

Peer Review:

Hearing 25 Zone Extents Framework Report - Dr Mark Davey

1. Waikato District Council commissioned David Hill to undertake a peer review of the Proposed District Plan (pWDP) Framework Report (the FR) proposed to and accepted by the Independent Hearing Panel (the Panel) considering submissions on the pWDP.
2. The Terms of Reference for that review are included as Attachment 1 to this review report. In brief, the overall purpose of the peer review was to enhance the end product (the FR) and provide additional assurance regarding the quality of the reporting undertaken. It would also be used to add weight to the content and recommendations both for the Waikato District Council but also for the district plan hearings panel and submitters.
3. An important qualification to this review is that I have not undertaken an independent professional planning assessment as to whether the pWDP provisions fully satisfy the statutory requirements of the RMA and the s32 evaluation report(s). That is not required. The FR is satisfied on that account and that is the starting point assumption for this review. That determination will, of course, be made in due course by the Hearing Panel which may, then, require a reconsideration of the subject matter of this review.
4. Whilst undertaking this review I have commented back directly on a number of iterations of the FR and provided preliminary comments on two occasions. Those comments have been responded to positively and generally incorporated. This review is based on the 19 January 2021 report.
5. The Panel's 12 May 2020 Minute and direction is included in the FR at Appendix 1. The specific reference to the FR states:
 9. *Council staff have also indicated that:*
 - a) *They intend to make all the section 42A reports available at the same time;*
and,
 - b) *To ensure a consistent approach is adopted by the different section 42A report authors when addressing the relevant statutory matters (planning and legal), they propose to prepare an overarching framework section 42A report which will apply to all subsequent individual section 42A reports ("Framework s42A Report"). The Panel understands that the Framework s42A Report will provide an overview of common matters to be considered in assessing submissions seeking rezoning changes, and include a summary of the basis on which the zones and zone boundaries in the notified version of the proposed plan were selected.*
 10. *Regarding paragraph 9 b) above, we consider that a Framework s42A Report will assist in providing a consistent approach amongst the different section 42A report authors and will also avoid unnecessary repetition in each individual report, thus resulting in a more efficient and effective hearing. Furthermore, we consider the Framework s42A Report should be provided prior to the submitters' filing their evidence to provide helpful guidance on the matters that need to be addressed by the submitters.*

General comments

6. The FR comprises 2 parts of which Part 1 is the backbone to the Panel's expectations.
 - Part 1 outlines the relevant policy frameworks and sets out the three-lens framework against which the s42A report authors are to assess zoning submission requests.
 - Part 2 provides contextual information (including macro strategic considerations related to the District); background to the zones used in the pWDP and changes that have been proposed from the Operative WDP Waikato and Franklin sections; and discusses the role, weighting and policy direction which other higher-order documents and strategies set and which impact the District.
 - The 9 appendices¹ include Appendices 1 – 3 which, for present purposes, contain the three-lens rezoning request assessment framework that is proposed for the s42A report authors.

7. In summary I find that, overall and in terms of the purpose and utility of the report:
 - The FR appropriately notes that, in the absence of decisions made or released by the Panel, the s42A touchstone for the initial assessment of any requested zone change is consistency with the pWDP provisions as notified. While this does not limit the Panel in its decision making, the s42A reports are, in the first instance, the Council's responses to submissions and are therefore somewhat conditioned by what it is seeking to achieve via the pWDP. This is the first lens proposed. The difficulty with this lens is, as noted in the FR, that the translation of the proposed objectives and policies into the proposed zoning matrix appears not to have been conducted through a particularly thorough process. In other words, in many undefined instances the existing zones have simply been carried forward from the operative district plan, seemingly without close attention to their fit with the broader proposed policy framework. That, itself, creates material room for well-reasoned zone changes.
 - The proposed second assessment lens provides helpful direction through its focus on those higher order statutory planning instruments to which the district plan must either give effect or have regard – including the National Policy Statement on Urban Development 2020 (NSP-UD), the Waikato Regional Policy Statement 2016 (WRPS), and Waikato 2070. That lens, of course, applies to the provisions of the pWDP as a whole as well as to the individual rezoning submission requests – and the s42A report authors need to be mindful of that fact notwithstanding the conclusions of the s32 RMA reports to date, and the FR, contending that such is achieved.
 - The proposed third assessment lens is borrowed and adapted from the Auckland Unitary Plan Independent Hearing Panel as a distillation of what is referred to as "good planning practice". While that lens is not mandated under s74 RMA, it is a pragmatic tool that can assist in safeguarding against rezonings that experience

¹ While the Table of Contents lists 10 Appendices, Appendix 4 appears to be missing.

has demonstrated risks creating problematic downstream consequences – such as activity or unwanted effect conflicts.

- Outlines and explains the basis for the proposed pWDP zones and the changes from the operative zones.
- With respect to the important growth demand projections, the FR notes an increase in the deficit of appropriately zoned land for residential and employment (both industrial and business) purposes - even since the pWDP was publicly notified - providing a detailed explanation for the increased projected residential housing (and therefore employment) demand over that anticipated in 2014 for the notified pWDP – and noting the NPS-UD requirement for a demand +20% planned and zoned supply. While there may be argument about the specifics and the timing of that demand, the FR bases its conclusions on the best currently available data – and, of course, there is not a 1:1 relationship between zone-enabled land and development feasible land, such that the demand +20% metric needs substantially more land zoned than the raw number thereby calculated to account for that discrepancy. Without defined density minima the correlation between plan-enabled and development feasible is quite poor. In other words, plan-enabled zoning needs to exceed anticipated demand by a significant quantum both in space (where the market may move over the intervening period) and time (taking into account the lead time for development to materialise on the ground). Experience in Auckland, for example, suggests that this factor required between 50% and 100% more plan-enabled land to meet the actual demand once the reality and contingencies of conversion from live zoning to actual development is taken into account. Allied to that, contemplating a planning horizon of 15 – 20 years better matches the NPS-UD requirement for a rolling 7 year supply beyond the notional 10-year life of the next plan.
- Emphasises the importance of the key strategic objectives of the pWDP – in the absence either of explicit purpose statements for the zones or clear rationale for them (especially at the critical interface with different zone typologies) – and the national and regional-scale development imperatives of the NPS-UD and WRPS (and including the latter’s productive soils objectives).
- Highlights the potential conflict between key urban and rural objectives, while noting that, to the extent practicable, each must be observed and only where that is not possible may one objective be preferred.
- Highlights the importance of critical infrastructure provision and/or funding before or at the same time as additional development or rezoning is enabled.
- Notes that the onus lies with the zone change requester, not Council, to justify a zone change request with appropriate information, insufficiency of which would lead to a recommendation, at this stage, to decline unless the identified information deficiency is corrected at the hearing.

Overall, the FR has taken into account the relevant RMA statutory instruments and statutory tests, and those are reflected in the proposed s42A Assessment Framework.

Specific Comments on Two Matters

The rural / urban / high quality productive soils issue

8. As the FR notes, setting aside the “avoidance” rural strategic objective 5.1.1(a) on high class soils for an urban purpose is a matter that the notified pWDP strongly directs against. Furthermore, that is not an outcome that the NPS-UD explicitly promotes – rather it is the intensification (i.e. the “up and out” principle) of the urban environment, which is defined as an area of land that:

(a) *is, or is intended to be, predominantly urban in character; and*

(b) *is, or is intended to be, part of a housing and labour market of at least 10,000 people.*

Importantly, both limbs of that definition apply conjunctively, and the pWDP makes an explicit distinction between the urban environment and the rural environment.

9. The FR helpfully discusses this potential provision conflict around rural to urban rezoning – a matter that requires careful consideration if the ability to intensify existing urban areas to satisfy projected residential and employment demand – as is promoted in the first instance both by the pWDP provisions as well as the higher order documents – falls short. The FR clearly identifies that reliance upon intensification of existing urban areas is highly unlikely to satisfy the projected demand and, therefore, some incursion into currently proposed rural-zoned land will be required – seeking to draw a distinction between “urban” and “non-urban” landuse to make that more palatable in terms of the policy framework (and, particularly, avoidance objective 5.1.1(a)).
10. While in due course, if objective 5.1.1(a) remains more or less as currently written, it will be necessary to define “urban” for the purpose of subclause (iii) as proposed by the FR, I am not sure that is entirely necessary at this stage.
11. The FR has concluded that the rationale for the proposed zoning is not completely robust – which I take to mean that not every zone and parcel boundary has been subject to policy examination for consistency. That is hardly an exceptional statement. To do so would be a prohibitive task. However, that suggests that zone boundaries can and ought to be adjusted to fit the broader policy framework without the need, at this stage, for adjusting the policy itself. That should certainly be done bearing in mind that once adjusted the strategic imperative will then apply going forward, so not disregarding the policy altogether at this stage. Once those revised zone boundaries are settled, any further and subsequent changes sought will then attract the full weight of the policy framework, including any avoidance policies.
12. The implication of this approach is that while a number of requests for changes from, for example, a rural to a more urban residential zoning may be superficially inconsistent with Lens 1, they may well pass the broader growth and development tests of Lens 2 for the purpose of refining the zone boundaries at this plan review stage. This will require some latitude in applying the notified objective/policy framework since, otherwise, the only option for Council would be to focus its “excess” growth

beyond its immediate administrative boundary primarily into Hamilton and Auckland cities.

The Rezoning Assessment Framework (Appendix 1)

13. The three lenses of the Rezoning Assessment Framework are set out in Appendix 1, comprising some 18 criteria (with 22 objectives / policies lying behind Lens 1).
14. While not all criteria will apply in all cases, as is evident from the detail behind those three lenses, assessing individual requests for zone changes will not be straightforward, and some prioritising of the criteria and their significance by s42A authors will be inevitable in the interests of efficiency. For example, if the particular location sought is not in a defined growth area (as defined either by WDC or WRC) and is not contiguous with or reasonably adjacent to an existing urban area and is on high quality soils then, unless there is significant and persuasive supporting information, there may be no need to inquire further before making a recommendation. Similarly, the lack of immediately available or proposed key infrastructure in a more remote greenfields situation may suggest the recommendation without further consideration.
15. Where those lenses are additionally helpful is in providing guidance also to submitters in terms of the matters they need to bring to the hearing in order to support their case in the event that the relevant s42A report recommends against their relief sought.
16. While a detailed cost benefit analysis per s32AA RMA would not be expected in all instances at submission stage, this is finally a requirement on the Panel if not undertaken by submitters – at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from implementation of the rezoning. For larger areas sought to be rezoned, this should be part of the documentation provided and might require a wider and more strategic economic assessment – for example where productive rural land is proposed to be brought under an urban zoning. That is one of the Lens 3 elements that may well be a critical decision step.
17. At the end of the day, a professional judgement call will need to be made by individual s42A authors as to whether the request in front of them more likely than not accords with the intention of the pWDP, the WRPS, the NPS-UD and of course, in the background, Part 2 RMA. The framework proposed, while complex, provides a robust basis upon which those judgements can be made.



David Hill
Peer Reviewer

26 January 2021

Attachment 1: Terms of Reference for Peer Review

Task

Undertake a peer review of the Waikato District Council's "Framework s42A Report" for rezoning submissions on the Proposed Waikato District Plan (Stage 1). The "Framework s42A Report" is required by direction from the Proposed Waikato District Plan hearing panel dated 22 June 2020. The framework report is to provide an overview of common rezoning issues, to inform and co-ordinate later s42A reports and evidence on rezoning submissions.

Purpose

The purpose of the review is to enhance the end product and provide additional assurance regarding the quality of the reporting undertaken. It will also be used to add weight to the content and recommendations both for the Waikato District Council but also for the district plan hearings panel and submitters.

Scope of work

The peer review will consider the scope, breadth and suitability of information and recommendations contained in the report. The peer review will provide a view on whether any recommendations are appropriate and defensible, based on the issues facing the district, including whether it is consistent with national/regional policy direction and with planning best practice. If the report is not consistent with national/regional policy, the peer review will consider whether the reasons for deviating from this are justified.

The peer review is to consider:

- The overall package of information and recommendations contained in the report
- Areas or themes in the report that are lacking evidence or are not supported well
- Whether the report tells a comprehensive story
- The robustness of the planning argument
- Where the report could be improved (professional tone, gaps in reasoning, wording deficiencies etc)
- Issues where the report may be placing the council at risk of legal challenge (acknowledging that the peer review is not a legal review)
- How useful the report is expected to be to the hearings panel, submitters and staff reporting officers
- Both resource management and strategic land use planning matters
- Integration between land use planning and infrastructure
- Alignment with the Resource Management Act 1991 (A legal review is not expected, but apparent errors and omissions should be noted)
- Alignment with the Waikato Regional Policy Statement

- Alignment to the National Policy Statement - UD
- The appropriateness of the linkages and references to PDP Stage 2 (Natural Hazards and Climate Change)
- The suitability of the recommended policy responses or if there are other possible options to consider (to best address resource management issues)

The peer review does not need to consider:

- The merits of individual submission points. (The 42A Framework Report does not address individual submission points).
- General grammar and formatting, unless it is fundamentally flawed.