

STATEMENT OF PRIMARY EVIDENCE

P. L. U. G.

PRIMARY LAND USERS GROUP.

PC1 Hearings Block 2 - Nutrient management and the nutrient reference point, stock exclusion, cultivation, and land use change, multiple owned and treaty settlement Maori land;

PLUG believes that PC1 in its current format is not fit for purpose and that if it is enacted as written, it will have severe perverse outcomes on both the regional and national economies.

PLUG has presented written evidence to the panel in support of this claim and in line with previous comments from the Chairman of the hearings panel we take this opportunity to present to the panel our suggestions for changes that we believe will make the plan change fit for purpose and that will be sustainable, workable and economically viable for all stakeholders.

In relation to nutrient management and the nutrient reference point, PLUG is firmly of the opinion that Nitrogen is not the limiting contaminant in most of the current 74 sub-catchments as shown by the latest water testing figures available from the WRC. Only fourteen of the current sub-catchments do not meet the eighty year targets for diffuse discharge of Nitrogen.

Given this fact we firmly believe that although there is a need to control discharges of contaminants from farming operations, there needs to be flexibility in the systems of control to allow for the different types of farming operations and their unique influencing factors to be considered in any decisions around criteria for discharge of contaminants.

Given the many differing types of farming operations undertaken within the Waikato Region we believe that it would be impossible to design a one size fits all model (e.g. PC1) that would cover every type of farming operation and all of the influencing factors on each individual specific farming site.

We believe that all different types of farming operations that were being undertaken prior to the publishing of the PC1 documents should be a permitted activity as of right and these operations should be required to have a working Farm Environment Plan (FEP) specific to each operation and its unique influencing factors (i.e. geology, topography, climate, type of operation, water quality of receiving waters etc.).

We believe that it seems to be forgotten in this whole discussion around PC1, that farmers already have done amazing work to reduce their on farm impacts on water quality and this needs to be noted by all.

There are many current initiatives in place and working to reduce the on farm effects such as:

- Fencing lowland streams,
- Retiring Land (QE2 covenants),
- Voluntary setbacks from watercourses,
- Development of wetlands,

- Changes to farming practices, etc.

And these can be seen to be achieving results by a study of the reductions in the levels of contaminants in watercourses over the past couple of decades. Yes we do have more to do in relation to water quality but we believe that we need to acknowledge the good work that has already been undertaken.

In setting the criteria around what should be addressed in a FEP there must be consideration given to the requirements of both **Section 5 of the Resource Management Act 1991-**

5 Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means 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 social, economic, and cultural well-being and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

and the **Vision & Strategy for Waikato River, under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010** also requires the restoration and protection of the relationships of the Waikato Region's communities with the Waikato River, including their economic, social, cultural, and spiritual relationships.

In light of these requirements around both sustainability and restoration & protection including the communities economic, social, cultural and spiritual relationships we believe that any setting of criteria must include an adequate cost benefit analysis aligned to the risk profiles of the type of farming activity being considered.

PLUG supports a preference for a catchment focus for managing water quality and the effects of farming operations on the same.

We support the Permitted Activity status for all farming with the management of effects from all farming being part of Catchment Management Planning with the development of Catchment Management Plans being led by Farmers but inclusive of the community, Iwi etc. (Note we will discuss in more detail in Block 3).

We also support the development of Certified Industry Schemes (where Sectors wish to develop these) noting that CIS development would also be led by Catchment Issues as set out in individual Catchment Management Plans.

This approach would allow for the individual sectors (Hill Country; Sheep & Beef; Dairy; Horticulture/Commercial Vegetable Producers etc.) to be part of CMP's with aligned FEPs developed under their sector umbrella.

We intend to expand on what we see as being the main issues that must be addressed in a FEP as part of our submission on Block 3.

In relation to all of the above PLUG would like to suggest the following solutions in regard to the Block 2 headings, to help make PC1 fit for purpose:-

Nutrient Management

Solutions:

- *That Overseer in its current form must not be used as a regulatory tool but can be used to undertake qualitative what-if-analysis if required for a given sub-catchment where N is identified as a limiting nutrient in either, that sub-catchment or the wider Waikato/Waipā Rivers.*
- *That other methods should be explored to establish NRPs if they are required in a given sub-catchment.*
- *That any required reduction in emissions from farming operations be made on the basis of the total percentage emitted from farming (i.e. 61%N & 45%P) as a part of the total reduction required for all waterways.*
- *Identify other other off-farm solutions to reduce N and P loadings on the rivers that are reasonable and equitable.*
- *Put in place a strategy to identify on a sub-catchment basis, the scale of the Koi Carp biomass in the river systems and identify the true effects of the increasing levels of Koi Carp on the water quality and consequently on the native flora and fauna.*
- *That PC 1 be rewritten and configured around a sub-catchment approach to water quality management and reflect the fact that some sub-catchments may not require the mitigation of N.*
- *That the use of FEP's & BPO's in line with a clear set of standard water quality criteria be adopted for the management of discharges from farming operations to allow for flexibility of land use coupled to each farming operations individual specific limiting factors (i.e. geology, topography, climate, type of farming operation being undertaken, receiving water catchment, scale of discharges etc.).*

Stock Exclusion

Solutions:

- *That the National Policy Statement on Fresh Water Management proposal for stock exclusion be adopted as an interim measure or alternatively adopt the same rules as in the Auckland region (i.e. eighteen stock units per hectare being the trigger point for requiring exclusion from waterways).*

- *That an in depth analysis of the total costs of implementation of PC1 be undertaken and that consideration be given to a more strategic and staged approach to implement PC 1 based on that analysis, so that Objective 2 can be realized.*

Cultivation and Land Use Change

Solutions:

- *That Horticulture be a permitted activity based on strict criteria that ensure discharges are maintained or reduced.*
- *Remove Non-Complying Land Use Change Rule from PC1.*
- *Enable change in land use in sub-catchments that meet Table 3.11-1 attribute targets as a Permitted Activity.*
- *Remove Land Use Change Policy 6 that provides for race based differential treatment and change Policy 16 to make it apply to all applications regardless of race.*

Multiple Owned and Treaty Settlement Maori Land

Solutions:

- *Central Government to provide any relief in regard to development of land returned under Treaty settlements and multiple owned Māori land.*
- *Where it is identified that there is a need to reduce current levels of discharges to allow for development of land returned under Treaty settlements and multiple owned Māori land, then a fair and equitable level of compensation be paid to those rural land users that are affected by the reductions.*

Certified Industry Schemes

Solutions:

- *That Certified Industry Schemes are allowed for under 'The Plan' as an option for the development of FEP's*
- *That Certified Industry Schemes are provided Permitted Activity Rights.*
- *That the development of FEPs under PA CIS are aligned to identified Catchment Issues as set out in individual Catchment Management Plans*
- *That Permitted Activity Certified Industry Schemes report via an Aggregate Reporting Model that provides for effective but efficient reporting of a set of key metrics that demonstrate actions taken toward improving Water Quality.*

- *That Audit requirements are managed at arm's length from each individual property and managed by sector organisations to ensure consistency, efficiency and ongoing buy-in from farmers.*

BPO procedures establish for a given set of objectives, the option that provides the most benefits or the least damage to the environment, as a whole, at acceptable cost, in the long term as well as in the short term.

The BPO framework is integrated throughout the RMA (1991), but most critically through three main sections. First and foremost, Section 2 (Interpretation and application) includes the definition of what is meant by the best practicable option in relation to a discharge of a contaminant or an emission of noise in the context of the RMA (1991).

In this context it means “the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to—

- (a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and
- (b) the financial implications, and the effects on the environment, of that option when compared with other options; and
- (c) the current state of technical knowledge and the likelihood that the option can be successfully applied.”

Accordingly, the RMA (1991) interpretation of the best practicable option prescribes a suite of matters which should be considered when determining, within this framework, the best method for preventing or mitigating the adverse effects in relation to discharges.

This interpretation of the BPO has been developed further through case law since the enactment of the RMA in 1991, and in particular through a case heard through the former Planning Tribunal in 1992 – Auckland Kart Club Inc v Auckland CC A124/92. The outcome of this case helped clarify that the phrase “among other things” within the BPO definition does not just limit consideration to the three provisions (a), (b) and (c); nor does it mean that one provision should be prioritised above another.

In addition, the question of significance accorded to each provision is dependent on the particular case, while the use of the conjunction “and” linking each provision means that in evaluating the best method account should be taken of all of the factors referred to in the provisions.

Nonetheless, individual components of the provisions may be exclusive of others at any one time. “What is reasonable is a question of fact and degree” (Salmon, RM2.10.01).

This refined understanding of the meaning of BPO is then reflected through a number of different sections in the Act. The second part of the Act that helps to establish the overall BPO framework relates to the potential for plans to be developed and approved by regional councils – or unitary authorities as is now the case with Auckland Council.

Having established the interpretation of what actually constitutes the BPO within the RMA context through Section 2 of the Act, Section 70(2) (Rules about discharges) goes on to offer the ability for regional councils to include a rule within a regional plan that requires the adoption of the best practicable option in order to prevent or minimise adverse effects on the environment of any discharge of a contaminant.

The Act prescribes that the council must be satisfied that the inclusion of such a rule is the most efficient and effective means of mitigating those adverse effects on the environment. And in order to be satisfied, regard should be given to:

- (a) the nature of the discharge and the receiving environment; and

(b) other alternatives, including a rule requiring the observance of minimum standards of quality of the environment.

In terms of the management of discharges, this ability to include such a rule within a regional plan is perhaps the pivotal component of the Act's BPO framework.

THE BEST PRACTICABLE OPTION - WHAT DO WE MEAN?

In order to consider what is actually meant by the phrase – the best practicable option, there is value in considering the individual definitions of each of its three components.

The online Oxford Dictionaries defines the 'best' as "that which is the most excellent, outstanding or desirable"; 'practicable' as "being able to be done or put into practice successfully"; and 'option' as "a thing that is or may be chosen" (Oxford Dictionaries, 2013).

Bringing these individual definitions together, we can explain the phrase to mean – the most desirable choice of something that can be done or put into practice successfully to manage our environment, while considering the economic, social, cultural, and spiritual relationships we desire for our Region as required by the Vision & Strategy for the Waikato River under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

With the above explanation in mind, it is evident that the best practicable option phrase can be used in different situations. For example, and in the context of a topic of particular social interest, one could refer to the decision to purchase a particular house – affordable or not, as the best practicable option.

Clearly the use of the phrase in this context is highly situational and open to debate, and one which is influenced by an array of contributing factors such as price, budget, location, number of bedrooms, outdoor space and so on.

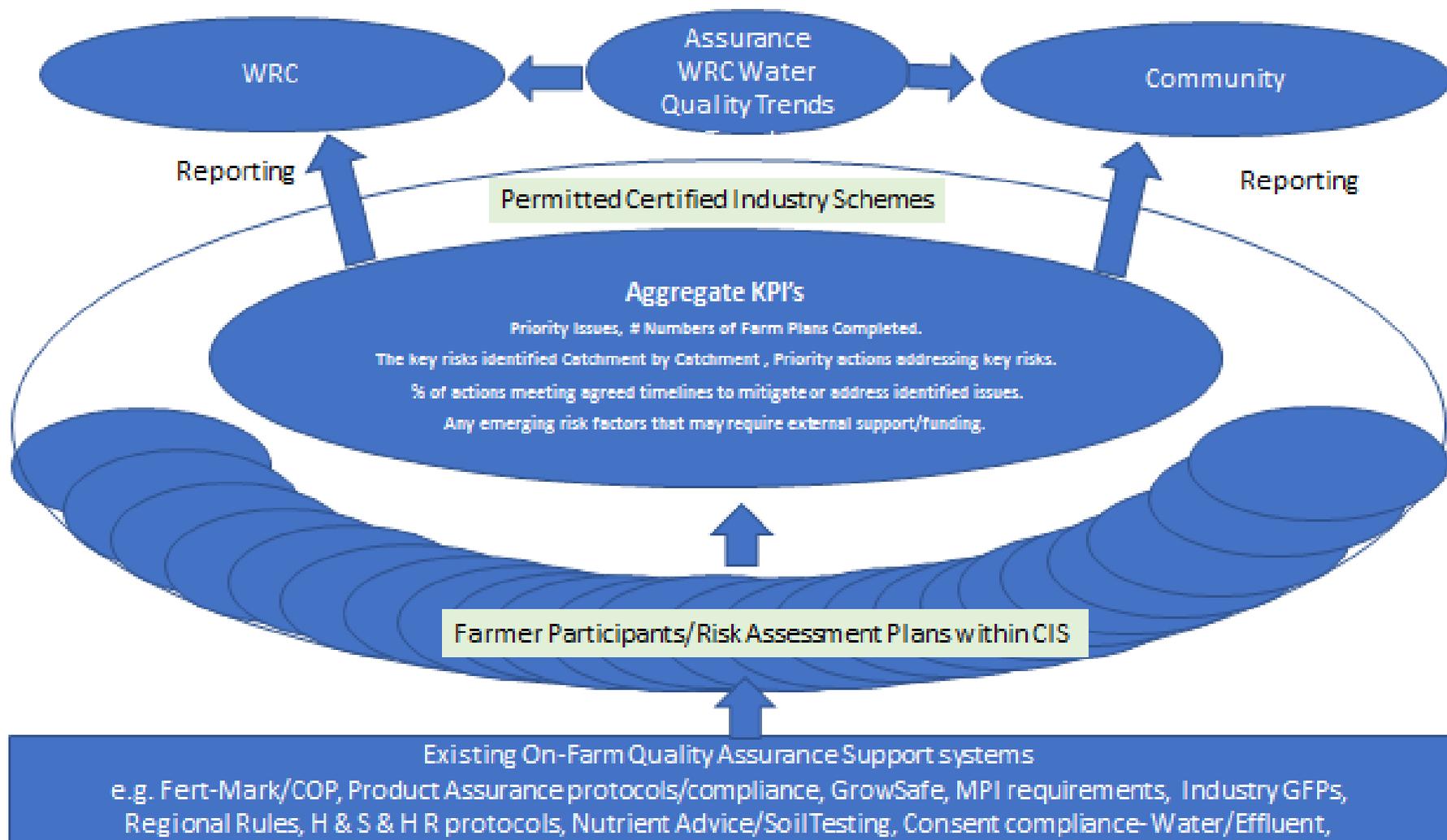
In this scenario however, arguably the person who chooses to buy a particular house is in the most appropriate position to determine what their best practicable option is. They have weighed up the contributing factors of most importance to them, and have made a decision within those constraints.

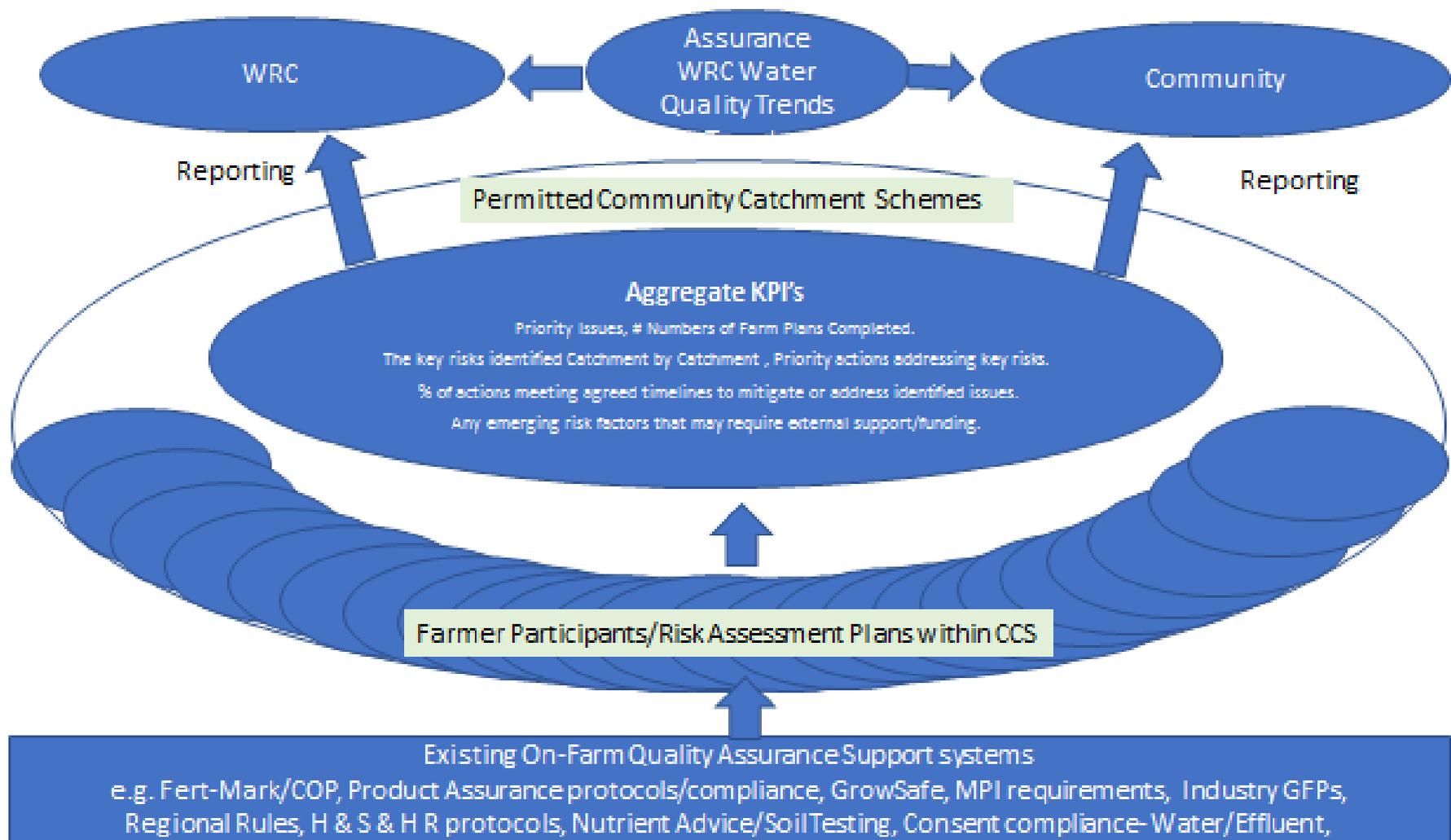
Nonetheless, even a slight change in circumstances could cause the decision to no longer be the best practicable option. An increase in mortgage interest rates for instance. In light of this, it can be construed that in whatever context, the best practicable option is situational, affected by perspective and reliant on a finely balanced decision process.

Using the above example as a template and replacing the buying of a house with farming the land, the use of BPO's in relation to control of discharges are also highly situational and influenced by an array of factors such as type of farming operation conducted, receiving water catchment, scale of any discharge, topography, geology, prevailing climate etc.

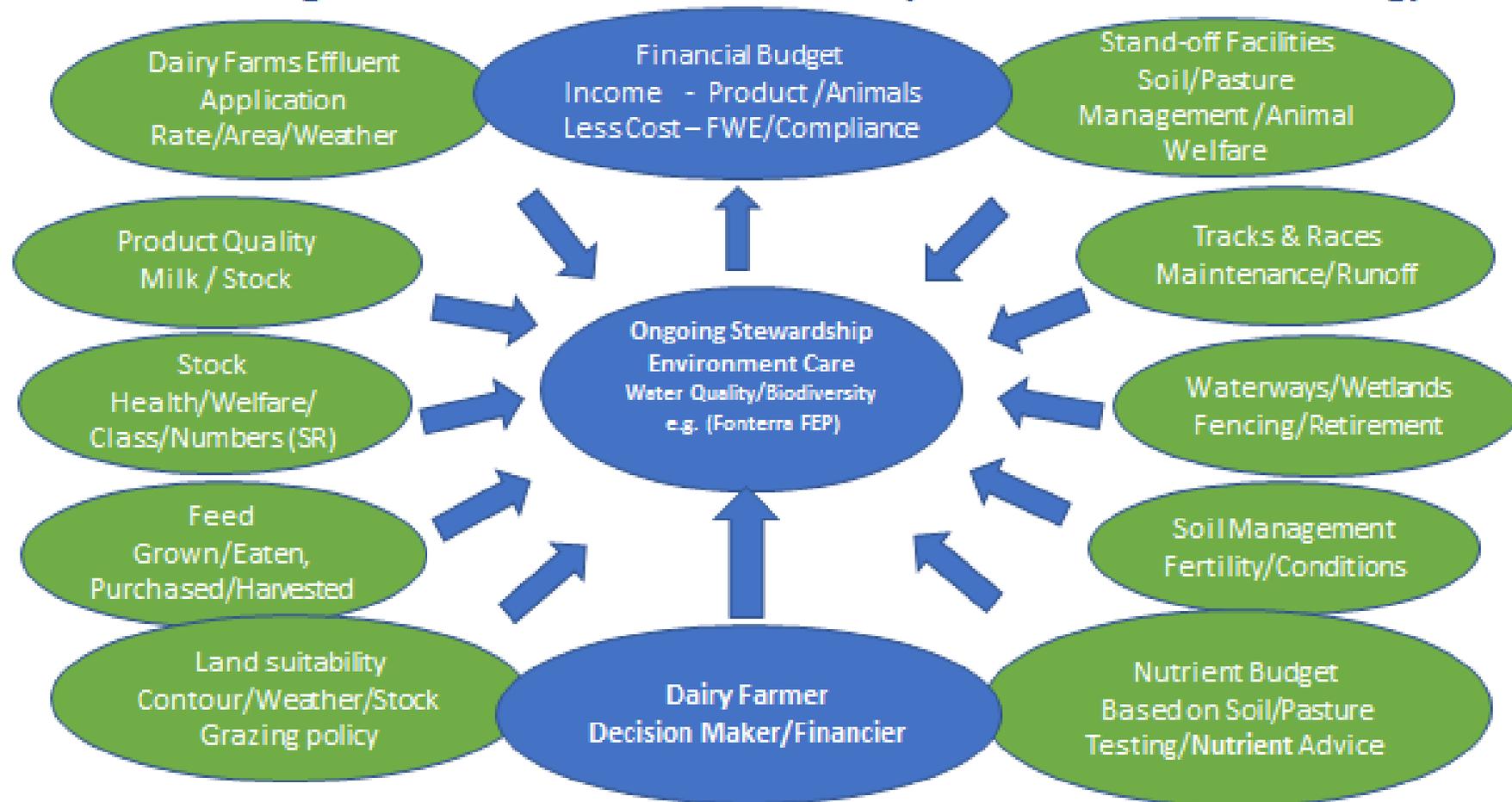
In the farming scenario, arguably the person who is in the most appropriate position to determine what their best practicable option is has to be the farmer.

The use of BPO in farming then gives the ability to allow flexibility of land use tailored to an individual property and its influencing factors whilst maintaining the observance of minimum standards of quality of the environment.

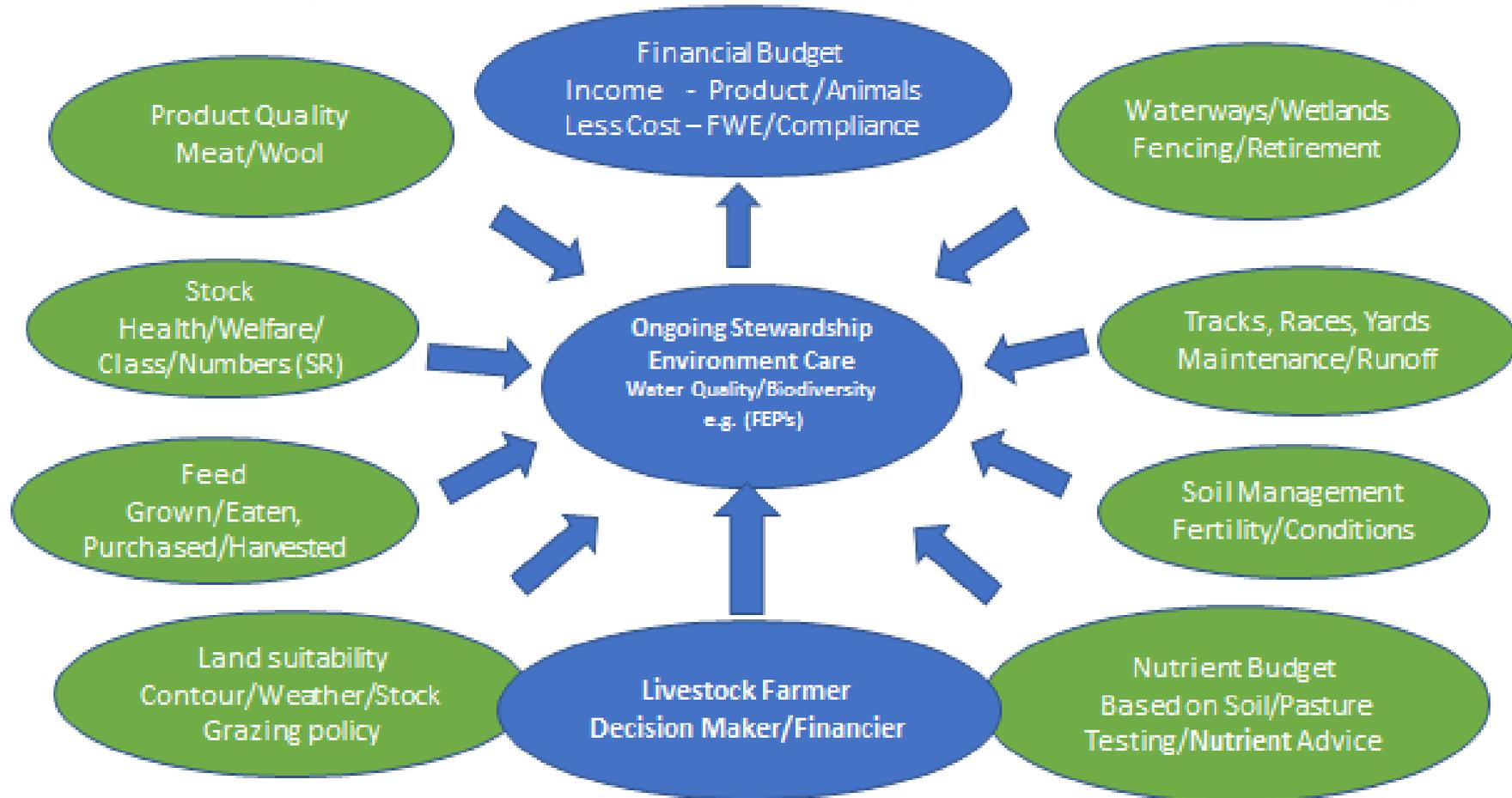




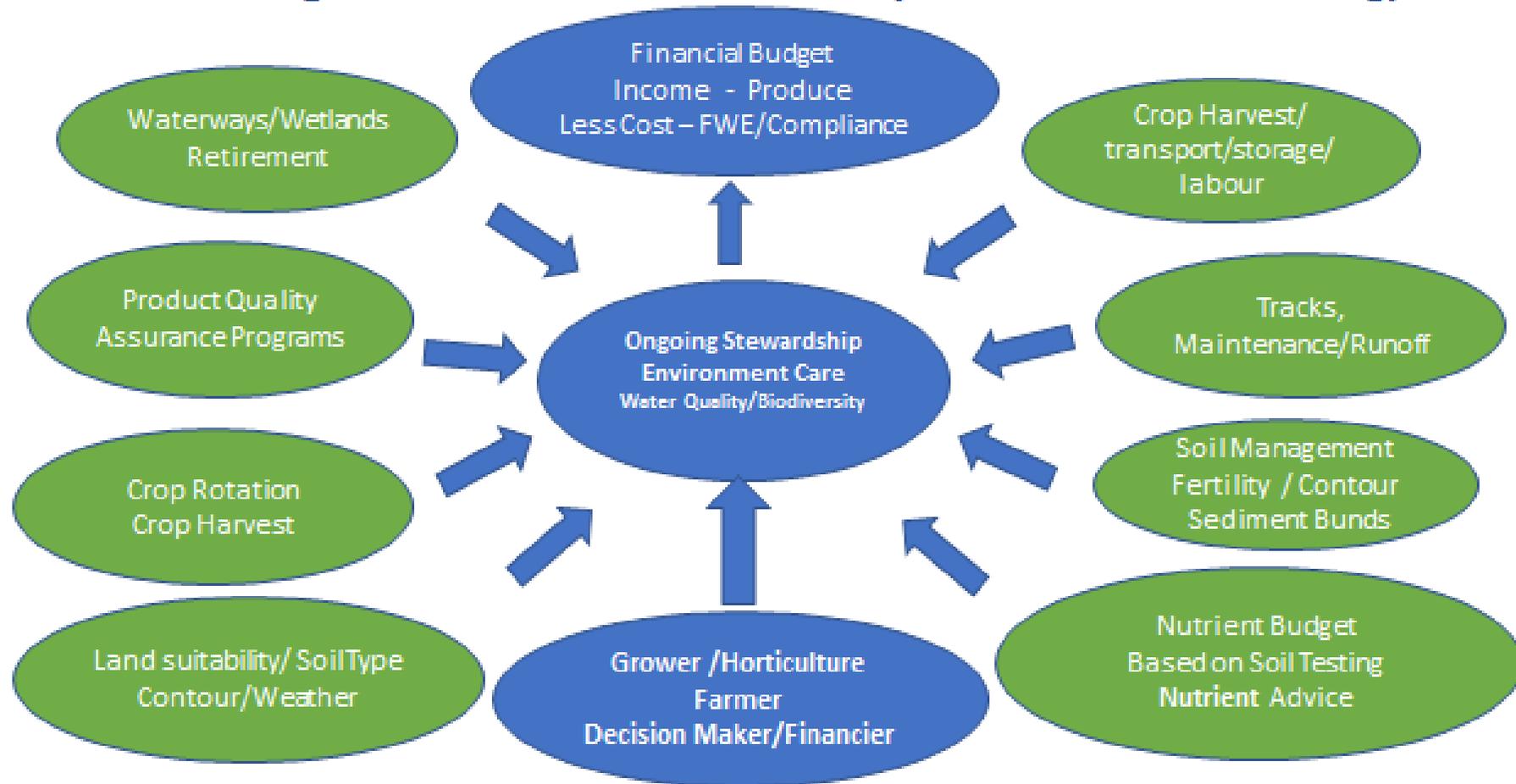
Existing Interconnected On-farm BPO (Planned Decision Making)



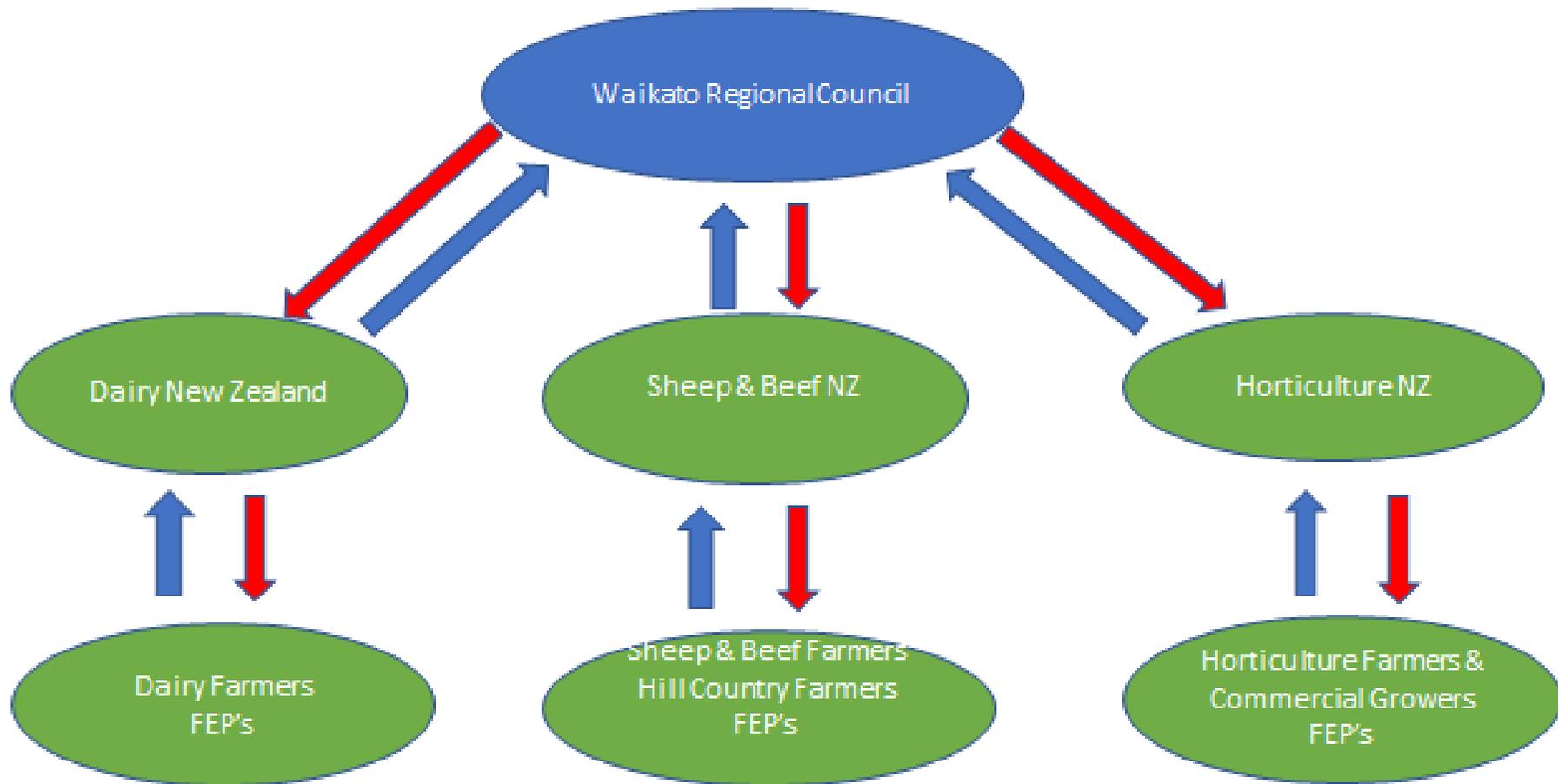
Existing Interconnected On-farm BPO (Planned Decision Making)



Existing Interconnected On-farm BPO (Planned Decision Making)



PROPOSED MODEL FOR INDIVIDUAL FARM ENVIRONMENT PLANNING



Blue arrows showing reporting paths and red arrows showing auditing paths.

Proposed structure for managing the compliance with Farm Environment Plans where the operator is not a member of a Certified Industry Scheme.

PLUG proposes that all those farmers that are not a member of a Certified Industry Scheme should be required to have a Farm Environment Plan the same as the members of any CIS and that the management of those FEP's should be devolved from the Waikato Regional Council down to the industry representative body to which the farmers pay levies.

The industry body to be responsible for ensuring that all members either belong to a CIS or that they have a FEP in place for their operation that complies with all requirements of WRC.

The reporting to WRC, of aggregated compliance monitoring figures, to be the responsibility of the industry representative bodies with their members required to report compliance to the industry body on an annual basis.

We propose that the industry body will audit a random sample of their members (comprising a number of small, medium and large operations) in any given year and report the aggregated results of those audits to the WRC.

The WRC to monitor the Industry Bodies for compliance with these audit requirements.

The reasons for our suggestion of this structure are:

- That as all farming operations currently pay levies to their industry bodies to represent them nationally it would be easy to control costs on a user pays basis.
- There will be no need for the WRC to hire a huge number of extra staff to carry out the monitoring/auditing functions with the associated increase in rates.
- No duplication of roles or functions for farmers to deal with or to fund.
- Monitoring functions will be undertaken by industry body representatives with expertise in the sector they are monitoring.

PLUG proposes to cover both the sub-catchment management planning and FEP's to greater depth in the block 3 presentations.