



Planning Under
Co-operative Mandates

QUALITY OF REGIONAL POLICY STATEMENTS AND DISTRICT PLANS

Lessons from the FRST Research Programme “Planning Under Co-operative Mandates” and Implications for the Environment Court

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Dr Tom W. Fookes¹

Introduction

Planning Under Co-operative Mandates (PUCM) is an ongoing FRST-funded Research programme based in the International Global Change Institute (IGCI) at the University of Waikato (www.waikato.ac.nz/igci/pucm). The collaborative PUCM team has provided a range of information on planning and governance under the RMA to various end-users. It seems pertinent to ask: “What lessons can the PUCM research offer for Judges and Commissioners of the Environment Court?” This paper is the first in a series that aims to stimulate discussions around this question.

PUCM has proceeded through four phases of research, which are summarized below, along with some key references.

Phase 1 (1995-1998): What makes a good plan?

This research was about developing and applying methods for evaluating *plan quality* and the factors that influence it. It focused on: the measurement of plan quality; interpretation of the RMA mandate; the implementation actions of central and local government; and the capability of councils to plan. A Report to Government (and other end-users) was published in 2001 titled *Resource Management, Plan Quality, and Governance* (Ericksen, et al.). It contained key findings and 20 recommendations for action. Amongst other publications was a book and planning practice guide (Ericksen, et al., 2003; Ericksen, et al., 2004).

Phase 2 (1999-2003): Do good plans matter?

This research was about developing and applying methods for evaluating *implementation quality* and factors affecting the implementation of plans. It focused on: capabilities and implementation strategies; resource consent applicants’

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capabilities to comply with plans; plan compliance; and implementation outcomes. A Report to Government (and other end-users) was published in 2003 titled *District Plan Implementation Under the RMA: Confessions of a Resource Consent* (Day et al.). Amongst other publications, is a planning practice guide (Day, et al., 2005).

Phase 3 (2003-06) Do good plans make a difference to environmental outcomes?

This research is about implementation outcomes with respect to environmental quality. It proposed to: investigate the cumulative environmental effects of consented and permitted activities on environmental quality in relation to anticipated environmental results (AERs) in plans; assess the influence of non-statutory measures on plans and environmental outcomes; and match AERs in plans with actual environmental outcomes in the selected areas. It includes a kaupapa Māori research component on environmental outcomes for Māori. Completing the final link between plan quality, implementation quality and environmental quality will enable councils to measure their own plan effectiveness. Relating the results from each Phase will enable an assessment of whether good plans make a difference in achieving the nation's environmental goals. The research design is shown in Figure 1.

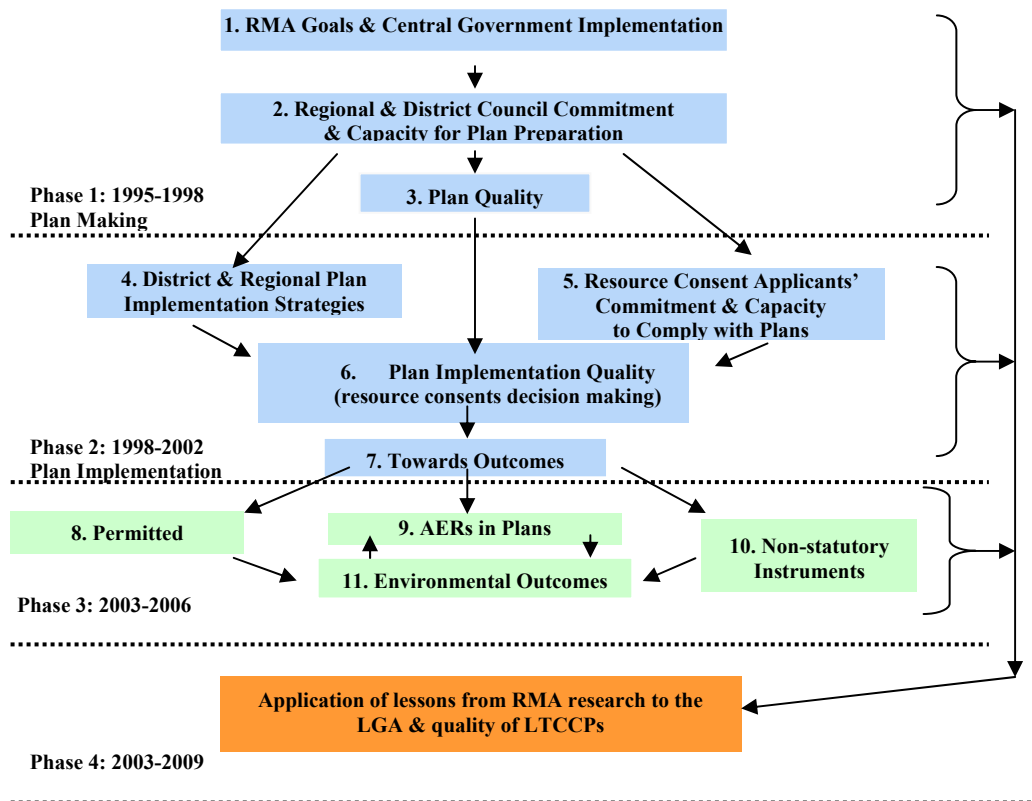


Figure 1: PUCM research design

Phase 4 (2003-2009) Sustainable Development through Local Government

New research is also being undertaken on the LGA. It capitalises on the lessons learnt from Phases 1 to 3 by applying them to the preparation and implementation of the new LTCCPs required by the LGA 2002 (Borrie, et al., 2004; Borrie and Memon, 2005). Another objective of research Phases 3 and 4 is to create a Practice Development Programme to build capacity through training, especially within tertiary institutions and councils.

Purpose of commentary

Given publications from the PUCM research programme, it is timely to ask what their findings and recommendations might mean for Judges and Commissioners of the Environment Court. That is the purpose of this commentary, which is being written by a new member of the PUCM team responsible for creating the Practice Development Programme. This first paper will focus on the Phase 1 research findings and recommendations with regard to plan quality and factors that influence it. It forms the basis of a presentation to the 2005 Annual Conference of the Environment Court. This in turn will provide an opportunity to explore the implications of the lessons learned for the Court through subsequent discussion. Subsequent papers will deal with issues stemming from other phases.

Plan Quality

“Plan quality” refers to regional policy statements and district plans made pursuant to the Resource Management Act 1991. Eight criteria were established for the assessment of quality (Table 1) and the results summarized in two Figures (2 & 3). The study used 16 regional policy statements and a selection of 34 district and combined plans from the 58 notified by March 1997.

Table 1: Principles for evaluating plan quality

1. Interpretation of the Mandate: Articulation of how legislative enabling provisions are interpreted in the context of local (or regional) circumstances.
 - 1.1 Is there a clear explanation of how the plan implements key provisions involving matters of national importance, Treaty of Waitangi, duties to assess costs and benefits, and duties to gather information and monitor?
 - 1.2 Is there a clear explanation of the functions of a district plan as required by key legislative provisions?
2. Clarity of Purpose: Articulation of a comprehensive overview, preferably early on, of the outcomes which the plans attempt to achieve.
 - 2.1 Does the overview consist of a coherent explanation of environmental outcomes?
 - 2.2 Does the overview contain a discussion of social, cultural and economic matters affecting those environmental outcomes?
3. Identification of Issues: Explanation of issue in terms of the management of effects.
 - 3.1 Are issues clearly identified in terms of an effects-based orientation?
4. Quality of Fact Base: Incorporation and explanation of the use of factual data in issue identification and the development of objectives and policies.
 - 4.1 Are maps/diagrams included? Do the maps display information that is relevant and comprehensible?
 - 4.2 Are facts presented in relevant and meaningful formats?
 - 4.3 Are methods used for deriving facts cited?
 - 4.4 Are issues prioritised based on explicit methods?
 - 4.5 Is benefit/cost analysis performed for main alternatives?
 - 4.6 Is background information/data sourced/referenced?
5. Internal Consistency of Plans: Issues, objectives, policies, and so forth are consistent and mutually reinforcing.
 - 5.1 Are objectives clearly linked to issues?
 - 5.2 Are policies clearly linked to certain objectives?
 - 5.3 Are methods linked to policies?
 - 5.4 Are anticipated results linked to objectives?
 - 5.5 Are indicators of outcomes linked to anticipated results?
6. Integration with Other Plans and Policy Instruments: Plans should integrate key actions of other plans and policy instruments that are produced within the agencies or by other agencies.
 - 6.1 How clear is the explanation of the relationship between each mentioned policy/policy instrument of the plan under study?
 - 6.2 How clearly are cross-boundary issues explained?
7. Monitoring: Plans should include provisions for monitoring and identify organisational responsibility.
 - 7.1 Are provisions for monitoring the performance of objectives and policies included in the plan?
 - 7.2 Are specific indicators to be monitored identified?
 - 7.3 Are organisations identified that are responsible for monitoring and providing data for indicators?
8. Organisation and Presentation: Plans should be readable, comprehensible and easy to use for both lay and professional people.
 - 8.1 Is a table of contents included (not just a list of chapters)?
 - 8.2 Is a detailed index included?
 - 8.3 Is there a user's guide that explains how the plan should be interpreted?
 - 8.4 Is a glossary of terms and definitions included?
 - 8.5 Is there an executive summary?
 - 8.6 Is there cross-referencing of issues, goals, objectives and policies?
 - 8.7 Are clear illustrations used (e.g. diagrams, pictures)?
 - 8.8 Is spatial information clearly illustrated on maps?
 - 8.9 Are individual properties clearly delineated on maps?

Source: Ericksen, Crawford, Berke and Dixon, 2001

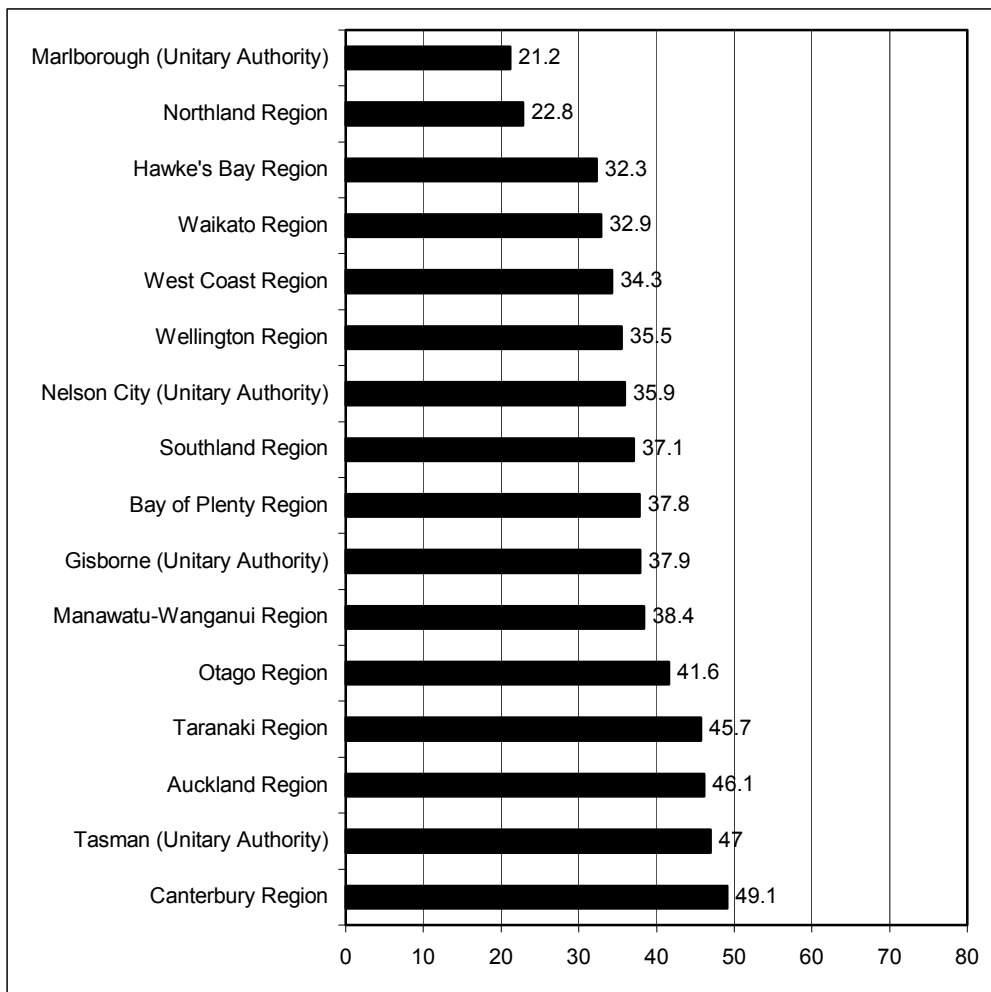


Figure 2: Ranking of overall regional policy statement scores (maximum possible score is 80)

Source: Ericksen, Crawford, Berke and Dixon, 2001

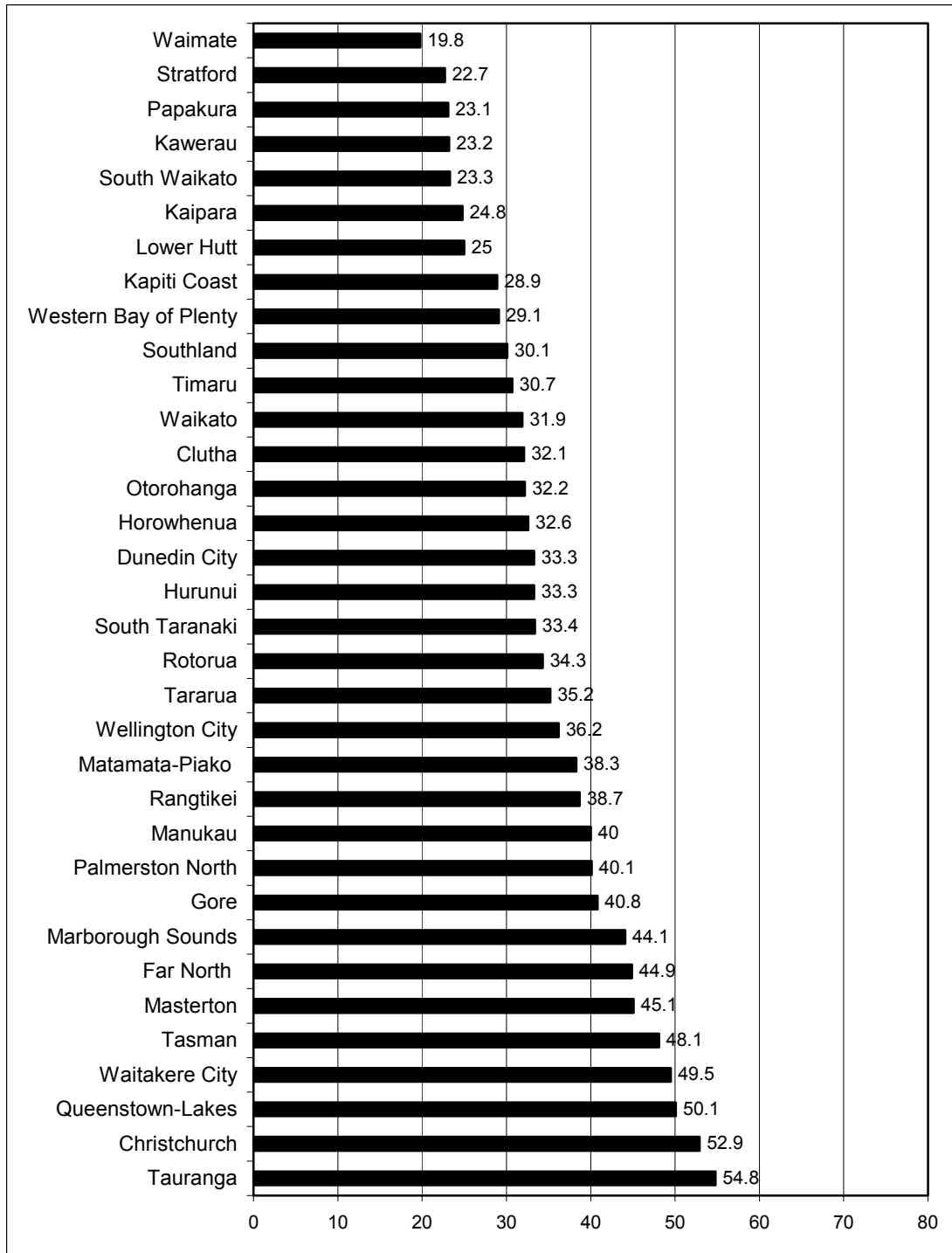


Figure 3: Ranking of overall district plan scores
(maximum possible score is 80)

Source: Ericksen, Crawford, Berke and Dixon, 2001

Assessment Criteria for Plan Quality

The PUCM conclusion overall on plan quality is summed up by the statement “Most councils produced inferior policy statements and plans” (Ericksen, Crawford, Berke and

Dixon, 2001p. vii). Of the eight Plan Quality criteria the lowest scoring were ‘interpretation of the mandate’, ‘facts base’, ‘issue identification’, and ‘monitoring’ (*ibid*, p. viii; Ericksen, *et al*, 2003, pp.119-120). The discussion of the evaluation in Ericksen, *et al* (2003) for the regional policy statements and district plans is presented in separate chapters (6 and 7) while influencing factors are presented in chapter 8. Figure 4 summarises the plan quality scores for regional policy statements and district plans by plan quality principle (Ericksen, *et al*, 2003, Fig. 5).

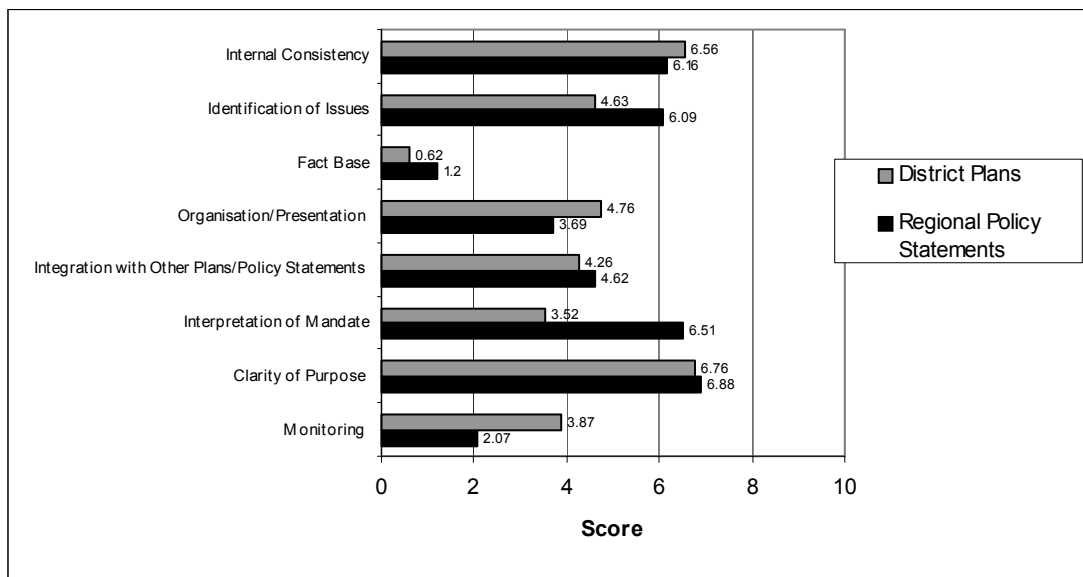


Figure 4: Comparison of scores for regional policy statements and district plans by plan quality principle (maximum possible score is 10)

Source: Ericksen, Crawford, Berke and Dixon, 2001

In its search for explanations for the results the research applied multi-variate statistical analysis to its data for regional policy statements and district plans (*ibid*, Ch. 8). A key indicator of plan quality emerged as the variable “population size per council”; “smaller rural councils generally producing weaker plans than did larger councils” (Ericksen, Crawford, Berke and Dixon, 2001, p. viii).

The study also identified organizational capability as a determining factor for plan quality; “When capability is strong the quality of plans is significantly greater” (*ibid*, p. viii). PUCM defined “capability” as a combination of “commitment” (i.e. dedication of councillors and staff to plan) and “capacity” (i.e. quality and quantity of

resources available for planning). The study reported, “We found many troubling gaps throughout the local government planning process” (*ibid*, p. viii).

These conclusions on contributing factors may not surprise members of the Environment Court because of their interaction extensively and intensively with councils. The application of the eight plan quality evaluation criteria may, however, raise matters that have implications for the Court.

Lessons learned and possible implications for the Environment Court

The identification of lessons learned, as reported by the various PUCM documents, does not claim to cover all findings or conclusions. Only those which the author considers have implications for the Court are included.

From the analysis of the plan quality criteria (Fig. 3) PUCM concluded that, at best the policy statements and plans scored only 6 out of 10 (i.e. ‘B’ quality). Working from the criterion with the lowest score for district plans in Fig. 3, several lessons can be learned:

Fact Base

When regional and district issues are identified and prioritized it is expected that this will be through the use of supporting empirical data. Furthermore this data should be generated through research and be subject to systematic analysis, the results of which will be evident in the document. This expectation was not met in most cases. Certainly interviews by PUCM revealed that little significant research was undertaken, and State of the Environment Reporting paid scant attention (Ericksen, *et al*, 2003, p. 138). An implication of this weak fact base could be leaving room for people to question the justification of particular issues and their relative importance. It also means:

- (a) uncertainty about the potential effects of future land use change will be introduced (Ericksen, Crawford, Berke and Dixon, 2001, p. 16)
- (b) being able to clearly define issues and set up appropriate monitoring of environmental outcomes for evaluating plan performance will be made more difficult (*ibid*, p.14).

These implications of a weak fact base have consequences for the Court because they mean the policy statement or district plan is:

- (a) a less effective reference on the pertinent issues (and change is those issues) the document is intended to address, and
- (b) more likely to be subject to a Reference.

A related question is whether the Court can respond to an inadequate facts base. While PUCM recommends a range of initiatives which should be taken by the Ministry for the Environment, it may be worth discussing whether the Court could be given the authority to require a council to address any inadequacies in its fact base where these emerge through cases.

Interpretation of the Mandate

The mandate introduced through the RMA includes regulatory goals rather than prescribed contents, and looks to the organizational capability of local government to do the mandated planning (Ericksen, *et al*, 2003, p. 13). Successful application of the mandate by local government depends on the encouragement and leadership provided by central government; its absence results in an apathetic approach to the mandate. There has been evidence of this. The PUCM reports to government point to severe shortcomings across government, resulting in a poor interpretation of the mandate.

The expectation that the functions of a regional policy statement or district plan would be clear was usually met. However, the need to provide clear explanations of the application of the Act to local physical and social conditions was generally not met (*ibid*, p. 16). This included explaining the way the provisions on "matters of national importance, Treaty of Waitangi, duties to assess costs and benefits, and duties to gather information and monitor" would be applied in the particular policy statement or district plan (Ericksen *et al*, 2003, p. 38). This finding is not surprising when one also reads that PUCM's surveys "...indicated that over 50% of plan-makers in councils found key provisions in the RMA to be unclear..." (Ericksen, Crawford, Berke and Dixon, 2001, p. ix). This lack of clarity extended to even understanding council's functions (sections 30 and 31).

The study's evaluation of how well plans address the role of Māori in land use and resource management resulted in low scores. This finding is consistent with the conclusion under *Organisation Capability* that "Just over half of councils understood the mandate with respect to the Treaty of Waitangi and Māori interests philosophically, but failed to follow through due to lack of political commitment and capacity" (Ericksen, Crawford, Berke and Dixon, 2001, p. viii).

The study introduces the question whether central government should leave the interpretation of the mandate entirely to local government, or not. It concludes that "Higher levels of government must not only make the purpose of environmental legislation clear, but also assist in interpretation by providing leadership, support, and direction" (*ibid*, p. 22). The scope of this question could equally be extended to the Environment Court, given its interpretative role.

Implications for the Court may be found in:

- (a) shortcomings in the connection between the Act's purposes and principles (Part 2) with local physical and social conditions
- (b) insufficient treatment of matters of concern to Māori.

Both of these are of concern because they suggest policy statements and plans could be lacking in the degree of detail needed by the Court when considering legal counsels' submissions and related evidence. Furthermore it can be argued that these are serious shortcomings because the Court is not in a position to develop its own content. At best individual members of the Court may have some knowledge which enables them to add to the record through questions of witnesses, but this is likely to be *ad hoc*.

Something the Court may wish to consider is the degree to which it is able to identify the above matters (and any others) when References on policy statements and plans are brought to it. While understanding that the matter at hand is as raised in the Reference, there may be some scope within that to address any shortcomings of the types found by PUCM. Alternatively, the Court may consider this to be of sufficient importance to request the Government to amend the Act to enable it to have a quality

review function when a policy statement or plan has been referred to it (rather than reviewing all RPSs and Plans). Another possible trigger for such a review function could be where a council is initiating numbers of plan variations, which suggests an inadequate plan.

Monitoring

The need to provide indicators which can be used to monitor the performance of policies is critical; in the absence of indicators the ability of councils to have an effective monitoring programme has to be questioned. Consequently the intention in the Act that the effectiveness of policies will be checked (and if necessary, fine tuned) cannot be complied with. This begs the question whether councils are, therefore, left relying on community feedback of problems, as illustrated by the Auckland City Council's recent experience with its inner city intensification and urban design criticisms. The danger here is that plan change proposals may be the result of a knee jerk reaction with a strong political component, rather than a rational weighing up of advantages and disadvantages across policy options.

The implications for the Court stem from plan changes being brought before it. With the lack of a solid base of monitoring-derived data and analysis but an implicit political agenda, the Court may be manoeuvred to weigh up the arguments based on emotion rather than facts on policy strengths or weaknesses.

Integration with other plans/policy statements

The expectation in this criterion is that "plans should integrate key actions of other plans and policy instruments that are produced within the agencies or by other agencies" (Ericksen, *et al*, 2003, p. 39). The poor score does not necessarily mean other regional policy statements, district plans, or other policies and plans were not mentioned – they often were – but "local plans lacked clear explanations of how these documents are accounted for in the policies included in the plan" (Ericksen, Crawford, Berke and Dixon, 2001, p. 16).

The implication for the Court is similar to those identified previously. A lack of explanation means the Court is not being provided with adequate information to help make the necessary judgements. In particular, an effective explanation of the way

other policies and plans can be connected to a policy in a plan will help the Court decide whether the source document is an “other matter” as provided for in section 104, RMA.

Identification of issues

The PUCM study reported that “These results indicate the absence of analytical rationales for defining and prioritising issues, and selecting policy alternatives (Eriksen, Crawford, Berke and Dixon, 2001, p. 14). This is a worrying conclusion because defining and prioritizing issues is a key step in the policy/plan-making process. If the Council does not spell out the rationale it has for an issue being of such significance in the district it requires attention in its plan, then how does the Court proceed with questions about that issue?

The Court will recall cases where a Council’s planner has tried to explain what the Council had in mind when it settled on a policy, even though any support for the explanation is not available in the Plan, and other confirming documentation is not forthcoming.

PUCM considered the need for rational forethought for plans and their outcomes. While it assumed that the rational planning process has been applied, there is no confidence that the regional policy statements and district plans it studied will result in sound environmental outcomes. Furthermore it questions whether “they will serve as a focal point for co-ordinating decision-making and helping diverse stakeholders reach consensus about desired environmental outcomes” (*ibid*, pp. 15-16).

An implication of these conclusions could be that the Environment Court, if it is involved, may find itself correcting this shortcoming. If it is not involved then sound environmental outcomes may be achieved in the face of a poor quality policy statement or plan. For example, where an application does not proceed to appeal, then it may be the applicant’s consultant in the first place, or subsequently the council’s planner or consultant, who enables sound environmental outcomes to be achieved through conditions placed on a Consent. (This is why the current PUCM Phase 3 is asking the question “Do plans matter in achieving sound environmental outcomes?”)

Organisation and presentation

With this criterion based on plans being readable, comprehensible and easy to use for both lay and professional people, as well as needing to be straight forward, the scores below 5 out of 10 suggest otherwise. One direct criticism from PUCM is that “most policy statements did not include supporting evidence in the form of documents or databases (e.g. mapped information, tabular summaries of data) to help understand the rationales for issue identification or policy selection” (Ericksen, *et al*, 2003, p. 119). It was also found that users’ guides were absent, as were detailed indexes; both limited the degree of user-friendliness. (The latter is now acknowledged by the Court as a necessary requirement for copies of plans tabled for cases before the Court.)

The implication of not explaining the rationale for an issue discussed previously under *Identification of issues* applies equally for this criterion. Also of particular importance to the Court is the conclusion that “Authors of plans often failed to write policy in a rigorous fashion and appeared to lack the technical skills to conduct research as indicated by the weak fact-base in plans” (*ibid*, p. viii). This raises the questions whether it is the role of the Court to draw attention in its decisions to such shortcomings, and should it be able to require a change in the Plan? The corollary is whether the Court is an effective way to achieve improvements in a plan.

Internal Consistency

The question for this criterion is whether issues, objective, policies and methods are consistent and reinforcing. The expected linking was reasonably well done which PUCM suspected “reflected past experience under town and country planning legislation” (*ibid*, p.290). However, the explicit link between objectives and anticipated environmental results (or AERs) was found to be weak. This was attributed to the AER being a new requirement. It was concluded that:

“Writers had neither a clear understanding of what the plan was trying to achieve nor the skills to express this via a rigorous cascade of highly crafted policies and rules” (*ibid*, p. 291).

Once again the implication here for the Court is whether the policy statement or plan is providing an adequate basis for the Court to make judgements, or not. If it is not, is

it sufficient that this weakness can be drawn to the attention of a Council on a case by case basis in the written decision? Should it be possible for the Court to require a Plan Change to address the problem?

Clarity of Purpose

This criterion refers to policy statements and plans having a “comprehensive overview, preferably early on, of the outcomes the plan attempts to achieve” (*ibid*, p. 38). Two explicit questions in the criterion sharpen its intentions:

- (a) “Does the overview consist of a coherent explanation of environmental outcomes?”
- (b) “Does the overview contain a discussion of social, cultural, and economic matters affecting those environmental outcomes?”

For both regional policy statements and district plans this scored the best, even if it only reached a high ‘B’ level (6.8 out of 10).

The implications of this result for the Court are positive because a reasonable achievement of *clarity of purpose* suggests that the Court will be able to develop a reasonable degree of understanding of environmental outcomes to be achieved through the statement or plan.

Conclusions

The PUCM findings do have implications for the Environment Court. Whether the Court is able to respond to them is another matter: what is the role of the Court in improving the quality of policy statements and plans?

Several of the criteria discussed identified a lack of information for the Court *within the policy statement or plan* as a consequence of poor Plan Quality. An implication of this for the Court is that, where it occurs, the Court is made more dependent on the Submissions of Counsel, expert evidence, and cross-examination, for the information, and, at the last resort, the effectiveness of the Court’s own questions. This means ensuring good quality plans is important for the Court.

The discussion of the *fact base* criterion acknowledges the connection between criteria. For example the importance of the *fact base* helps explain the absence of analytical rationales for selecting policy alternatives reported below, and why without a strong fact base, the subsequent lacklustre scores for *Identification of issues*. The question here is whether there is an effective role for the Court in addressing this shortcoming in policy statements and plans.

Another question concerns the importance to the Court of the finding about the role of commitment and capacity for achieving quality plans. Are there things about commitment and capacity which could be ascribed to the Court, taking the concepts beyond their application to councils? What might they be? Should they sit alongside the interpretation of the terms “commitment” and “capacity” when applied to the Court as a judicial institution (i.e. commitment to the Law; capacity to function fairly and efficiently, etc)

Finally, has this presentation on the eight criteria for plan quality been of sufficient benefit to suggest that this subject could be included in the Court’s *Bench Book* as continuing advice to members of the Court?

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For more information about the PUCM Research Programme see:

www.waikato.ac.nz/igci/pucm

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