrastructure in the short, medium and long-term. It encourages integration and coordination of land use and infrastructure planning. This will require a sustained effort from local authorities, council controlled organisations, and infrastructure providers (including central government) to align their intentions and resources."

3.3 The NPS:UDC includes Policy PA1 which requires:

- (i) *"Short term development capacity to be feasible, zoned and serviced with development infrastructure;*
- (ii) *Medium term development capacity to be feasible, zoned and either:*
 - 1. *Serviced with development infrastructure;*
or
 - 2. *The funding for the development infrastructure required to service that development capacity to be identified in a Long Term Plan required under the Local Government Act 2002.*
- (iii) *Long term development capacity must be feasible, identified in relevant plans and strategies and the development infrastructure required to service it must be identified in the relevant Infrastructure Strategy required under the Local Government Act 2002."*

- 3.4 The NPS:UDC therefore contains a clear direction to local authorities that they must consider land supply and infrastructure provision together, as an integrated whole. It is not enough simply to “live” zone land for development and hope that infrastructure provision can be worked out along the way.

Waikato Regional Policy Statement

- 3.5 As noted in Opening Submissions and in PVHL’s submission, relevant requirements of the RPS include that:

- (a) The sequencing of new development is coordinated with the development of new infrastructure (Policy 6.3 and associated methods);
- (b) Development does not occur until appropriate infrastructure is in place (Policy 6.3 and associated methods);
- (c) Zoning for new urban development is supported by information which identifies the location, type, scale, funding and staging of infrastructure required to service the area (Implementation Method 6.1.8(b));
- (d) Zoning for new urban development is supported by information which identifies anticipated water requirements necessary to support development and ensure the availability of volumes required, which may include identifying the available sources of water for water supply (Implementation Method 6.1.8(j)); and
- (e) Zoning for new urban development is supported by information which identifies how the design will achieve the efficient use of water (Implementation Method 6.1.8(k)).

Relevant objectives in the PWDP

- 3.6 Attachment C to Mr Scrafton’s evidence sets out some relatively minor changes to Objective 4.1.1 as follows:

"4.1.1 Objective – Strategic

(a) Liveable, thriving and connected communities that are sustainable, efficient and co-ordinated.

*(b) National Policy Statement on Urban Development Capacity
Minimum Targets*

The minimum targets for sufficient, feasible development capacity for housing in the Waikato District area are met, in accordance with the requirements of the National Policy Statement on Urban Development Capacity 2016.

...”

3.7 The reason for this change is that Mr Scafton considers it unnecessary to reference the NPS:UDC in the objective. Policy PA9 of the NPS:UDC requires that minimum targets be included in a district plan, and this has been implemented, without the need to reference the NPS:UDC.

3.8 Mr Scafton also proposes the addition of a new Objective 4.1.X to provide proper recognition to the importance of infrastructure availability, as required by the NPS:UDC and the Waikato RPS as follows:

“The urbanisation of land is managed to ensure the appropriate provision of infrastructure.”

3.9 In the context of the strategic direction section of the plan Mr Scafton’s conclusion is that this is sufficient and appropriate to reflect implementation of the NPS-UDC.

3.10 PVHL considers that, as amended by Mr Scafton, the objectives in Section 4.1 – Strategic Direction are the “most appropriate” means of achieving the objectives of the higher order planning instruments in terms of managing urban growth and the purpose of the RMA. As such, PVHL submits that the policies, rules and methods relating to zoning in the PWDP must achieve these objectives.

4. INCLUSION OF A FUTURE URBAN ZONE IN THE PWDP

4.1 Of particular concern to PVHL is the decision to “live” zone greenfield land (including the land described in the PWDP as “Pokeno West”) in the absence of adequate supporting analysis.

4.2 The issue is summarised in the evidence of Mr Scafton: by way of summary, the Draft Waikato District Plan (“Draft Plan”) included a “Deferred Zone” which identified land suitable for future urban development in order to give effect to Objective 4.1.1. The zone provisions included a requirement for a structure planning process to be undertaken prior to rezoning by way of Council resolution. In the PWDP, the Deferred zone was deleted and replaced with “live” zoning.

4.3 PVHL's submission is that "live" zoning all potentially developable land is not the most appropriate method to achieve Objective 4.1.1 and there are other options that should have been considered in the section 32 analysis.

Failure to consider all reasonably practicable options including use of a Future Urban zone

4.4 As detailed in Opening Submissions, the Strategic Direction and Management of Growth section 32 report analyses six potential options (policies, rules and methods) for achieving Objective 4.1.1.¹¹ These include:

(a) Option 3 – proactively identify further areas for development through deferred zoning. This option involves identifying areas for future growth but not enabling them to be developed until there is appropriate infrastructure in place. Development could occur with a Council resolution to that effect; and

(b) Option 4 – proactively rezone areas for urban development. This option involves the identification of sufficient land adjoining existing towns and villages to accommodate growth. These areas would be live-zoned as residential.

4.5 Option 3 was (correctly) rejected on the basis that it was *ultra vires*.¹² Option 4 was selected as the most appropriate option for achieving the objectives.

4.6 Mr Scrafton has undertaken his own section 32AA analysis (attached as Attachment A to his evidence) which concludes that other options are reasonably practicable and therefore should have been considered by WDC, specifically:

(a) Option 7 - Use of a Future Urban zone (followed by structure planning and rezoning under a Schedule 1 process);

(b) Option 8 - Use of a Structure Plan process (followed by rezoning under a Schedule 1 process.

4.7 Future urban zones are widely used in other regions, including Auckland, and are provided for in the National Planning Standards. "Future urban Zone" is defined in the National Planning Standards as:¹³

11 S 32 report 'Strategic Direction and Management of Growth', section 5.
12 Re Auckland Council [2016] NZEnvC 65.
13 National Planning Standards at p 38.

"Areas suitable for urbanisation in the future and for activities that are compatible with and do not compromise potential future urban use."

- 4.8 A Future Urban Zone therefore identifies potential urban development areas which have no intrinsic constraints to urbanisation, prevents *ad hoc* development until such a time as the necessary supporting infrastructure is available and a structure planning process is undertaken. It would require the development of a structure plan and Schedule 1 process in order to rezone Future Urban land to a "live" zone.
- 4.9 PVHL is unaware of any reason why Option 7 or 8 would not be reasonably practicable. Given that such approaches are widely used throughout New Zealand, including in Auckland, WDC's failure to consider these options is inexplicable. I submit that any section 32AA report prepared pursuant to these hearings must consider these options alongside those identified by WDC.

Use of a Future Urban zone is the most appropriate method for achieving Objective 4.1.1

- 4.10 Mr Scafton concludes that Option 7 (Future Urban zone) is the most appropriate means of achieving Objective 4.1.1, as follows:¹⁴

"This option seeks to enable development through the use of a Future Urban zone supported by a structure plan process. The Zone will enable council to proactively identify areas for future urban growth and these areas will only be 'unlocked' through a structure plan process. This option will appropriately address Objective 4.1.1 and Objective 4.1.2 in that new land will be opened up for urban development which will meet council's growth targets and it will occur in a manner which will consolidate urban development around existing towns and villages."

- 4.11 The use of a Future Urban zone would essentially offer all of the benefits of the Deferred zone identified by WDC without the *vires* problem. In this regard, the section 32 report notes that WDC does not have the resources available to service all growth cells at once, nor is there a desire to flood the market with all potentially developable land at once. Like Option 3, Option 7 provides a mechanism to enable agreed areas of land to be made available

14 EIC Scafton, Attachment A, page 30.

for development in the near future, when servicing is agreed and the structure planning for these areas of land is completed.

- 4.12 This approach is consistent with the direction in the Waikato RPS (and the NPS:UDC) in terms of ensuring that:
- (a) The sequencing of new development is coordinated with the development of new infrastructure (Policy 6.3 and associated methods);
 - (b) Zoning for new urban development is supported by sufficient information in relation to infrastructure provision (Implementation Method 6.1.8(b), (j) and (k)).
- 4.13 Conversely, if “live zoning” is the only means to identify land suitable for future development, there is a risk that an urban zone will be applied prematurely, before sufficient technical analysis has been undertaken to confirm that the land is suitable for development and can be serviced. Of course, there would also be no Schedule 1 process by which the outcomes proposed for the land could be thoroughly tested.
- 4.14 The proposed live zoning of the “Pokeno West” land is a prime example. PVHL’s concerns about the inadequacy of the technical analysis supporting that zoning were outlined in opening submissions. To recap, PVHL submitted:¹⁵

“We submit that the information available in respect of development at Pokeno West does not satisfy the requirements of s 32 and is insufficient to support the proposed rezoning. In particular:

- a) The technical reports available in respect of Pokeno West are high level and do not contain a level of detail corresponding to the scale and significance of the effects that development of this area would entail;*
- b) There are significant gaps in the Pokeno West reports as set out at para 2.4 above;*
- c) There has been insufficient consultation on the proposal including no consultation with PVHL;*

¹⁵ Opening submissions of counsel for Pokeno Village Holdings Limited, 26 September 2019, paragraph 3.4.

d) *The environmental, economic, social, and cultural effects of the proposal have not been thoroughly identified or assessed and no attempt has been made to quantify the benefits and costs of anticipated effects;*

...

There is also no indication that WDC has identified funding for the infrastructure required to support development at Pokeno West or 179/205 Helenslee Road. This would entail a significant economic cost to WDC which needs to be quantified and addressed."

4.15 Under the PWDP as currently drafted, all of these issues would be left for resolution at resource consent stage. In my submission, at that point it is simply too late. The opportunity to undertake a proper holistic assessment of how the land is proposed to be used, how it will integrate with surrounding communities and how it will be serviced has passed.

5. **POKENO STRUCTURE PLAN**

5.1 PVHL's submission and the evidence of Mr Botica and Mr Scafton detail the huge investment over many years into the development of the vision and Structure Plan for Pokeno. The Structure Plan is intended to guide development until 2028. In this regard the preamble states:¹⁶

"The aim of the Pokeno Structure Plan is to create a framework to guide the future development of Pokeno over the next 20 years (to 2028), and will be used to inform the next District Plan review"

[our emphasis]

5.2 Notwithstanding this, the Structure Plan is not included or referenced in the PWDP, despite the fact that structure plans/precincts are a method employed by the PWDP. Indeed, as Mr Scafton and other experts¹⁷ note in their evidence, as currently drafted the PWDP contains a notable lack of direction for Pokeno.

5.3 Mr Scafton provides an overview of the Structure Plan in his evidence. He says:

¹⁶ Pokeno Structure Plan – Part 54.15 of the operative Waikato District Plan.
¹⁷ E.g. EIC Mark Tollemache on behalf of Havelock Village Ltd.

"The Pokeno provisions include:

- a) Specific objectives and policies which implement the PSP and recognise locally significant landforms, vegetation, watercourses and wetlands;*

- b) Assessment matters, which require that all subdivision applications (a restricted discretionary activity) be assessed against the relevant subdivision design assessment criteria. These include:*
 - i) Road, reserve and access networks;*
 - ii) Block size, lot type and orientation;*
 - iii) Roads and accessways;*
 - iv) Pedestrian links and routes;*
 - v) Reserves;*
 - vi) Stormwater reserves; and*
 - vii) Interface Design."*

5.4 These provisions establish a framework for the development of Pokeno which is tailored to the specific needs of that community. The Structure Plan map (attached to Mr Botica's evidence as Attachment 1) identifies key infrastructure including stormwater management areas, key link roads, sports facilities, parks and open space and the primary school, as well as areas for residential and commercial development.

5.5 The development of Pokeno is proceeding in accordance with the Structure Plan. It is by no means finished. As Mr Botica notes in his evidence, there are at least 1,000 sections still to be developed in the Structure Plan Area.¹⁸

5.6 The section 32 analysis does not include any explanation for the failure to incorporate the Structure Plan into the PWDP, nor any discussion of how the development of Pokeno should be managed. This is particularly concerning given the town's recent history and the clear ongoing demand illustrated by the large number of submissions to the PWDP seeking urban zoning for land beyond the existing urban area.

18 Evidence of Botica, paragraph 3.7.

5.7 Structure planning generally is an important tool to enable the integrated management of the effects of use and development, particularly of fast growing urban areas and greenfield land.¹⁹ The Pokeno Structure Plan in particular is an extremely valuable document which is the product of many years of technical analysis, consultation and consensus building. It has been thoroughly tested via the Schedule 1 process in PC24 (and more recently in PC21). Failure to incorporate it into the PWDP risks undermining that work and the integrated approach to development which has ensured high quality development outcomes to date.

5.8 In his evidence Mr Botica records PVHL's disquiet at the suggestion by counsel for Annie Chen Shiu, CSL Trust and Top End Properties that those parties have been engaging with WDC about the use of the Pokeno Sports Park, a key piece of community infrastructure identified on the Structure Plan, as a stormwater attenuation device.²⁰ As Mr Botica says:²¹

"The Sports Park is a structural element of the PSP, and was the result of years of consultation with the local community, sporting bodies, the Ministry of Education and iwi. Furthermore, the sports park land and associated improvements/facilities are included in WDC's Long Term Plan and in a Development Contributions Agreement with PVHL."

5.9 If the Structure Plan is not included in the District Plan, *ad hoc* decision making about fundamental pieces of infrastructure such as the Sports Park becomes much more likely, to the detriment of the Pokeno community.²²

5.10 Against that background, the absence of the Structure Plan from the PWDP is incomprehensible. PVHL can only conclude that it has been excluded in error and requests that it is reinstated.

6. DENSITY TARGETS

6.1 Policy 4.1.5(b) in the PWDP states:

"4.1.5 Policy – Density

19 *Omokoroa Ratepayers Association Inc v Western Bay of Plenty District Council* A102/2004 at [72].

20 Opening legal submissions of counsel for Chen, CSL and Top End Properties, 6 October 2019, paragraph 33(a).

21 EIC Botica, paragraph 5.2.

22 See *Auckland Memorial Park Ltd v Auckland Council* [2014] NZEnvC 9 in relation to the limited weight to be afforded to structure plans which do not form part of the District Plan.

(a) Encourage higher density housing and retirement villages to be located near to and support commercial centres, community facilities, public transport and open space.

(b) Achieve a minimum density of 12-15 households per hectare in the Residential Zone.

(c) Achieve a minimum density of 8-10 households per hectare in the Village Zone where public reticulated services can be provided."

- 6.2 This policy applies to all residential areas throughout the district, regardless of their particular characteristics.
- 6.3 The PWDP also includes no guidance as to how "density per hectare" is to be calculated. There are a number of possible interpretations, including:
- (a) Every hectare of land must achieve 12-15 dwellings;
 - (b) Whether the calculation includes areas of environmental protection, roads and reserves; and
 - (c) Whether for structure plan areas, density per hectare should be averaged over the entire area.
- 6.4 Regardless of the approach taken, PVHL's position, informed by many years of work in Pokeno, is that this minimum density is unrealistic for Pokeno and likely to lead to adverse environmental outcomes.

Relevant RPS provisions

- 6.5 The RPS includes direction in relation to the management of growth in Waikato district, including in relation to density. However, the policy framework is somewhat complex, because the RPS has not yet been updated to reflect revisions to the relevant growth strategies referenced.
- 6.6 In summary, Policy 6.12 of the RPS requires the growth of the former Franklin district, including Pokeno, to be managed in accordance with the Franklin District Growth Strategy 2007. That document includes a target of an average of 10 dwellings per hectare. That is consistent with the density targets set out in Policy 6.15 which provides that "*greenfield development in Waikato District rural villages where sewage is reticulated*" (including Pokeno) should aim to achieve an average gross density of 8-10 dwellings per hectare.
- 6.7 Policy 6.12 also includes the following line:

"The Franklin District Growth Strategy applies until the Future Proof Growth Strategy and relevant district plans are amended."

- 6.8 No further direction is provided, including whether the density targets in Policy 6.15 should be considered to be superseded once the Future Proof Growth Strategy is amended.
- 6.9 The Future Proof Growth Strategy was updated to include the Franklin District, including Pokeno, in 2017 and will be updated again in 2020. The current version includes *"density targets which are to be achieved over time and not necessarily immediately."*²³ In relation to Pokeno, it includes an average gross density target of 12-15 households per hectare.²⁴
- 6.10 Having regard to the above, it is arguable whether the applicable RPS density target is an average gross density of 8-10 dwellings per hectare, as set out in the operative RPS, or 12-15 households as set out in the Future Proof Growth Strategy 2017. If the former, the Future Proof Growth Strategy is in any event a relevant "management plan or strategy" that should be considered under section 74(2)(b)(i) of the RMA.
- 6.11 In any event, it is important to note that whichever RPS direction applies, it is a target, not a minimum, which must be read alongside other provisions of the RPS which have implications for the form of urban growth. For example:
- (a) The need to protect significant indigenous vegetation and significant habitats of indigenous fauna (Policy 11.2);
 - (b) The need to protect the significant values of wetlands (Policy 8.2);
 - (c) The need for subdivision, use and development of the built environment to occur in a planned and co-ordinated manner which has regard to the existing built environment (Policy 6.1).

Appropriate density for Pokeno

- 6.12 The most "developable" land in Pokeno already forms part of the Pokeno Structure Plan area. A summary of dwelling densities achieved in Pokeno to date is set out in Mr Scrafton's evidence.²⁵ In summary, development of the Structure Plan area has achieved approximately 10 dwellings per hectare,

23 Future Proof Growth Strategy 2017 page 32.

24 Ibid.

25 EIC Scrafton, paragraph 5.3.

consistent with the minimum density requirement in the operative Waikato District Plan.²⁶ This minimum density requirement was thoroughly tested via the Schedule 1 process for Plan Change 24 and Plan Change 21, and has proved appropriate having regard to the natural constraints of the land and the desire to offer a range of housing choice.

- 6.13 Titles in the existing development blocks are covenanted such that further subdivision is precluded, so it is not possible for higher densities to be achieved through infill development.²⁷
- 6.14 As a result, a minimum density requirement that is higher than 10 dwellings per hectare would have perverse and undesirable implications for Pokeno's future. Higher density development would need to be located on the generally steep and less developable land at the edges of Pokeno. In order to comply with other directions in the RPS such as the need to protect natural features, potentially the only means to achieve the requirement would be with very high density apartment buildings located beyond typical walking distance, potentially 1.5 km from the town centre and community facilities. This is clearly inconsistent with good planning practice.
- 6.15 PVHL therefore submits that if a minimum dwelling density requirement for Pokeno is to be included in the PWDP, an average gross density minimum of 10 dwellings per hectare, as set out in the operative Waikato District Plan, remains appropriate. This is supported by Mr Matheson in his section 42A rebuttal report dated 30 October 2019.

DATED at AUCKLAND this 1st day of November 2019

POKENO VILLAGE HOLDINGS LIMITED

by their solicitors and duly authorised agents
BERRY SIMONS



S J Simons / K A Storer

²⁶ Waikato District Plan - Franklin Section, Pokeno Structure Plan area, section 54.15.2.5.
²⁷ EIC Scrafton paragraph 5.2-55.