

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**

OPENING SUBMISSIONS OF COUNSEL FOR POKENO VILLAGE HOLDINGS LIMITED

Dated 26 September 2019

1. INTRODUCTION AND ISSUES FOR DETERMINATION

- 1.1 This is the hearing of opening submissions on the Proposed Waikato District Plan ("**PWDP**").
- 1.2 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. PVHL has in depth knowledge of the development landscape at Pokeno including challenges and constraints.

Background - history of development at Pokeno

- 1.3 PVHL formed the majority of a landowner consortium (comprising Dines Group, Fulton Hogan, Hynds Pipe Systems and Winstone Aggregates) which authored the Pokeno Structure Plan 2008 ("**PSP**"). The PSP was the result of a rigorous structure planning exercise carried out over many years. It was informed by 26 technical reports (all of which were peer reviewed) and two Cultural Impact Assessments and other supporting documents..
- 1.4 Additionally, significant and various forms of consultation were undertaken with the local community, including town hall meetings, open days and workshops, individual meetings with community members and local organisations and extensive liaison with tangata whenua.

- 1.5 The PSP formed the basis for a private plan change that was prepared by the landowners' consortium and adopted as a public plan change (PC24) to the Franklin District Plan by Franklin District Council in October 2008.
- 1.6 PC24 became operative, with modifications following a 3 week hearing, in 2010. The decision, which extended to three volumes, enabled the urban expansion of Pokeno from a village of approximately 500 people to an "urban village" with a thriving town centre, public reserves, with a population of approximately 5,000 people and approximately 80 hectares of industrial land.
- 1.7 In 2018 an additional 26 hectares of land was added to the PSP area pursuant to Plan change 21 (PC21) to the Waikato District Plan: Franklin Section (WDP:FS). PC21 was prepared by PVHL and involved detailed and comprehensive technical reporting on all aspects of the request (including 13 technical reports). PC21 was declared operative on 12 September 2018.

Key issues for determination

- 1.8 The matter that PVHL will address in these submissions is the proposed rezoning of the area known as Pokeno West and the area made up of 179 and 205 Helenslee Road from their current rural zoning to a 'live' residential zoning. PVHL has made a submission in opposition to the proposed re-zoning because it is concerned about the potential effects on existing communities and currently planned development that is being undertaken in accordance with existing operative plan changes.
- 1.9 In our submission, the main issues to be determined in relation to the rezoning proposal are as follows:
 - (a) Whether it is supported by sufficient information and analysis as required by section 32 and the first schedule of the Resource Management Act 1991 ("**RMA**"); and
 - (b) Whether it gives effect to the higher order planning instruments including the National Policy Statement on Urban Development Capacity ("**NPS:UDC**") and the Waikato Regional Policy Statement ("**RPS**").
- 1.10 PVHL's concerns apply equally to the proposed rural to urban rezoning of other land around Pokeno that is being sought by various submitters.

Scope of PVHL's submissions

- 1.11 Having regard to those key issues, these submissions address:
- (a) The decision to rezone Pokeno West and other areas (Section 2);
 - (b) Section 32 analysis (Section 3);
 - (c) Grounds for rezoning of Pokeno West (Section 4);
 - (d) NPS:UDC requirements (Section 5);
 - (e) Response to further submissions by Birch Surveyors (Section 6);
 - (f) RPS requirements (Section 7); and
 - (g) Conclusions (Section 8).

Focus of PVHL's submissions

- 1.12 The original vision for Plan Change 24, which initiated the development of Pokeno, was 'live, work, play' hence the inclusion of land zoned for employment and recreation purposes. The intention being to achieve an appropriate balance between residential, employment and recreation. PVHL are concerned that the additional of vast areas of new residential will tip the balance too far towards residential thus not achieving that vision.
- 1.13 Since 2005, PVHL has prepared literally dozens of investigative theses to support two plan changes and the implementation of the Pokeno Structure Plan. In the early stages of the development of the Pokeno Structure Plan, these analyses included all the Pokeno West land north of Munro Road. Through this analysis, it was determined that the land at Pokeno West was unsuitable for urban development primarily for stormwater management reasons. None of the technical analysis undertaken by the submitters demonstrates that the flooding risk can be managed.
- 1.14 PVHL are aware, from discussions with Watercare, WDC and potential purchasers of industrial land that there are wastewater infrastructure capacity issues resulting from the time required for the upgrade of the Pukekohe Wastewater Treatment Plant. Introducing hundreds more residential properties before the provision of wastewater capacity for the employment zones has been addressed would not constitute sustainable management.
- 1.15 While the attraction of expanding Pokeno is undeniable, movements in this direction must provide certainty that existing and future residents and

businesses and their investments will be protected from infrastructure failure or shortcomings.

2. **THE DECISION TO REZONE POKENO WEST AND OTHER AREAS**

2.1 The PWDP provides for the rezoning of 160ha of land to the west of Munro Road in Pokeno ("**Pokeno West**") from rural to residential. This area is outside the Plan Change 24 and 21 area.

2.2 Notably, the Draft Proposed Waikato District Plan identified the Pokeno West land as "under discussion". The PWDP identifies the land as "live" zoned. It is unclear what new information was available to support that change.

2.3 We also note that between the release of the Draft PDP and the release of the notified PDP land that was previously identified as "deferred zone" was generally up-zoned to urban zonings (primarily residential). Again, it is unclear what new information was available to support that change.

2.4 The proposed rezoning is briefly addressed in the s 32 report entitled 'Strategic Direction and Management of Growth', which attaches five specialist reports that we understand were commissioned by landowners with an interest in Pokeno West. The reports are:

- (a) Geotechnical feasibility assessment – Ground Consulting;
- (b) Ecology report – JS Ecology;
- (c) Urban Design report - Construct;
- (d) Integrated Transport Assessment report – Commute Transportation Consultants; and
- (e) Engineering report – Maven Associates.

2.5 Notable omissions include:

- (a) No planning analysis or assessment of the proposed rezoning including (but not limited to) how the proposed development gives effect to Policy 6.1.7, Implementation Method 6.1.8 or the development principles of Section 6A of the Waikato Regional Policy Statement (RPS);
- (b) No landscape assessment;
- (c) No visual assessment;

- (d) Limited analysis in respect of other key issues including in particular infrastructure provision;
- (e) No indication that there has been any correspondence with Watercare in relation to water and wastewater network capacity or NZTA;
- (f) No cultural impact assessments or evidence of liaison with iwi;
- (g) No record of any engagement with the community; and
- (h) No approved stormwater catchment management plan.

2.6 The proposed rezoning of approximately 95 ha of land at 179 and 205 Helenslee Road does not appear to be supported by any s 32 analysis or consultation at all. The owners of this land, CSL Trust and Top End Properties Limited, have provided a submission on the PWDP (SN. 89) which included five technical reports in support of rezoning. However, the engineering report supplied is the same one used for Pokeno West. The four new reports appear to suffer from the same limitations and omissions that afflict the Pokeno West documents.

2.7 Of ongoing concern is the proliferation of other submitters seeking rezoning of land around Pokeno from rural to urban. These include Thorntree Orchards (SN. 54), Rainbow Water Ltd (SN. 205), Kwanghooon Yang (SN. 360), Hopkins (SN. 451), Lawrie (SN. 458), Se Gi Noh (SN. 502), Anna Noakes (SN. 524), Grander Investments Ltd (SN. 548), TaTa Valley (SN. 574), Reeve (SN. 668), Parkmere Farms (SN. 696), Young (SN. 735), Van Leeuwen (SN. 754), and Havelock Village (SN. 862).

2.8 None of these submitters have provided sufficient analysis or technical evidence to support the relief they are seeking.

2.9 By way of contrast, PVHL's Plan Change 24 application to rezone land at Pokeno was informed by 26 peer-reviewed technical reports and extensive consultation with the Pokeno community and Iwi.

PVHL LGOIMA request

2.10 PVHL made a LGOIMA request to WDC on 24 July 2019 requesting all correspondence, emails (internal and external), technical analysis reports, minutes of meetings in respect to the decision to implement a live residential zoning at Pokeno West and 179 and 205 Helenslee Road (including all communications with Waikato Regional Council and iwi authorities).

2.11 WDC's response dated 16 August 2019 stated that it had decided to grant PVHL's request in part, but some of the information sought was withheld in accordance with section 7(2)(g) of the Local Government Official Information and Meetings Act 1987 to maintain legal professional privilege.

2.12 The documents provided to PVHL did not include any relevant new information that sheds light on the decision to rezone Pokeno West or 179 / 205 Helenslee Road.

3. **SECTION 32 ANALYSIS**

Statutory requirements

3.1 In exercising its functions under the RMA, the Council must undertake evaluations of objectives, policies and other methods in accordance with section 32 of the Act.

3.2 Section 32 requires an evaluation of the extent to which each objective is the "most appropriate" way to achieve the purpose of the RMA and an evaluation of alternatives, benefits and costs of policies, rules and other methods. The evaluation is to be carried out initially by the local authority preparing a district plan and the local authority also has a duty to carry out a further evaluation before making decisions on submissions.

3.3 We submit that the most relevant aspects of section 32 are:

(1) *An evaluation report required under this Act must—*

...

(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) An assessment under subsection (1)(b)(ii) must—
- (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

[Emphasis added]

Inadequacy of supporting information

- 3.4 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;

- (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;
- (e) By way of contrast, the technical reports and supporting information that PVHL provided in support of PC24 and PC21 were far more comprehensive and demonstrate an appropriate level of analysis corresponding to the scale and significance of effects. Even PC21, which involved a 26 ha extension of the existing live zoned area, was supported by 13 technical reports. The rezoning proposals for Pokeno West and 179/205 Helenslee Road apply to approximately 255 ha of rural land – 10 times the size of the PC21 area.

3.5 As noted, the s 32 analysis included no information at all in regard to the feasibility of development on the land at 179 and 205 Helenslee Road. The information subsequently provided in Submission 89 suffers the same flaws outlined above and is insufficient to support the rezoning proposal.

3.6 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.

No consideration of future urban zones

3.7 Objective 4.1.1 of the Notified PWDP states:

"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."

3.8 The Strategic Direction and Management of Growth s 32 report analyses six potential options (policies, rules and methods) for achieving Objective 4.1.1.¹ 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.

3.9 The report notes that Option 3:²

"...would achieve the objectives and signal the locations where development is appropriate. The use of comprehensive structure plans and master planning would ensure that the new growth areas were well planned and integrated with existing development."

3.10 The report also notes that the Council does not have the resources available to service all growth cells at once, nor is there a desire to flood the market with all the identified grow cells at once. Option 3 provides a mechanism to enable agreed areas of land to be made available for development in the near future, when servicing is agreed and the structure planning for these areas of land is completed.³

3.11 However, it goes on to state that:⁴

However this approach is ultra vires the Act and relies on processes outside the district plan to determine the zoning. It also provides no certainty to either developers or the community as to when development is likely to occur.

3.12 As a result the report recommends Option 4 as the most appropriate option for achieving the Objectives.

¹ S 32 report 'Strategic Direction and Management of Growth', section 5.

² Ibid, pp 66 – 67.

³ Ibid, pp 66 – 67.

⁴ Ibid, p 67.

3.13 However, the report does not include the use of future urban zones as an option. The 'deferred zones' considered by WDC are quite different to future urban zones, which are widely used in other regions and are provided for in the National Planning Standards. Future urban zone is defined as:⁵

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

3.14 We consider that the information currently available has not established that the Pokeno West area is suitable for urbanisation. However, if this can be established in the future it seems clear that a future urban zoning may then be appropriate. As compared to 'live' zoning, future urban zoning would effectively address identified issues of infrastructure funding and allow for properly sequenced and integrated development.

3.15 Future urban zones were inexplicably not considered as an option for achieving Objective 4.1.1 of the PWDP, even though it is likely to be the most appropriate option in many cases. We submit that this is a significant deficiency in the s 32 analysis and is likely to result in inappropriate zoning outcomes in many cases.

4. **GROUNDS FOR REZONING OF POKENO WEST**

4.1 The s 32 documents provided by WDC include a PowerPoint presentation entitled 'District Plan Review Workshop Options to Provide for Growth' dated 1 May 2018. This addresses the Pokeno West proposal and recommends a residential zoning for this area. The Powerpoint records that the following reasons for the recommendation:

1. *Demand for development*
2. *Developers ready to undertake development*
3. *Suitable for urban development*
4. *Infrastructure able to be provided*
5. *Existing and new community facilities available*
6. *Existing policy and urban design guides for Residential Subdivision, Town Centre and Pokeno Town Centre character statement."*

⁵ National Planning Standards at p 38.

4.2 The PowerPoint does not set out the information that its recommendation is based on. PVHL has significant concerns about the accuracy of WDC's analysis, and some of the stated grounds for its recommendation are addressed below.

Demand for development

4.3 The s 32 report entitled 'Strategic Direction and Management of Growth' states that Pokeno currently has greenfield capacity for an additional 2,200 dwellings and a further 500 infill dwellings – for a total capacity of 2,700 dwellings.⁶ This compares to a medium-series long-term demand (to 2046) at Pokeno for 2,300 dwellings.⁷

4.4 Appendix 2.1 to the above s 32 report is Market Economics Consulting's Housing Development Capacity Assessment 2017 - Future Proof Area, which was undertaken pursuant to the requirements of the NPS:UDC. This assessment confirms that:

(a) Pokeno will have surplus residential capacity in the short and medium term (to 2026);⁸ and

(b) A capacity deficit is projected to emerge in Pokeno in the long-term (between 2026 and 2046), as infrastructure provision within greenfields areas becomes a constraint on feasible capacity.⁹

4.5 This data confirms that there is no shortage of housing capacity at Pokeno in the short to medium term, and that issues with long term capacity relate to the provision of sufficient development infrastructure.

4.6 This reinforces PVHL's submission that potential development areas need to be properly assessed and coordinated with the provision of development infrastructure in a staged manner as directed by the NPS:UDC. Merely rezoning land does not satisfy the NPS:UDC's requirement for development capacity to be serviced with development infrastructure and other infrastructure.¹⁰

Suitable for urban development

4.7 In our submission the technical reports and consultation undertaken in respect of Pokeno West are manifestly inadequate to support this conclusion.

⁶ P 86.

⁷ Ibid.

⁸ Pp 113-114; Figure 78.

⁹ Pp 114-115; Figure 79.

¹⁰ NPS:UDC Policies PA1 and PA2.

PVHL intentionally excluded the land at Pokeno West from the Pokeno Structure Plan area because of limitations including the steepness of the slopes and associated erosion risk, the significant challenges associated with managing stormwater and flooding risk and the lack of a defensible visual boundary. The site is also understood to be a volcanic tuff ring and includes productive soils – issues which have not been addressed in any of the supporting documents.

4.8 PVHL has particular concerns about the effects that development of Pokeno West could have on existing communities and land that is currently under development in the PC24 and PC21 area, including:

- (a) Stormwater attenuation and flooding risk for downstream communities;
- (b) Erosion risks and environmental impacts associated with the significant level of earthworks that would be required to develop the steep slopes at Pokeno West;
- (c) Wastewater infrastructure capacity issues and the effects of additional loading; and
- (d) Effects on transport infrastructure which have not been adequately assessed.

Infrastructure available

4.9 The land at Pokeno West is not currently serviced with development infrastructure or other infrastructure as defined in the NPS:UDC. There is also no evidence that funding for the requisite infrastructure has been identified in WDC's Long Term Plan or Infrastructure Strategy. As such the information available seems to contradict this conclusion.

Existing and new community facilities available

4.10 No analysis has been provided of whether existing and planned community facilities are sufficient to provide for additional growth in Pokeno West.

5. NPS:UDC REQUIREMENTS

Heirarchy of planning instruments

5.1 S 75(3) RMA specifies that a district plan must give effect to any national policy statement and any regional policy statement.

5.2 The NPS:UDC is currently operative and the PWDP must give effect to it as explained in this section. The RPS is addressed below at section 7 in these submissions.

Policy PA1

5.3 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."*

5.4 As set out in PVHL's original submission, given that Pokeno West is proposed to be live zoned for residential activity, this area should be considered to be "short term capacity", which refers to the next 3 years.

Feasibility

5.5 The NPS:UDC defines "feasible" as follows:

*"**Feasible** means that development is commercially viable, taking into account the current likely costs, revenue and yield of developing; and feasibility has a corresponding meaning."*

5.6 We submit that the available information is insufficient to establish the feasibility of development at Pokeno West. In light of the technical challenges to development it is not clear that the environmental benefits will outweigh adverse effects. Accurate predictions of the likely costs, revenue and yield of

developing the land (including costs to the Council) are also crucial. No such information has been provided.

Development infrastructure

- 5.7 Policy PA1 requires Pokeno West to be serviced with development infrastructure, which is defined as:

"Development infrastructure means network infrastructure for water supply, wastewater, stormwater, and land transport as defined in the Land Transport Management Act 2003, to the extent that it is controlled by local authorities."

- 5.8 Policy PA1 is clear, unambiguous and directive. A failure to ensure that short term development capacity is serviced with development infrastructure means that Pokeno West does not give effect to the NPS:UDC.

- 5.9 We further note that the current level of infrastructure provision for Pokeno West would not even meet the NPS:UDC requirements for medium term development capacity (3-10 years), as no evidence has been made available to show that funding for the required infrastructure has been identified in WDC's Long Term Plan.

- 5.10 Policy PA2 is also relevant and requires local authorities to satisfy themselves that other infrastructure required to support urban development are likely to be available. Other infrastructure includes community, social, energy and telecommunications infrastructure. No evidence has been made available to demonstrate that sufficient infrastructure is likely to be available at Pokeno West.

6. RESPONSE TO FURTHER SUBMISSIONS BY BIRCH SURVEYORS

- 6.1 Birch Surveyors has provided further submissions on behalf of Annie Chen, who owns property in Pokeno West, and CSL Trust and Top End Properties Limited which own properties at 179 and 205 Helenslee Road. The PWDP's proposed rezoning applies to all of these properties. Both of the further submissions support the proposed rezoning and attach 'Appendix A', a response to PVHL's submission by various consultants. These are addressed below.

Development engineering issues

- 6.2 The reports that have been prepared in relation to Pokeno West are manifestly inadequate. The geotechnical report, for instance, records that no

sub-surface investigations have been undertaken.¹¹ Its discussion of ground conditions and groundwater conditions are purely speculative, referring to the “likely” conditions.¹² The report contains only 6 pages of text, and is wholly disproportionate to the scale of the geotechnical challenges associated with Pokeno West. It nonetheless acknowledges that 2 out of the 3 proposed development zones in Pokeno West may not be suitable for residential development unless significant (but unquantified) remedial measures are taken including:¹³

- (a) Structural in-filling or re-grading of steep slopes in order to provide acceptable overall slope grades (< 1 on 4), and of low-lying areas to provide acceptable groundwater table clearances;
- (b) Engineered retaining along the edge of the gullies;
- (c) Structural in-filling and diversion of the site overland flowpaths.

6.3 No further detail is provided by Ground Consulting Limited in Birch Surveyors’ further submissions.

6.4 A major concern of downstream communities is the woefully inadequate assessment of stormwater and wastewater capacity and treatment. Stormwater runoff and flooding risk is an existing issue at Pokeno that would almost certainly be exacerbated by development of the steep slopes at Pokeno West. The response provided by Maven Associates asserts that stormwater management can be achieved via mitigation measures to maintain pre-development flood flows.¹⁴ However, this assertion is not supported by robust and detailed analysis – the Maven Associates’ report is only a preliminary desk-top analysis which provides no specifics as to how adequate stormwater attenuation will be achieved. Among other issues, Maven makes no reference to the history of stormwater and flooding issues at Pokeno and has not consulted PVHL about these issues.

6.5 In regard to wastewater, Maven Associates’ Engineering report acknowledges that there is no capacity in the wastewater network for the development of Pokeno West. Capacity constraints have been an ongoing issue in regard to Pokeno over the past 10 years and further development prior to the resolution of capacity issues has the potential to impact on existing communities and the viability of the development of existing

¹¹ Geotechnical Feasibility Assessment for a Proposed Subdivision by Ground Consulting Limited, para 3.2.
¹² Ibid, paras 3 and 4.
¹³ Ibid, para 5.
¹⁴ Birch Surveyors further submissions FSN. 1297 and FSN. 1261, Appendix A, p 3.

employment zoned land. The response by Maven Associates states that WDC is investigating wastewater capacity solutions and a long term strategy plan has now been developed with identified solutions. However, this does not resolve capacity constraints in the short to medium term. Furthermore, there has been no confirmation from Watercare that sufficient treatment capacity is available to deal with additional loading from Pokeno West.

Comments by Birch Surveyors

6.6 Birch Surveyors is of the view that rezoning Pokeno West and the areas at 179 and 205 Helenslee Road "will greatly assist Council with meeting its obligations"¹⁵ under the NPS:UDC. We disagree for the reasons below.

6.7 It is not possible to comply with the NPS:UDC by rezoning land without proper analysis and sufficient infrastructure servicing. The preamble to the NPS:UDC relevantly states:¹⁶

"This national policy statement does not anticipate development occurring with disregard to its effect. Local authorities will still need to consider a range of matters in deciding where and how development is to occur, including the direction provided by this national policy statement."

[Emphasis added]

6.8 As set out above, the effects of rezoning at Pokeno West have not been assessed in a robust manner.

6.9 The NPS:UDC preamble states in regard to infrastructure:

"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."

¹⁵ Birch Surveyors further submission on behalf of Annie Chen (FSN. 1261), p 2.
¹⁶ NSP:UDC, p 4.

6.10 In this case there does not appear to have been any effort to coordinate the proposed rezoning of Pokeno West with provision of development infrastructure or other infrastructure, which is clearly contrary to Objective OD1 and Policies PA1 and PA2, among others.

6.11 We also note that the NPS:UDC defines "Development capacity" as follows:

"Development capacity means in relation to housing and business land, the capacity of land intended for urban development based on:

a) the zoning, objectives, policies, rules and overlays that apply to the land, in the relevant proposed and operative regional policy statements, regional plans and district plans; and

b) the provision of adequate development infrastructure to support the development of the land."

[Emphasis added]

6.12 By reference to this definition it is clear that the adequate development infrastructure is integral to the provision of sufficient development capacity. Merely rezoning Pokeno West (without development infrastructure) will not contribute additional development capacity and will not assist WDC to meet its NPS:UDC obligations.

Comments by Peter Fuller (Barrister)

6.13 Birch Surveyors' Appendix A includes comments on PVHL's submission by barrister Peter Fuller.¹⁷ Mr Fuller refers to the history of the NPS:UDC and makes broad statements about the motivations for its development. He also makes a number of unsupported observations about the need for the Council to "expand its rating base", which do not seem to be connected to the text of the NPS:UDC.

6.14 Where the meaning of a provision in a statutory document is unclear, a purposive approach to interpretation may assist to resolve any ambiguity. However, this does not entitle one to rewrite the document. The Objectives and Policies of the NPS:UDC are clear, directive, and must be given effect to by the PWDP. The Pokeno West proposal fails to do so.

6.15 Mr Fuller states that "The NPS:UDC makes it clear that there is far greater harm and risk with undersupplying land, for urban use, than oversupplying

¹⁷ Birch Surveyors further submissions FSN. 1297 and FSN. 1261, Appendix A, pp 9 - 11.

(PC13.b)).”¹⁸ With respect, Policy PC13(b) says no such thing, and in fact refers to the requirements for a future development strategy. Mr Fuller’s comments about undersupplying land are also irrelevant as the s 32 documents confirm that there will be sufficient development capacity at Pokeno in the medium term (to at least 2026) – and capacity issues in the long term relate to infrastructure provision, not zoning.¹⁹

- 6.16 Mr Fuller refers to the decision by Judge Jackson in *Bunnings Ltd v Queenstown Lakes District Council* [2019] NZEnvC 59, which in his submission makes it clear that the price of land is a relevant consideration in creating an efficient land market. We agree with this assessment but it does not avoid the need for robust planning and adequate infrastructure.
- 6.17 Mr Fuller states that the Pokeno West will help to ensure that Pokeno can continue to grow and will assist with the creation of a competitive land market. Again, Mr Fuller fails to address the NPS:UDC requirements in regard to provision of development infrastructure. PVHL is not opposed to further urban development and growth at Pokeno provided that it is well-planned and implemented on the basis of robust technical analysis and appropriate consultation.

WDC discussions regarding rezoning

- 6.18 Birch Surveyors’ further submissions state at page 11 of Appendix A that:

“The inclusion of Pokeno West in the PWDP was a Council initiative that is similar to other greenfield land that has been identified for future residential development. The merits of including Pokeno West were considered by Council in the context of the wider assessment of aspects such as landscape values and the extension of essential infrastructure.

Council has also had discussions with key service providers, government agencies and local Iwi in respect of Pokeno West which has resulted in their decision to include the proposal for wider consultation as part of the review of the District Plan.

In terms of Iwi specifically, Council have socialised all aspects of the Plan with an Iwi Reference Group that has worked alongside Council in the preparation of the Plan. This includes the Pokeno West proposal.”

¹⁸ Ibid, p 10.

¹⁹ Market Economics Consulting’s Housing Development Capacity Assessment 2017 - Future Proof Area, pp 113-115; Figures 78 and 79.

6.19 As noted previously, PVHL has made a LGOIMA request to WDC specifically requesting information about discussions WDC has had about the rezoning of Pokeno West. WDC's response disclosed no relevant information that would help to explain or support the rezoning decision, and this contrasts sharply with the claims made by Birch Surveyors. In particular, no evidence has been made available to show that the Council has:

- (a) Considered the merits of rezoning Pokeno West in the context of landscape values – given that no landscape or visual assessments have been undertaken;
- (b) Properly considered the extension of essential infrastructure that would be necessary to develop Pokeno West, or provided for sufficient infrastructure funding to support the proposed development;
- (c) Had discussions with key service providers, government agencies and local Iwi in respect of Pokeno West – as no records have been provided of the existence or outcomes of such discussions; or
- (d) Addressed the significant technical challenges to the feasibility of development at Pokeno West.

7. **RPS REQUIREMENTS**

7.1 PVHL's submission on the PWDP outlined the relevant requirements of the RPS which 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)).

7.2 The above requirements are clear and have not been satisfied by the Council's s 32 analysis.

Birch Surveyors planning analysis

7.3 In response to PVHL's submission that the s 32 analysis did not include any planning assessment against the RPS, Birch Surveyors' further submissions purport to provide such an assessment in Appendix A – Table 1. Birch Surveyors considers that this assessment demonstrates that the proposed rezoning gives effect to the RPS.²⁰

7.4 In our submission Birch Surveyors' analysis repeatedly overstates the robustness and comprehensiveness of the Pokeno West technical reports. By way of example, it claims that implementation methods 6.1.8(b), (j) and (k) are satisfied by the Maven Associates report which "outlines the three waters servicing arrangements for Pokeno."²¹ This is patently incorrect – the Maven report does not provide any information about the scale, funding and staging of infrastructure required.

7.5 Further, in our submission the conclusion reached by Birch Surveyors cannot be correct. Any analysis of the provisions of the RPS sits within the umbrella of the NPS:UDC, which the RPS is required to give effect to. If the rezoning proposal is contrary to the NPS:UDC it cannot be inconsistent with the policy direction of the RPS.

8. CONCLUSION

8.1 PVHL has made a submission in opposition to the proposed re-zoning of Pokeno West and 179 / 205 Helenslee Road because it is primarily concerned about the potential effects on existing communities and currently planned development that is being undertaken in accordance with PC24 and PC21. Potential effects include:

- (a) Erosion and flooding risks affecting downstream communities;

²⁰ Birch Surveyors further submissions FSN. 1297 and FSN. 1261, Appendix A, p 11.

²¹ Ibid, p 16.

- (b) Significant earthworks on steep slopes and adverse environmental effects that have not been properly assessed;
- (c) Development occurring in advance of development infrastructure being provided;
- (d) Poor urban planning and increasing pressure on transport infrastructure; and
- (e) Insufficient provision for community, social and other infrastructure.

8.2 The existing reports about Pokeno West and 179 / 205 Helenslee Road are woefully inadequate in terms of the level of detail and do not establish that development of the area is feasible. The area is also not serviced by development infrastructure and no evidence has been made available about infrastructure funding.

8.3 Until that evidence is provided, the proposal does not comply with the NPS:UDC or the RPS and thereby fails to give effect to them.

8.4 In our submission it is necessary for consideration of the rezoning proposal to be put on hold until the requirements of the NPS:UDC and the RPS have been satisfied.

DATED at AUCKLAND this 26th day of September 2019

POKENO VILLAGE HOLDINGS LIMITED

by their solicitors and duly authorised agents
BERRY SIMONS



S J Simons / E J Sheppard