Bryce Wilkinson Statement to the Hearings Panel on the KCDC's Section 42A-Part B report on chapter 2: Objectives of its Proposed District Plan

Introduction

I am both an economic consultant with long-standing expertise in public policy and an affected ratepayer through the Wilkinson Family Trust that owns the beachfront property at 65 Manly Street. I am a committee member of the Coastal Ratepayers Association (CRU).

I have a PhD and MCom in Economics and a BSc (Hons) in Chemistry from the University of Canterbury. During my career I have reached the positions of Director of Internal Economics Division I in the New Zealand Treasury (1984), Director of CS First Boston New Zealand Securities (1990) and Director of its successor firm First NZ Capital (1995). For a short period in 2011 I was acting executive director of the New Zealand Business Roundtable. Since 1997 I have been a director of my own consulting firm (Capital Economics Limited). I am currently also a senior research fellow with The New Zealand Initiative.

In recent years I have been a member of the Government's Regulatory Responsibility Taskforce, the Government's ACC Steering Group, and the Government's 2025 Taskforce.

In March 2013 I made a 16-page submission (number 280) on the KCDC's Proposed District Plan (PDP).

I have read the KCDC's section 42A Part B – Objectives report ('the report') responding to my submission and all others.

This statement responds to that report.

Disregard of fundamental public policy formulation principles

Central government strictures on policy development not followed

Fundamental to all policy development is the ability to understand and apply sound legal, constitutional and economic principles. In New Zealand, central government's CabGuide dictates[1] that policy proposals of a law-making or regulation must be tested against the principles set out in specified Regulatory Impact Analysis and Regulatory Impact Statement Requirements and in the Legislation Advisory Committee Guidelines 2014.

The literature and other material the author of the report lists as using or relying on in paragraph 14 does not include either of these documents, or indeed any document that enumerates sound public policy formulation principles.

Little or no problem definition

A key element of the Regulatory Impact Statement requirement is the need to identify the problem with current arrangements that motivate the case for considering policy action. The step must be taken before a policy objective is considered. Simply put, if there is no real problem for members of the community with current arrangements, there is no community wellbeing need for the policy.

[1] See http://cabguide.cabinetoffice.govt.nz/template-paper-seeking-authorisation-submission-regulations-executive-council

I submit that this is a critical deficiency in the PDP process to date. The statements of objectives are not directed at overcoming an identified problem that members of the community are experiencing with existing arrangements.

Costs and benefits not assessed

A further key requirement is the assessment of the relative costs and benefits of the available options for pursuing the policy objective.

To illustrate, the restrictive coastal hazard provisions in the PDP 2012, potentially cost the community several hundred million dollars in lost amenity value.[2] To put this in perspective, KCDC's annual rates income in 2014 was only $50 million. Yet the KCDC's response to my Official Information Act request for details of its assessment of the costs and benefits of its proposed provision revealed that it had done no calculations relevant to my request. From a public policy perspective this reflects an utterly unacceptable approach to dictating the use of the community's assets.

Cost-benefit analysis aspect of Objective 2.14: Access and Transport

Paragraph 595 of the report rejects my suggestion that the pursuit of enumerated access and transport goals should be conditional on assessed benefits to the community exceeding the costs. It does so on the basis that benefits are to be realised and the effects managed without reference to costs. Apparently costs are "outside" the scope of the PDP.

Since a cost is a negative benefit, to argue that consideration of costs is outside the scope of the PDP is to argue that benefits are also outside its scope. Yet if the PDP is not concerned with benefits and costs as experienced by affected members of the community, whose purpose is it serving?

I submit that this rejection is logically incoherent. In my submission I also suggested that the omission was inconsistent with sections 5(2) and 22 of the RMA that are concerned to improve the well-being of the community.

Cost-benefit analysis aspect of Objective 2.15: Incentives

Paragraph 618 rejects the proposition that this objective should be pursued only to the degree that it enhances community wellbeing. In doing so it posits, apparently as a preferred conflicting and superior objective, the pursuit of "environmental enhancement" in order to provide "environmental benefits". This paragraph neither recognises nor addresses the need to balance benefits to affected members of the community against costs.

This aspect of the report essentially rejects the core of the government's Regulatory Impact Statement requirement – the need to establish that benefits exceed costs before proceeding with a policy that imposes costs on the community. If the issue of community wellbeing is subservient to other goals in the PDP, whose interests are being served by those goals and why should they be a priority?

Property rights

[2] A drop in property values reflects the lower value the community at large puts on the amenity value of a property. While the financial burden of the loss falls on the current owner when there is no compensation, the loss in amenity value is experienced by those who use the diminished amenity property in the future. Compensation transfers the incidence of the loss, but the loss is experienced by the community regardless.

A key legal principle enumerated in the Legislation Advisory Committee Guidelines is that new legislation should respect property rights.[3]

Property rights aspect of Objective 2.1

In my view there is a galling and inexplicable inconsistency in the report's attitude to private property rights. Objective 2.1 – Tangata Whenua expressly acknowledges active protection for privately-owned resources and other treasured property "to the fullest extent possible". It also promises protection from "restrictions imposed by legislation, plan or policy which prevent or limit" all protected ratepayers from "using their land and resources according to their cultural preferences" and it accepts a principle of self-regulation which recognises that all property owners "can retain responsibility and control of the management and allocation of resources over which they wish to retain control".

In March 2013, I submitted that a revised PDP should provide the same assurances to all members of the community. In paragraph 118 the report argues on the one hand in many respects the PDP "seeks to achieve this", (in which case the obvious question is why oppose making it explicit?) and on the contrary, Orwellian, hand that Tangata Whenua do have "special status". However the author makes no case that "special status" means that British citizens were excluded from these rights at the time the Treaty of Waitangi were signed, or subsequently. Obviously, "special status" does not require discriminatory treatment in respect of such rights. Paragraph 118 ignores all such considerations and cavalierly dismisses the issue by concluding that "I do not consider it appropriate" to amend the objective to make it less discriminatory. Nothing in this paragraph indicates that this opinion draws on any relevant expertise in these issues. Yet if it is merely a personal opinion, why should it be given any weight?

The LAC Guidelines endorse the principle of equal treatment before the law. Unequal treatment is a serious matter, particularly when no case is made that it is necessary or desirable in these respects. I submit that the Hearings Panel should take serious constitutional issues seriously.

Property rights aspect of Objective 2.2: Ecology and biodiversity

In paragraph 156, the report's author expresses a personal opinion that the principles of sustainable management etc. "should apply irrespective of ownership or the predominant land use/zone". No professional or other reason is given for believing that private property owners would be failing to do so given their incentive to enhance the amenity value of their properties. Yet the objective as stated promises to impose material costs on the community even if there are no benefits. Again in this paragraph the author exhibits no interest in identifying what the problem is with private arrangements that the objective is intended to address. Nor does the report adequately address the question of whether its pursuit would benefit or harm community wellbeing.

Property rights aspect of Objective 2.3: Development Management

In paragraph 239, the report's author expresses a personal and, as I see it, elitist view that "resilience is about managing the location of future growth and development so that we avoid exposing people

[3] The LAC Guidelines observe that in practice it is not a legal requirement to pay compensation in respect of takings under the Resource Management 1991, but of course no competent policy development process would fail to consider the implications for well-being, including unintended consequences, of failing to pay compensation in the absence of consent at least where it would be practicable and equitable to do so. Even if it is not a legal requirement there may be sound policy reasons for doing so. (Fiscal cost is not a sound reason for not doing so, to the contrary it is a predatory reason that likely violates sound public policy tax principles. To take without compensating is to tax and tax proposals should conform to Inland Revenue Department and Treasury's Generic Tax Policy Process.).

to mortal danger or severe property damage from natural hazards irrespective of land ownership". Again there is no problem definition. The report identifies no problem with private insurance arrangements that might conceivably justify this view. Insurance companies, bankers and property owners have strong incentives to manage their own risks. Planners lack these incentives. The report does not attempt to demonstrate that a planning elite can use command and control to allocate resources as flexibly as voluntary processes. The ability to respond quickly and effectively to changes in circumstances is the essential feature of resilience. Tying property owners up in red tape is likely to achieve the antithesis of a resilient community. Such unintended consequences are not addressed in the report. Another uncomfortable feature of this paragraph is its contrast with the assurances of self-management to the Tangata Whenua.

Property rights aspect of Objective 2.4: Coastal Environment

In paragraph 287, the report rejects multiple submissions pointing out that the KCDC has a prime responsibility for KCDC land and assets, managing the foreshore commons, and assisting collective action of a public works nature in respect of flood control, storm water management etc. and that it must perform these functions well because no one else can. In short self-management is required for council property just as objective 2.1 acknowledges it applies with respect to property owned by Tangata Whenua. The intrusive regulation of private property in the Coastal Environment requires a justification for diminishing self-management. In paragraph 301, the report sweepingly dismisses these points on the grounds that the council needs to give effect to higher order documents such as the NZCPS. However, nowhere does the report identify any feature of the NZCPS that stops the KCDC from managing its own land directly and private land indirectly via allowing a greater role for self-management. Once again, the report appears to be appealing to legal requirements rather than community wellbeing considerations to dismiss mainstream public policy approaches.

Property rights aspect of Objective 2.5: Natural Hazards

In paragraphs 324 and 338 the report respectively acknowledges and then dismisses a similar objection to that immediately above. The KCDC's responsibilities in respect of its own property is different in kind from that in respect of private property and an objective statement that fails to recognise the distinction and addresses itself to the relative roles for self-management and council management risks destroying amenity values in private land, perhaps very substantially. Again the report dismisses this point on sweepingly asserted legalistic grounds rather than on public policy grounds. Fortunately, elected officials cannot afford to be so cavalier about community wellbeing.

Property rights aspect of Objective 2.6: Rural Productivity

Paragraph 364 asserts the author's personal opinion that the objective of centrally planned allocation of rural land as between housing and other uses:

> "provides an appropriate platform for managing the rural land use with regard to development pressures. Whilst I accept that the increasing population places increased demand on housing, the same is also true for food and other life sustaining resources, and land resource is finite. I consider it is important to manage rural land to ensure the resilience and wellbeing of the District's communities.

Having spent over 40 years as a professional economist specialising in public policy issues for much of that time I have no hesitation in saying that it would be professionally embarrassing if this view were encountered amongst economists; expressed colloquially, this central planning conceit is nothing short of barking mad from an economics perspective. Central planners are bound to fail as forecasters of future demand and supply because they lack the incentive and the information to outperform decentralised voluntary processes with respect to private goods, such as land. That is the

central reason for the failure of centrally planned systems in the 20th century to prosper as much as capitalist systems based on the rule of law and private property rights.[4]

In economic terms, no matter how scarce rural land becomes in Kapiti, that scarcity will have no impact on the price at which the world can ship land-based products to residents in Kapiti. Conversely, no matter how much food is produced in Kapiti, as long as the producers can export it to other markets, residents in Kapiti will have to pay as much as others are prepared to pay, less transport costs. Any notion that state control of the allocation of land in Kapiti can insulate or protect it from world prices is delusional, regardless of the price at which a state farm would sell its products locally.

In short paragraph 364 raises a concern that the writer may have little or no expertise in assessing the economic assumptions underlying the report's recommendations.

Property rights aspect of Objective 2.7: Historical heritage

Paragraph 385 confuses the intention of a policy with its likely effect when it asserts without consideration of the likely unintended consequences that a policy aimed at protecting historic heritage will in fact protect them. Paragraph 387 similarly confuses the intent of the RMA with its effect.

To the extent that the objective turns private assets into private liabilities it relies on the stick rather that the carrot to preserve them. This virtually guarantees unintended consequences. The case for imposing such costs needs to be made rather than assumed. If the PDP is to be faithful to the protective intent of the RMA. Any refusal to do address this issue of costs, benefits and property rights begs the question of whether the RMA's objective is being taken seriously.

Property rights aspect of Objective 2.8: Strong Communities

The KCDC's PDP will not build strong communities if it makes ratepayers insecure in their persons or property. If follows that the KCDC's policy objectives should aim to enhance rather than diminish security in property, self-management and self-control rather than diminish it by tying property owners up in red tape. However, in paragraph 410 the report dismisses this proposition because the protection of persons and property is a "collective responsibility of society" whatever that means. But if so, it surely means that society should be ensuring that the KCDC does its bit to protect people in their persons and property. Paragraph 410 seems to have missed the point.

Property rights aspect of Objective 2.9: Landscapes

Paragraph 452 apparently rejects the fundamental proposition, going back to Magna Carta, and embodied in New Zealand's venerable public works act, that if a government agency wants to take someone's land for a public purpose the issue of compensation should be addressed. It does so on the basis that "I consider that this is a non-regulatory method that the Council should consider using outside the District Plan, but it is not appropriate to require it at objective level of within PDP provisions". Actually, to take someone's land (effectively) without their consent is a regulatory measure. That is why a Public Works Act has always been necessary. It is a legal process. Compensation is a means of achieving the goal of dictating future land use while preserving private 'carrot' incentives to protect landscapes rather than destroy them.

[4] A seminal article is F. A. Hayek, 1945, 'The Use of Knowledge in Society' http://www.econlib.org/library/Essays/hykKnw1.html

Again, the focus on putting in place objectives that lend themselves to a 'stick' approach to private property rather than a carrot approach raise a question as to whether the protective goal is being taken seriously.

Property rights aspect of Objective 2.16: Economic Vitality

Paragraph 655 rejects the need for any such objective to acknowledge the importance of secure private property rights for enhancing economic vitality on that grounds that the writer is "of the opinion that the principles of economic vitality and sustainable management apply irrespective of ownership … ".

From an economics perspective (and I suspect from the average ratepayers perspective), this is unsupported opinion mixed with mumbo jumbo. Despite my professional background I have never heard of the principles of economic vitality and would also be interested to know precisely what are the principles of sustainable management of private land that are being referred to.

Governments need to have a good public policy reason for interfering in private decisions given the importance of allowing individuals to pursue goals of their own choosing. The principles of economic vitality, whatever they are don't look like a good reason.

Property rights aspect of Objective 2.17: Centres

Paragraphs 713 and 699 are virtually identical to paragraph 655. My response is the same.

Property rights aspect of Objective 2.18: Open spaces/active communities

Paragraph 726 rejects my submission (supported by others) that support for open spaces/active communities should be conditional on respecting private property rights. It does so on the grounds that the writer is satisfied that the "new, extended or enhanced provision for open spaces will respects [sic] the communities in which they are located, and their rights".

This response does not give anyone else a reason to feel the same way. It does not even assure individual property owners that the writer thinks that their rights will be protected in the pursuit of the goal of more open spaces. I see nothing in this report that gives due constitutional attention to the need to address issues of compensation and falls in property values for residents generally as distinct from the Tangata Whenua.

Property rights aspect of Objective 2.19: Urban Design

The concern in my submission was that this objective is apparently intended to stop people from doing things with their property that might offend the planners whom the objective would empower to "promote high quality urban design". Paragraph 756 of the report "shoots past" my concern by saying that all property owners could share in the general enjoyment of the planners fine designs. Paragraph 769 uses this argument to reject the suggestion that the pursuit of this objective should not be at the expense of private property rights. In short, the basis for the concern is ignored, there is no problem definition, and no regard for the merits of private management of private property.

Concluding comments

I submit that the report has failed to respond satisfactorily to the issues I raised in my 2013 submission.

Moreover, I submit that it has failed utterly to comply with central government requirements for public policy formulation in respect of property rights, problem definition, the compilation of options and the assessment of cost and benefits.

I acknowledge that provisions in the plan have to comply with the law and that the Resource Management Act 1991 has been and continues to be a source of great difficulty and contention across the land. Nor is it the only source of central government conferred ambiguity and difficulty.

However, none of that justifies the abandonment of sound public policy guidelines in evaluating options for complying with legislative requirements. Elected officials know that local communities are interested in evaluating whether given objectives are worth pursuing in the light of the costs.

In the absence of any willingness to demonstrate net benefits for affected members of the community from the pursuit of the proposed objectives, the report gives the impression of being an elitist “planners know best” project. I submit that this is not the way to achieve ‘buy-in’ for the plan.

My objections to the proposed PDP stand. I don’t consider that the report has adequately addressed any of them.

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