

BEFORE THE INDEPENDENT HEARINGS PANEL

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

Plan Change 1 to the
Operative Waikato
Regional Plan

STATEMENT OF PRIMARY EVIDENCE OF MURRAY KIVELL

FOR THE SOUTH WAIKATO DISTRICT COUNCIL

AND

THE MATAMATA – PIAKO DISTRICT COUNCIL

BLOCK 1

PART A – OVERVIEW & CONTENT

PART B – OVERALL DIRECTION, VALUES & USES, SCIENCE & ECONOMICS,

OBJECTIVES, LIMITS & TARGETS

Submitter Number: 72892

Submitter Number: 73419

Dated: 15 February 2019

A. Introduction

1. My name is Murray Spencer Kivell. I am providing planning evidence on the Block 1 Topics of Plan Change 1 to the Operative Waikato Regional Plan. My experience and qualifications are set out in section C of this evidence.
2. In this evidence I have considered the relevant South Waikato District Council (SWDC), Matamata-Piako District Council (MPDC) and Waikato Regional Territorial Authority (WARTA) submission points on the topics included in Block 1 of the hearings from a planning perspective.

B. Executive Summary

3. A fully informed appraisal of the Plan's provisions can only occur when consideration is given to the relationships and links between the objectives, policies, rules and methods as a whole to determine an overarching position for or against Plan Change 1 (PC1) – Te Ture Whaimana o Te Awa o Waikato. Furthermore, the organisation of the hearings into 'Blocks' 1, 2 and 3 does not lend itself to such an analysis.
4. This Plan Change is about the applied and not the theoretical application of the concept of sustainable management. Regional Plan Change 1 – Healthy Rivers/Wai Ora, (PC1) must provide clarity to the concept of sustainable management as this will apply to the Waikato and Waipa river catchments. This means providing clarity and certainty to all landowners, communities and Councils as to the purpose of the provisions and promoting reasoned, practical and verifiable methods so all can contribute to achieving those goals recorded in the Vision and Strategy for the Waikato and Waipa Rivers (hereafter referred to as the 'Vision and Strategy').
5. My over-arching question is whether the basic science is robust enough to base sound and equitable policy and regulation for the Plan Change to satisfy the statutory requirements of the Resource Management Act 1991 (RMA).
6. Moreover, while the Vision and Strategy may guide us with aspirational statements, the real test is with determining the preferred methods of implementation to achieve the overall sustainability purpose of the RMA and not just the Vision and Strategy.

7. Therefore, it is necessary for the Plan promoter and the Panel to 'check in' and validate the Vision and Strategy with Part 2 of the Resource Management Act 1991 (RMA) because the Vision itself did not evolve through the established Schedule 1 process of the RMA. It is equally important and a statutory requirement that the Plan Change also satisfy the evaluation tests of section 32 (s32); namely, whether having regard to all the alternatives, the objectives settled on are the "most appropriate" way to achieve the purpose of the RMA and the provisions are the best way to achieve those objectives.
8. This is the central thrust of my statement on the review of the Plan Change provisions as it is understood to impact on the communities of the South Waikato and Matamata-Piako districts.
9. To do this, I provide commentary on:
 - District Council Submissions & Further Submissions (Section E);
 - Profiles for the two districts (Section F);
 - The South Waikato district planning approach (Section G);
 - Section 42A report - high level review (Section H);
 - Section 42A report – some detailed comments (Section I);
 - Section 32 evaluation (Section J); and
 - Conclusion (Section K).

C. Qualifications & Experience

10. My name is Murray Kivell. I am a resource management consultant and have worked throughout the Waikato Region since 1994. I have a B.SC(Hons) in Geography, a Diploma in Town Planning, and a Post-Graduate Diploma in Business Studies (Dispute Resolution). I have been in consultancy practice since 1987 initially with Opus International Consultants, (Hamilton Work Group Manager, Planning), Environmental Management Services (Principal and Director) and Mitchell Daysh Limited (Senior Consultant). I have been a sole resource management/planning practitioner since mid-2018.
11. I have been a full member of the NZ Planning Institute since 1983. I have been an Associate of the Arbitrators' and Mediators' Institute of NZ since 2001. I have been a certified Hearings Commissioner with Chair endorsement since 2015. I am on the list

of Hearing Panel Members for the Hamilton City Council, Waipa District Council, Thames-Coromandel District Council, Rotorua District Council and South Waikato District Council from about 2014 onwards.

12. I have advised the South Waikato District Council on two district plan reviews in 1995 and 2015, and have advised the Council on this Regional Plan Change since its public notification in October 2016. I have participated in the Waikato Regional Territorial Authorities (WARTA) alliance of Waikato Councils for the purpose of participating in this statutory planning process.
13. I have also been engaged by the Matamata-Piako District Council since January 2017 to advise on the potential impacts of this Plan Change on that district.
14. I advised both Councils and was actively involved with the preparation and lodgement of the Councils' respective Primary Submissions and Further Submissions. This role included presentations at workshops with Councillors and meetings with key stakeholders in these communities.
15. I support the WARTA group initiative as these Councils are in a unique position having a responsibility to understand the potential effects of this Plan Change on their diverse communities and to inform the Hearing Panel of these representative viewpoints in relation to this strategically important Plan Change.
16. I record that my wife lodged a submission to the Plan Change (P.A. Lean, Submission No. 71227), on behalf of the Kivell-Lean Trust in relation to an approximately 7-hectare property on Marychurch Road, Hauptau that is located within the Plan Change area. This property we own and operate as a Limousin beef stud farm in conjunction with our 8-hectare home property on Victoria Road that lies some 6 kilometres away and is outside the Plan Change area.
17. In my statement of evidence, I refer to two appendices to Mayor Jenny Shattock's statement of evidence for the South Waikato District:
 - 1 Our District - An Economic and Community Profile (this being an update version of Appendix 2 to the primary submission of the South Waikato District) - this provides a 'backdrop' to Dr. Brent Wheeler's statement of evidence; and

2 Council-led Initiatives to consult with its community on Regional Plan Change 1 (2016-2019) – this traces the various steps taken to inform and formulate a District-wide view on the merits of the Plan Change.

18. These appendices summarise the Council’s commitment over the past two-plus years to inform itself on matters strategically important to the well-being of the district and their desire to collaborate with others to identify the alternative approaches that soften and thus blunt the potential adverse effects on the District if this Change were to proceed in its current form.

D. Code of Practice

19. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and have complied with that practice note in preparation of this report. I agree to comply with it in presenting this report and any evidence at the hearing. The opinions and assessment within this report are within my area of expertise, except where I have stated my reliance on other identified evidence. I have considered all material facts that are known to me that might alter or detract from the opinions I express in this evidence.

20. In forming my opinions, I also rely on the evidence of Dr. Brent Wheeler, economist.

E. District Council Submissions & Further Submissions

21. For the record the submissions lodged by the two Councils are referenced as follows:

- South Waikato (SWDC): Submission No. 72892;
- South Waikato Submission on Variation 1 (V1PC1);
- Further Submission No.72892;
- Matamata-Piako (MPDC): Submission No.73419; and
- Matamata-Piako Further Submission No. 73419.

22. The central focus of the two Councils’ submissions was to support in part the Plan Change “as it aims to achieve the Vision and Strategy for the Waikato and Waipa Rivers” and oppose in other parts “given the potential adverse economic and social coststhat will result from its implementation”.

23. Specifically, with reference to page 1 of the Council submission, the South Waikato:
“Supports the principle of sustainable management as defined under section 5 of the Resource Management Act 1991 (RMA 1991), and on this basis, the Regional Plan Change:

- *Does not provide certainty and clarity relating to the interpretation and administration of its provisions for land owners and land managers in the District;*
- *Does not provide for methods of implementation that are affordable to the South Waikato community; and*
- *Does not incentivise land owners and land managers to achieve sustainable environmental outcomes in the district;*

And on this basis, the District Council:

- *Requests effects based rules to regulate land use practices and activities that are in proportion to the conditions or scale of the environmental effects being addressed; and*
- *Requests the withdrawal of RPC1 to provide time for a targeted approach to identify all impacts on sub-catchments and communities together with rules and alternative methods of implementation, to promote sustainable community and sub-catchment solutions, with the expectation that the Regional Council will then re-notify an amended Regional Plan Change 1; or*
- *If the Regional Council does not withdraw RPC1, the District Council requests amendments to parts of the Regional Plan Change 1 to satisfy section 32 RMA 1991 to provide provisions that are understandable, practicable, cost-effective and fair with their implementation to achieve an effects-based resource management framework.”*

24. The MPDC submission is similarly worded.

25. The two separate Further Submissions lodged by the two District Councils set out some guiding principles sought in the Plan Change:

1. *Effects-based provisions that accommodate changes in land use activity, provide for multiple land use opportunities, innovation and diversification, and can be supported by sustainable land management practices.*
2. *A sub catchment approach to managing the four contaminants.*
3. *A sensible, practical, certain, fair and simple implementation regime with realistic timeframes for reporting and deadlines for compliance.*

4. *Methods of implementation that are affordable to land owners and communities and minimises the impacts on the social, economic and cultural well-being of communities.*
5. *An evaluation that can satisfy section 32 RMA to inform decision-making that the Plan Change and or alternative approaches are fit for purpose to promote sustainable management of natural and physical resources.*

These strategic themes are presented against the context of a district described in Appendix 2: Our District – An Economic and Community Profile, to the Council Submission.

26. These principles are relevant to all aspects of this Plan Change because it is only when considered as a whole and not just for these 'Block 1' hearings, can the provisions of the Plan Change be assessed on their merits in relation to Part 2 and s32 RMA.
27. Both Councils were signatories to the Waikato Regional Territorial Authority (WARTA) Further Submission. The key principles set out in the WARTA Further Submission in paragraph 20 echo and therefore reinforce these principles stated above.

F. PROFILES FOR THE TWO DISTRICTS

28. The two districts share common concerns regarding the Plan Change while having specific and unique concerns about its substance. Concerns about the possible controls on point source discharges as these relate to Three Waters infrastructure services is a common concern.
29. As noted in Mayor Jenny Shattock's evidence at Appendix 1, which updates Appendix 2 of Council's primary submission, in relation to South Waikato:
 - Half the district is in the Upper Waikato Freshwater Management Unit (FMU);
 - The most dramatic expression of this is that 'half' the township of Putaruru is in the administrative area of the Plan Change, and conversely half the town and the district will not be governed by the rules of the Plan Change – this will create a governance and administrative challenge at both the district and regional level that cannot be disregarded or dismissed;
 - The economic base of the district is underpinned both by dairy farming and dairy processing, and forestry and forestry processing and neither of these land use

activities recognise the administrative boundary of the Waikato River catchment as I have just described – it is the strength of the primary sector that directly enables people and communities to provide for their social, economic and cultural well-being;

- The Operative District Plan (2015) has in place rules that I refer to further in section G for managing land conversion and providing riparian margins to address landscape, biodiversity and amenity outcomes and indirectly improving water quality outcomes - this is ironic given the potential duplicity of these operative provisions with the proposed regional rules and how these will be administered for the two 'part catchments' that make up the District;
- The potential economic and social impacts are assessed as being significant and adverse for both this stage one Plan Change and over the long term – the provisions settled on need to have an over-arching consideration to the well-being of people and the environment and that one should not be achieved at the expense of the other.

30. With regard to Matamata-Piako district:

- In contrast, only a small portion of the district estimated at 1% in in the Plan Change area;
- However, the economy is also based on a well-established dairy farming and dairy processing sector operating over 80% of the district's grasslands;
- Critically, the district supports extensive areas of between 3,000-4,000 hectares of Class 1 and 2 soils that are increasingly being used for/earmarked through land aggregation for horticulture and vegetable production and processing activities;
- The consequences of policy and rule development for the neighbouring Waikato catchment is seen as being a precursor to the possible regulatory regime that may be proposed for the Waihou catchment wherein the district is predominantly located, as a future Plan Change; and
- The economic and social impacts may well be foreshadowed by the experience of the proposed regulatory framework on the South Waikato community.

31. In summary, the submission poses the question: Is the Plan Change going too far, too fast, and with too greater cost to communities?

G. THE SOUTH WAIKATO DISTRICT PLANNING APPROACH

32. South Waikato fronted many of the concerns that the Hearing Panel faces today, but from a district planning perspective during the review of its District Plan during 2012-2015. I was the principal author of District Plan Hearing Report 5: *Impact of Farming on Environment* dated September 2013. The report details the debate on the merits of alternative approaches to improve environmental performance for the sector and involved eleven of the parties with all but one now being submitters to PC1.
33. The outcomes from these hearings is a District Plan made operative in 2015 that:
- Addresses the Vision and Strategy for the Waikato River in section 1.4.1;
 - In section 2 – Significant Resource Management Issues for the District, the first issue is: The health and wellbeing of the Waikato River while the second issue is: Recognising Tangata Whenua values; and
 - Rules in the Rural Zone (Rule 28) to minimise the impacts of land use change on the health and wellbeing of the Waikato River and specifically, the conversion of commercial forestry land for farming is provided for as a Controlled Activity (Rule 28.3.2c) provided there is compliance with the performance standards in Rule 28.4. Control is reserved over measures to manage effects on riparian margins including existing indigenous vegetation and stock access, ensuring performance standards in Rule 28.4 are implemented, and measures to manage the extent of disturbance of natural character, access, amenity values and landscapes including cultural landscapes and indigenous biodiversity (Rule 8.3.1g)).
34. The relevant performance standards in Rule 28.4 include:
- Rule 28.4.8 Riparian Management under a) vegetation damage, earthworks and mechanical cultivation shall not be carried out within 10 metres of the edge of a wetland or lake greater than 0.5 hectares, or within the riparian setback to the banks of a river or streams listed in Table 1;
 - Under b) farming involved in the conversion of land used for forestry to farming shall require fencing of the riparian setback to effectively exclude livestock and accessways; and

- Table 1 (on page 217 of the Plan) lists by catchment the streams and riparian setback requirements developed by Wildlands Consultants and drawing on data sets using the NIWA River Environment Classification. These are mapped in Appendix J in Volume 2 (pages 166 to 168) of the Plan maps. Riparian setbacks range from 20 metres for the main stem of the Waikato River, and 10 metres and 5 metres for other rivers and streams.
35. For the record, the WRC was involved in the appeals that settled these provisions and settlement was achieved through Environment Court led mediation.
36. So what status will these provisions have in relation to any regional rules once operative under PC1? Will these district rules need to be 'amended' or even deleted to "give effect to" PC1? This question is posed on the basis that a district plan must give effect to national policy statement under s75(3) and I understand that the Vision and Strategy has this status. Alternatively, s75(4) states that a district plan "must not be inconsistent with" a regional plan. In either case, what statutory procedures should be adopted by the District Council to achieve conformance? Where do the costs lie in addressing these questions? And, who participates in this process? The same question can also be asked in relation to the Matamata-Piako District Plan too.
37. These district overviews provide the context for my consideration of the provisions of Plan Change 1 as reported on by the s42A reporting officers and the possible impacts on these two Districts.

H. SECTION 42A REPORT - HIGH LEVEL REVIEW

Fragmented analysis

38. The requirement for the s42A reports to be segmented by topics makes it hard to grapple with the substantive resource management issues in any coherent manner. The aim should be to provide a holistic and integrated approach to resource management planning and policy development. This is not enabled by the current segmented approach but most certainly is required to satisfactorily address matters under s32.

39. There is presently limited capacity for parties to assess the merits of the objectives in the absence of scope to consider policies, rules and methods including alternatives/non-RMA methods. My assessment is therefore rather muted as a result.

RMA 'Strategic' Considerations

40. There is no robust discussion, suggestions or recommendations of the three strategic planning matters that concern PC1:

- Relationship between Part 2 and s5 RMA and the Vision and Strategy;
- Section 32 'gateway' duties and the evaluation to support the current (and any alternative) Plan provisions; and
- Relationship between the NPS-Freshwater 2014 (updated in 2017), and the circumstances under which 'any inconsistency' triggers the situation that the Vision and Strategy shall prevail as being a superior planning regime (s42A report, paragraph 11). This is a similar question to the one posed in paragraph 36 above in relation to the South Waikato District Plan.

41. This results in an inability for submitters to assess the merits of the notified PC and any subsequent changes suggested, or in many cases deferred for further reporting, resulting in an inability to assess the merits of the provisions in their entirety.

42. Given the potentially significant impacts 'foretold' in the economic assessments completed under the auspice of the Technical Leaders Group on the primary/land production activities and communities in the South Waikato it now falls to the Panel to ensure these links are clear and understandable, traceable (verifiable by the sciences), realistic and affordable to implement by way of rules and other methods by all landowners.

43. In my opinion, the 'evaluative duties' of the s42A reporting team advising this Panel are not fulfilled by simply stating (paragraph 285):

"...The significant costs to some parts of the community of achieving the Vision and Strategy are recognised, but the achievement of the Vision and Strategy, and the NPS-FW, are mandatory."

(emphasis added)

44. In my opinion, what is mandatory is achieving the purpose of the Act, this being “to promote the sustainable management of natural and physical resources.” I conclude that as drafted, the section 42A report side-steps the question of the relevance of the relationship between section 5 (and Part 2) RMA with the Vision and Strategy, and does not acknowledge the primacy of section 5 to the overall consideration of the planning framework for implementing the Vision and Strategy. I speak more about the application and statutory weight of the Vision and Strategy and Part 2 in paragraphs 76-81.

45. I also conclude that as drafted, the section 42A report does not provide any robust audit record of the s32 assessment but simply states at paragraph 276:

“Ahead of the evidence being presented, the Officers consider the science and economic analysis and modelling to be both comprehensive and adequate to enable the RMA requirements in s32 to be fulfilled.”

And, at paragraph 291:

“...Section E.2.7 of the s32 Report states that there was significant data collection, analysis and modelling undertaken to support PC1”

46. I consider the s32 evaluative duty placed on the Plan Change promoter and the Hearing Panel further in Section J.

47. What the section 42A report does say that I agree with is that the Plan Change is a first step in a staged planning process that must be intergenerational in the timeframes **likely** to be required to achieve the thirteen objectives of the Vision and Strategy. But there is good reason why this is the case and why the first steps must be cautious steps as is explained in the following sub-sections.

Dealing with Uncertainty under the RMA

48. Uncertainty is associated with key elements of the Plan Change such as:

- The extent of the available scientific data to support the planning framework (296, 298) – is there sufficient verifiable science available to base the suite of objectives and policies on; for example, is the reliance on Overseer appropriate

and warranted to determine Nitrogen levels and compliance with the proposed rules governing nitrogen discharges?

- The available data to support the assessment of environmental effects – the reports prepared in support of the Plan Change suggest adverse economic and social effects over and beyond the first-stage period of the Plan Change, and for South Waikato this is significant – I discuss this aspect further in Section J, Section 32 Evaluation;
- Achieving the stated water quality standards based on the four contaminants as envisaged in 1863 – to achieve these stated water quality standards will be reliant on technologies and farming practices **not yet available or economically feasible** (12, 13).

49. Given such uncertainties about the data available for modelling future states and its interpretation by the specialists and the continuing need for more data, together with the scale of potential adverse economic and social effects presently identified from the technical reports then it is appropriate to adopt a cautionary approach to the expression of policy. With all these qualifications to the evidential baseline, I find it surprising that a ‘one-size-fits all’ planning and regulatory approach has been settled on.

50. The s42A reporting team acknowledge this very point at paragraph 296:

“.....the Officers do not consider it feasible to wait until there is more data or information available to further model the outcomes of the policy mix, but do note that one of the aims of PC1 is to gather better information to inform future plan changes.”

51. In my opinion, adopting an approach to sustainable management that can be **implemented in a practical sense** should firstly be based on well established and generally agreed data sets, support diversity or enable flexibility in the management approaches while ensuring resilience of the natural, community and business systems that we operate in.

52. On this point, I attended day 2 of the expert conferencing held on 22 November 2018 as an observer, and rely on the Memorandum from the two senior facilitators Messrs Hill and Shepherd who chaired the conferencing on the issues associated with the water quality science and economic modelling. They concluded at paragraph 5 of their memorandum:

“It seems to us that the underlying issues discussed at the Forum are of such fundamental significance that it is unlikely in the available time...that useful progress would be made.”

(Emphasis added)

53. The extensive “Summary tabulation of Issues raised” speaks to these issues of ‘fundamental significance’.
54. In these circumstances adopting a range of plan methods that can include rules therefore seems a reasonable and pragmatic outcome. Landowners individually and collectively should be encouraged to seek out and adopt innovative ‘solutions’ to **local** water quality issues and therefore the planning responses should not be inhibited but be ‘fit for purpose’. In my terms, this does not equate to the ‘one-size-fits all’ approach. In this regard, the move to sub-catchment planning and promoting collaborative approaches, as discussed below, provides an opportunity that needs further investigation.

I. S42A REPORT – SOME DETAILED COMMENTS

55. My key observations on the opinions presented here are made, with reference to the relevant s42A paragraphs recorded in brackets for convenient referencing. They reflect the concerns raised in both the South Waikato and Matamata-Piako District Council submissions.

Overall Direction

56. The ‘straight line’ journey illustrated to achieve the overall direction for water quality improvement (102, 117) – while schematic, this approach over simplifies a complex and dynamic environmental situation that is acknowledged repeatedly elsewhere in the report. It is unwise to base planning provisions including rules on this assumption given the qualifications made regarding economic and social costs and their potentially unequal impact on different parts of the region, and all this while recording in the technical reports that these “costs are significant” (124, 125). These adverse effects need to be recognised and accommodated by adopting a cautious approach to the review of both an objective/policy framework and the regulatory and non-regulatory approaches adopted.
57. The reporting team says as much in paragraph 52:

“...The full achievement of the Vision, and a number of the Objectives, will require non-RMA processes and activities in parallel to PC1 and future plan changes.”

58. While the staged approach is iterative based on data collection, monitoring, learning and refining as we go, I do not consider that the objectives should be directive as to imply a reliance on rules being essential to achieve the stated goal. I expand on this point now.

Water Quality State

59. The 80-year timeframe to achieve the water quality objectives of the Vision and Strategy is a CSG-determined outcome of rivers safe for swimming and for taking food (12) while the necessary “technologies or practices that are not yet available or economically feasible” (13) – this reflects a water quality state **estimate derived from modelling for 1863** and effectively becomes a modern-day proxy for a ‘permitted environmental baseline’. My question is whether this approach is appropriate, realistic and justifiable given the stated uncertainty (and risk) that methods of land management and production systems are unlikely to operate or even exist to deliver this ‘environmental end state of 1863’ or nirvana.
60. Rephrased, how can you set a timeframe of 80 years knowing, based on present knowledge that it cannot be achieved with the foreseeable tools in an environmental management ‘toolbox’ for land managers and the regulator? Are we setting up a planning system that is set up to fail?
61. I also note that the 80-year time ‘target’ is supported by the s42A reporting team because it was “settled on by the CSG” (308) – this warrants further consideration in my opinion. The submission from the two Councils seeks to rephrase the relevant objective to something like “...at least 80-years” to recognise that the objective(s) need to present **realistic statements of intent**. This is not supported by the reporting team (at paragraph 308). In my mind this points to a further shortcoming in the s32 evaluation – practically and literally, unachievable outcomes are being sought to achieve the Vision and Strategy and this is settled on in the absence of an assessment against the Purpose and Principles of the Act.

The Vision's Objectives

62. Objectives G, H and K of the Vision and Strategy are stated to provide “specific and incontrovertible direction on what needs to occur” (23, 125) – in this case, some objectives are implied to be more relevant than others for PC1 but the case for these objectives (and the other objectives) being assessed in terms of their consistency with Part 2 is not made.
63. From my reading of these “Objectives for the Waikato River” (recorded as a.-m.) I too consider that some serve a more important purpose in informing on PC1. I am unclear whether this is intended or not. The objectives seem to focus around four broad themes that could provide a more informed basis to understand and establish a clearer relationship with Part 2 of the Act.
64. There is an environmental baseline or starting point: The Waikato River is ‘degraded’ and should not be required to absorb further degradation as a result of human activities (h.) and there is a need for “the restoration and protection of the health and wellbeing of the Waikato River” (a.) – in some parts of the two catchments it would seem that water quality standards are good, so shouldn’t the PC1 objectives also embrace the aspect of ‘maintenance’ too.
65. There are relationships to the Waikato River that are to be recognised: The relationship of Waikato-Tainui (b.); the relationship of Waikato River iwi(c.); and the relationship of the Waikato region’s communities (d.) – these matters should be afforded equal weighting as they represent the ‘communities of interest’ and would therefore seem to accord with Purpose and Principles under Part 2 RMA.
66. Some desirable approaches to management are promoted: An integrated, holistic and coordinated approaches (e.); the adoption of a precautionary approach (f.); the recognition and avoidance of adverse cumulative effects (g.); and the application of maatauaranga Maori and latest available scientific methods (m.) – these objectives reflect best practice and are judged as underpinning the RMA purpose of sustainable management.
67. The strategic outcomes are recorded: the strategic importance of the Waikato River to New Zealand’s wellbeing (j.); water quality that is safe for swimming and in taking food from over its entire length (k.); the promotion of improved access (l.); and the protection and enhancement of significant sites, fisheries, flora and fauna (i.) - this

presents a diverse set of possibly competing outcomes, however, I suggest that Objective K. has become the over-riding consideration and the single focus of the Plan Change and the 'other matters' seem to have fallen away.

68. This commentary may assist the Panel further in its consideration of the translation of the Vision and Strategy Objectives into PC1 Objectives and the "consistency" of those Objectives (the subject of this Block 1 hearings) with Part 2 RMA.

Nitrogen

69. The management of nitrogen "is not considered to be any more important than the other three contaminants" (131) and officers "broadly agree" that "the PC1 regime with respect to N is costly, inflexible and potentially has a range of unintended consequences"(132) but then the statement follows under the first bullet point "...increase clarity that no individual can expect to cause an increase in losses (f)or any of the four contaminants, and that the direction of travel is improved' - the "one size -fits -all" approach is again promoted as essential to reaching the stated goal of a water quality state estimated to be that of 1863 as noted above or a water quality standard safe for swimming and gathering food.

'Grandparenting' Nitrogen

70. The PC position on 'grandparenting' is maintained (147, 148, 149) - while the re-stated reason is that the overall level of N loss within the entire catchment needs to decrease it seems pragmatic and potentially cost-effective to address the worse-performing sub-catchments first and not to also seek continuous improvements from those sub-catchments that I understand where N is not an issue.

Variability in the range of contaminants

71. Following on from the focus on N, the reports also indicate that there is variability in the range or concentration of contaminants in the two catchments of Waikato and Waipa that warrant 'management' and this should be recognised at a sub-catchment level (109, 136). This would provide a better basis for determining the degree of intervention required through rules and other methods including financial assistance to Councils, sub-catchment groups, landowner collectives for example. The s42A reporting team seem to acknowledge this point in paragraph 137.

Modelling

72. The modelling undertaken was judged to be “fit for purpose” in that it informed the assessment of costs and benefits, and that this reflected a high level of analysis (288) - this is questioned when understanding the potential adverse economic, social and cultural effects (when, where and on whom, and the potential cumulative effects) is crucial to the overall assessment of the merits of the PC. I further rely on the statement of evidence of Dr Brent Wheeler in this regard.

Overseer

73. The limitations of the Overseer model are noted but a determination on its possible use is deferred for consideration in the Block C 42A report (297, 298) - again a crucial element of the Plan Change where unhelpfully, consideration of this matter is deferred. The question is whether Overseer is relied on to support a rule and performance standard, or is a guide and management tool to aid with decision making for landowners completing and implementing Farm Environment Plans for example.

Rules and Non-RMA Methods

74. The acknowledgement that non-RMA methods should operate in parallel (52) – it is essential that the hearings inform the Panel on both the regulatory and non-Plan methods that are **able to contribute** to providing practical approaches that landowners can understand and implement if land use change and land management changes are to be achieved and sustained over the long term. I suggest far greater consideration and assessment is required from the s42A reporting team to determine this mixed methods approach than has occurred to date.

Sub-catchment planning approach

75. A sub-catchment planning framework is generally supported but is judged to be “not well supported by higher-level planning documents” namely, the Vision and Strategy and NPS-FW. Reference is made back to a focus on “cumulative effects” and “the avoidance of any further degradation in the river systems” as being the reasons for this view (141, 142, 143) - from my non-expert viewpoint, a sub-catchment approach is a finer grained framework that could more efficiently and effectively begin to halt further degradation and begin to achieve contaminant decline in a particular sub-catchment, so I cannot see how this risk of ‘not having an eye on the prize’ arises (143), particularly if management approaches are developed based around community commitments to local solutions. Hopefully the link between ‘environmental cause and effect’ and the management response and mitigation adopted then becomes self-evident. This local

led opportunity should be encouraged as opposed to regulation - providing for the 'one size fits all' approach and its apparent administrative convenience.

Objectives

76. In these circumstances it is difficult to form firm opinions on the amendments proposed to the Objectives in the absence of understanding what other changes may be recommended to the supporting policies, rules and methods. It therefore is prudent to reserve expressing opinions on the merits of each of the suggested amended objectives.
77. The Councils' submissions commonly support relief "in part" given the challenge on a case-by-case basis when trying to assess subtle nuances between the variety of relief sought by submitters. The overall outcome must be to provide for integrated management as required under s30(1)(a) of the Act.
78. In relation to the track change version provided by the s42A reporting team I caution against drafting Objectives that implies that a pre-determined method is required, that is, rules to achieve an outcome. A more measured expression to the objective statements is appropriate; in other words, less directive expressions given the timeframes being promoted. For example, the 80-year period could reasonably be stated as 'the desired 80-year period' or 'at least the 80-year period" in relation to objective 1 as I have previously discussed, for example. I also note that the track change version on page 15 under 3.11.1 List of Tables and Maps promotes the addition of the word "...and desired water quality states" in four cases. So, the inclusion of either of these suggested words in recast objectives is appropriate to me.
79. Similarly, the word 'maintenance' could be inserted in objective 2 to recognise that parts of the river systems currently demonstrate good water quality so recognition of this is appropriate to set the baseline that the sciences have provided. I would also add that in relation to regional council functions, s30(1)(c) also uses the word 'maintenance' in relation to the control of the use of land for the purpose of:

(i)

(ii) *The maintenance and enhancement of the quality of water in water bodies.....;*

....

(iia) *the maintenance and enhancement of ecosystems in water bodies....;*

80. From **both** the Councils' submissions, the 'headline' points I continue to emphasize are:
- The Objectives must be realistic, and acknowledge the inter-generational time period will likely be at least 80 years in relation to achieving the attribute states (previously worded 'targets) in Objective 1 for example – be realistic in this target setting;
 - Objective 2 is recast to be consistent with s5 RMA – continue to enable people and communities to provide for their economic, social and cultural wellbeing while maintaining, restoring and protecting water quality;
 - Objective 3 recognise that water quality improvements may only be achieved ten years after implementation (2036), if implemented by 2026, to recognise there may well be a time lag between implementation of plan rules and other methods and recording the anticipated water quality improvements; and
 - Objective 4 is redrafted to recognise that a staged approach is necessary to minimise the impacts on economic and social wellbeing.
81. In summary, the objective(s) must fully recognise community impacts and that communities will need to be resilient to manage the transition espoused by the objectives. "Resilience" provides a useful, single word to give meaning to Section 5 and Part 2, RMA in my opinion. The word means the capacity or ability to recover quickly from difficulties. The term finds practical expression for the South Waikato as I discuss in paragraphs 95-97 below, for example.
82. Resilience can be sustained by adopting an approach(es) or pathways (rules, non-RMA methods for example) that **enable** flexibility and, in this case, provide for or incentivise innovation in the planning approaches settled on, to build resilience into production systems (farming, forestry, farm-forestry, vegetable growing as examples) and ecosystems (natural capital of the soils and vegetation). Flexibility can then enable adaptive management systems or practices to operate, build capacity in economic and business performance and enhance families' and communities' wellbeing.
83. Resilience also implies **coping** with uncertainties and therefore the economic costs associated with all implementation methods need to be taken account of along with the compliance costs faced by all parties as well as acknowledging the opportunity costs (foregone opportunities) faced to parties, that is, committing resources to

meeting PC1 expectations could limit opportunities for people and communities to do other things.

84. Consequently, regulation should not be the default mechanism implied from reading and interpreting the objectives of RPC1 to achieve the Vision and Strategy. In this respect, I note that as currently drafted all farming activities are regulated with auditing to confirm compliance along with property data provision for production activities over 2 hectares. Is this reasonable and consistent with the Objectives proposed? The Council submissions suggests there is not the justification to settle on this 2-hectare trigger and this is nothing more than a data gathering exercise by the regulator and an reporting imposition on the landowner.
85. However, I do give qualified support for the following recommended amendments of the S42A reporting team:
- The deletion of the opening preamble statements to each objective; and
 - The deletion of the 'Reasons' for adopting the respective objectives (paragraph 313 refers).
86. This is because each objective can be read as a stand-alone provision and will not be 'clouded' by the preamble and additional commentary which through the submission process has already invited the re-shaping of the interpretation of each objective. However, this approach may pose formatting inconsistencies with their insertion in the Regional Plan and therefore may need further consideration as a consequence.

J. COMMENTARY ON SECTION 32 EVALUATION

87. A s32 evaluation report should provide the evidential framework upon which the planning decisions for PC1 must be made. The section's provisions are **directive**. The evaluation report 'must' (the Act's words) with reference to part of the provisions of Section 32:

'examine the extent to which the objectives...are the most appropriate way to achieve the purpose of this Act' (s32(1)(a));

'examine whether the provisions....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' (s32(1)(b))*

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)

88. Completing a s32 Evaluation Report requires considerable professional judgement to 'examine' and 'identify and assess' with the scope and extent of the assessment directly related to the scale and significance (and complexity) of the planning /resource management matters under review. In this regard, the bar is high, very high – PC1 is a strategically significant policy initiative at the regional **and** district(s) level for the reasons already set out. Therefore, the analysis needs to be robust rather than cursory to reflect this scale of 'significance'. I would expect to see an independent view/audit provided particularly of **other reasonably practicable options for achieving the objectives**, the **benefits and costs**, and the **risk of acting or not acting if there is uncertain or insufficient information** for example. This contrasts with the CSG approach that is 'reviewed', and we are presented with the broad-based endorsement that is stated throughout the s42A report.
89. The s32 process must be iterative and therefore be responsive to the evidence base presented before and during the hearings process that includes expert conferencing.
90. The Panel therefore must be satisfied that the provisions settled on do meet these s32 'duties' or obligations as recorded above from the Act, and the 'chain of

interconnectedness' between s32(1)-(4A) including that **the objectives are the “most appropriate” way to achieve the purpose of the Act.**

91. Embedded in any assessment is the need to recognise the complexities inherent in the PC and the accompanying planning provisions, and specifically:
- The multi-dimensional framework being developed to implement an enduring concept for sustainability;
 - The measures to accommodate/recognise the intergenerational timeframe that is required/relied upon to implement this concept of sustainability in a meaningful way;
 - The detailed but as yet incomplete sciences, along with the future monitoring, modelling and reporting that will be required to trace the direction, performance and rate of travel to achieve the Vision and Strategy;
 - The future scope of compliance monitoring and reporting required of landowners to assess their performance and the rate of progress and the direction of travel to achieve the Vision;
 - The expanding regulatory and compliance and reporting 'load' on the Regional Council and the burgeoning 5,000-plus regional consent holder 'clients';
 - The monitoring and reporting required to assess the economic (and employment) and social and cultural impacts (benefits and costs) on local communities who will be accountable for progressing the direction and rate of travel to achieve the Vision and Strategy;
 - The general recognition that the PC is based on uncertain or incomplete information that must be improved over time to be able to judge the effectiveness and efficiency of the provisions over time.
92. The terms 'effectiveness' and 'efficiency' come with their own interpretative challenges. With reference to an MFE report *“A Guide to Section 32 of the Resource Management Act 1991. Incorporating changes as a result of the Resource Legislation Amendment Act 2017.”* the term 'efficiency' is suggested to measure **whether the provisions are likely to achieve the objectives at the lowest total cost to all members of society, or achieves the highest net benefit to all of the society.** It is further noted that the assessment of efficiency under the RMA involves the inclusion of a broad range of costs and benefits, many intangible and non-monetary.

93. My issue is that the overall impacts (benefits and costs) of any rule package and associated methods of implementation need to be better ground-truthed to appreciate the likely direct impacts on the ratepayer base of South Waikato and potentially, the Matamata-Piako Districts for example. The impact of the extent of land use change for dairying in South Waikato and Matamata-Piako and not just within the catchment of PC1 needs further critical commentary as does commentary on the likely future state of the South Waikato district's forestry and forestry processing sectors. In this regard I again rely on both the published technical reports and Dr. Wheeler's evidence to suggest that a conservative or cautious approach is warranted to the ways and means of implementing the steps required of **people** to achieve the sustainable management outcomes sought.
94. The "Integrated Assessment Two" Report (the abbreviated name for "*Achieving water quality for swimming, taking food and healthy biodiversity. Assessment of Scenario 1 steps 10%, 25% and 50% for case 1 modelling round two*") presents a stark picture for South Waikato if the Scenario 1 policy is adopted to restore and protect the two river catchments for swimming, taking food and healthy biodiversity. The report 'teases out' my concerns from the perspective of the South Waikato. I precis this under the recorded headings of *Vibrant resilient communities, Employment, Infrastructure and Economic Indicators* and provide several, some lengthy direct quotations.

Vibrant resilient communities

95. Even when adopting the 10% first phase step to improving water quality under a new regulatory control the report notes:
- The Upper FMU has the highest level of impact in terms of jobs losses. That impacts most particularly on Tokoroa and the surrounding areas, which has existing high levels of deprivation and so a change will have a compounding effect for that community. There is an immediate effect on job losses in the Upper FMU, given that this is the smallest step towards Scenario 1. Almost all reductions are in dairy with employees between 18-40 years being important to some parts of the industry. Having a loss in the working age population has a negative effect on the resilience of a community. Sheep and beef and forestry experience some gains in job numbers in the Upper FMU.*
96. Achieving the 100% implementation of the desired water quality targets will, according to the assessment:

From a social perspective time and support reduces the negative social impacts and assists people to make transition. Support could be, for example, research and development grants, land purchases, funding, extension, advice, business development grants, education and training initiatives or infrastructure subsidies. Support measures become critical to assist the change and reduce unintended negative consequences. Communities that are already in decline, will be more affected by a decrease in jobs, which influence population decline and can have the flow on effect of a loss of key services such as schools, healthcare, stores and shops. Providing levels of service and infrastructure relies on having a large enough rateable population base. Working age population brings employment and children to an area. The dairy industry is the most affected by the number of job losses in scenario 1, and people 18-40 years being important to some parts of the industry. So a loss in this sector may impact on this working age population in the area. This is especially so in the Upper FMU. How close a community gets to a tipping point will depend on how close it is now.

97. In terms of the potential scale of these impacts or direction of travel, the report records somewhere between a 3-4 with 5 judged to reflect the potential worst-case effects.

Employment

98. The assessment in relation to achieving 50-100% of the water quality targets, the report notes:

Employment in non-forestry primary industries, particularly dairy farming, would decrease substantially under this step. This would affect the type and number of jobs in these sectors, with many of the job losses affecting low-skilled workers who may struggle to find work elsewhere without retraining. The magnitude of the change for the dairy industry means there would be a flow-on effect for the primary service sectors and other services within the economy. There would be a large regional loss of jobs in these sectors. Depending on the policy approach, this may have a large negative effect on these sectors, which may in turn lead to migration out of the region and force people to look for work elsewhere. However, balancing this is the possibility that adaptation and mitigation within industries could lead to innovation and opportunities for new types of employment. The model shows a major shift towards forestry. An increase in employment in forestry, and wood and paper manufacturing, would result in an increase in the numbers of people working in these industries. This may balance migration out of the region to some extent, and provide jobs for people from industries

that have been adversely affected. The transition to forestry would take place over 60 to 70 years – taking into account successive waves of forestry planting, as dairy is gradually replaced, and the lag time as trees are planted and mature.

99. The potential scale of adverse impacts is banded between 1-4.5 in the longer term.

Infrastructure

100. The report records the following observations, firstly in the context of achieving a 10% first step improvement to water quality:

Overall, the impact of this step on the reliability and affordability of water and river-related infrastructure would be minimal. It is not likely to be practicable to provide incremental improvements to existing wastewater treatment plants to match the nominated incremental improvement targets. Constructing new treatment plants with higher technical specifications may be the only option if further improvements are required, which would bring significant unplanned costs. Most plants are operating at their technical capacity. All treatment plants have existing resource consent conditions and review clauses, and this is the appropriate mechanism to use to change discharge conditions.

101. When considering achieving 100% of the water quality targets proposed:

Costs to the urban centres and the rural areas may be more equitable under this step, because mitigations would be required for both point source municipal and commercial, and diffuse source rural contaminants. Urban municipal point sources would have to take into account the constraints of council planning timeframes, such as those set by the 10 year long-term plans. Affordability for communities would decrease, as job losses combine with increased costs. Upgrades required to wastewater treatment and stormwater infrastructure will create particular affordability issues for some communities. The upgrades to infrastructure are managed through the resource consent process. Costs for these upgrades are passed on to consumers and rate payers. In the case of public infrastructural upgrades, the level and allocation of funding is decided through council long term planning processes, involving assessment of benefits, costs and affordability.

102. The potential scale of adverse impacts is banded between 1-2. Mayor Jenny Shattock details the challenge the South Waikato community already faces in its ongoing

commitment to enhancing water quality associated with the operation of its four wastewater treatment plants and infrastructure. I simply refer the Panel to that statement of evidence and paragraphs 27-30 for the cost implications on ratepayers for these communities to upgrade only one set of public infrastructure services.

Economic Indicators

103. Three indicators are considered - 'Value Add', 'International Exports' and 'Employment'. I don't re-produce the sets of tables or comments here except to offer the commentary in relation to 'Value Add' when achieving 100% of the water quality targets proposed:

Value added for the Waikato region decreases by 3.0%, with a significant impact on Horticulture 40.5% Value added for Waikato dairy farming decreases by 15.1% and for sheep and beef by 16.2%. These impacts are felt throughout all the FMUs. The large reduction in Horticulture will have flow on impacts for local domestic supply of leafy greens that will be felt throughout New Zealand. Land values may decrease due to reduced opportunities. Dairy farms are often highly leveraged and are highly indebted. Any changes that flow onto the banking sector due to repayment defaults will impact on exchange rates and other sectors. Sheep and beef farms typically have lower levels of debt than dairy farms, and decreases in land value would decrease the equity levels. Land equity is especially relied on to offset lower cashflow in drystock farming compared to higher cashflow dairy farming. With such decreases in the agricultural sectors, the declines in smaller rural towns will accelerate as people move away to seek other opportunities.

104. The potential scale of adverse impacts is banded between 1-5.
105. The Trend Wheel representations of the bundle of potential effects from the staged adoption of the Plan Change do provide a useful 'overview' but only serves to further highlight the breadth of the impacts on people and communities whether they be the South Waikato or the Matamata-Piako districts, which as noted, have sizable dairy and dairy processing sectors that underpin their economies.
106. Councils and communities are entitled to ask how such impacts are going to be recognised, and if so, what measures could be adopted through this Plan Change process and through other processes to manage "the use, development, and protection of natural and physical resources in a way, or at a rate, which enables

people and communities to provide for their social, economic, and cultural well-being and for their health and safety...”.

107. The s32 evaluation should present a record of these considerations and their scope for implementation under the RMA and other legislative frameworks, otherwise territorial authorities will be left with district planning frameworks that might be largely impotent in promoting the purpose of the Act.
108. In this respect, I point to the operative provisions of the South Waikato District Plan where measures were put in place to manage land use change while achieving landscape and biodiversity and amenity outcomes back in 2015. Section G of my evidence expanded upon this point.
109. The “Deprivation study” (*Using the Index of Multiple Deprivation (IMD) to understand the drivers of deprivation in your district. A Presentation to Waikato Strategic Planners Network. Rachael McMillan and Associate Professor Daniel Exeter. 9 March 2018*) reinforces the less than optimistic outlook for the South Waikato community. Accepting that the report is acknowledged as not being ‘official statistics’, my high-level summary, with the context of PC1 in mind is:
- South Waikato is the 4th most deprived district in the country and the most deprived in the Waikato region; and
 - The IMD parameters covered include: employment, income, health, education, housing, crime and access.

The message doesn’t change.

K. CONCLUSION

110. I have examined the provisions of PC1 and the matters addressed in the ‘Block 1’ s42A report. As a resource management/planning practitioner I have recorded some wide-ranging concerns regarding its provisions including discussion of the Objectives and the likely impacts on the people and communities of South Waikato and what will be, and the Matamata-Piako district and what might be, should these same provisions be rolled out for the neighbouring Waihou catchment in the years to come.
111. I conclude that:

- The Vision and Strategy and its thirteen objectives when translated to provisions in this Plan Change are yet to confirm consistency with the purpose and principles of Part 2 of the RMA, namely managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their well-being and health and safety;
- While there will be positive environmental benefits realised over time and to future generations, this is likely to be achieved at the 'expense' of the potentially significant adverse effects on people and communities and in particular in the South Waikato; and
- the directives of s32 to complete an evaluation report have not been met as the assessment and the audit recorded by the s42A reporting team still does not contain a level of detail corresponding to the scale and significance of the effects that are anticipated from its implementation.

112. Given the 'block' approach to reporting I have reserved expressing any final opinions on the amended set of objectives presented in the s42A report but made some high-level comments that seek to temper the final wording adopted.

113. I have set out the guiding principles that each District Council has applied through the process to date to assess the merits of an amended Plan Change or any desirable alternative that the Councils hope might come from this hearings process, expert caucusing and mediation.

Murray Kivell

15 February 2019