

**BEFORE THE HEARINGS COMMITTEE**

**IN THE MATTER**

**of hearings on  
submissions concerning  
the proposed One Plan  
notified by the  
Manawatu-Wanganui  
Regional Council**

**Introductory statement of Phillip Percy  
for the Land hearing**

## **INTRODUCTION**

1. You have been provided with the following evidence from Horizons for this hearing:

### **Section 42A Planning Evidence and Recommendations Report – Phillip Percy**

2. This report was prepared by me summarising the submission points from submissions that referred to provisions relevant to land management in Chapter 5, Chapter 12, the Glossary and Schedule A. I will discuss shortly some changes to my original recommendations which I trust will assist the Committee when hearing from submitters over the next few days.

### **Expert Evidence**

3. Many of the submissions to the Proposed One Plan raised significant concern with the approach that Horizons was taking to land management in the region. There were a large number of submissions that raised concerns about the identification of Highly Erodible Land. There was concern that the approach proposed by Horizons in the One Plan would require compulsory retirement of hill country farm land, and that the costs of this change to individual farmers and to the community would be unacceptable.
4. To address these major concerns, Horizons has put forward expert evidence to explain:
  - What the land management issue is (why is land management important).
  - To explain the research that has informed the SLUI programme and the One Plan.
  - What Highly Erodible Land actually is (to try to address the confusion created by the map in Schedule A of the Proposed One Plan).
  - To make it clear that WFBPs are voluntary and do not require compulsory land retirement.
  - To explain at a broad level what the costs and benefits of the WFBP programme are.

5. Each of the following experts will speak to you later in the hearing and explain to you in more detail some of the matters presented in their evidence.

#### **S42A Report - Greg Carlyon**

6. Mr Carlyon's evidence provides an overview of the Sustainable Land Use Initiative and the Whole Farm Business Plan approach which is borrowed by the One Plan. Mr Carlyon provides an explanation of the catalyst for change in the way land is managed in the Region to control erosion. This catalyst for change explains the motivation behind the Council's move towards more focused management of land use practices than occurred in the past.
7. Mr Carlyon also describes how the SLUI programme is funded, which includes the funding of the development of Whole Farm Business Plans.

#### **S42A Report – Dr John Dymond**

8. Dr Dymond's evidence describes the background to the definition of Highly Erodible Land. He explains the approach that he took to determining the areas of land where there was the greatest risk of erosion and describes how that analysis was transferred into a map format. Dr Dymond's work provides much of the basis for the direction that Horizons has adopted to land management, both through the One Plan as well as the non-regulatory SLUI programme.

#### **S42A Report – Dr Alec McKay**

9. Dr McKay has provided evidence which describes some of the fundamental approaches underpinning land management in New Zealand. He explains the principles of land evaluation and planning, describing how the capability and limitations of land are identified and how a course of action for the future use and management of that land is developed. This is fundamentally the WFBP approach.
10. Dr McKay provides explanation of the reasons for sustainable management of the land resource. He describes how the SLUI programme fits with the sustainable land use approach.
11. Dr McKay also provides in his evidence useful evaluation of the costs and benefits of the SLUI programme for the country, region, communities and at the farm scale.

#### **S42A Report – Dr Jon Roygard**

12. Dr Roygard has provided evidence which explains the other scientific work that was undertaken to inform the development of both the One Plan and the SLUI programme. Dr Roygard also expands on the definition of Highly Erodible Land and provides a useful summary of its development.
13. Dr Roygard also discusses the outcomes anticipated from the SLUI programme and explains the monitoring and reporting that is anticipated to measure these outcomes. This includes how the various anticipated benefits of SLUI are to be measured as the programme is implemented, and how this monitoring fits in with monitoring and reporting for the One Plan.

#### **S42A Report – Allan Cook**

14. Mr Cook is the Group Manager – Operations for Horizons Regional Council and is responsible for managing the Council's river and drainage engineering functions. He has provided evidence to describe how flood management in the Region is undertaken. Importantly, Mr Cook explains the influence of sediment on flooding and flood management. He explains the impact of sedimentation in the flood plain and outlines some of the costs to the community of managing this impact.

#### **S42A Report – Allan Kirk**

15. Allan Kirk is the Environmental Coordinator (Whanganui Catchment Strategy) and provides soil conservation advice on behalf of the Council. Mr Kirk's evidence explains how the Whole Farm Business Plan tool was developed and how it is implemented in practice. He explains how relationships with land owners is built up and how the WFBP development process occurs with individual land owners. Mr Kirk also explains some of the costs to the various parties involved in the WFBP process, including the costs attributed to landowners and the Council

#### **S42A Report – Lachlan Grant**

16. Mr Grant is a land management consultant who prepares Whole Farm Business Plans on behalf of the Council. Mr Grant's evidence explains how the WFBPs are developed in 'real life'. His

evidence explains the process that is followed in developing individual farm plans, and describes the structure of the WFBP document. Mr Grant also provides some useful data to demonstrate the implications of whole farm planning on the carrying capacity of 40 farms that have completed WFBPs.

#### **SUBMISSIONS WITHDRAWN**

17. Please note that the following submissions have been withdrawn that related to the land hearing.

| <b>Submitter</b>                            | <b>Submission Number</b> |
|---|--------------------------|
| <b>Lyll Walker</b>                          | 79                       |
| <b>Ministry of Agriculture and Forestry</b> | 373                      |

#### **PRE-HEARING MEETINGS**

18. Horizons has taken the opportunity to engage with a significant number of submitters through pre-hearing meetings. These meetings have been seen as being very valuable in clarifying the concerns that submitters have as well as explaining to submitters the reasons for the approach adopted in the POP. The pre-hearing meetings conducted in relation to the POP provisions addressing land management were successful in clarifying some issues and I will comment on those positive outcomes later in this report.

19. There are unfortunately a number of issues that remain unresolved. These fall into two categories: issues where there is significant disagreement; and matters where a general agreement on an approach has been reached but for resolution of specific details.

20. The minutes of these meetings have been provided to you.

#### **EVIDENCE FROM SUBMITTERS WHO HAVE ALREADY PRESENTED ALL OR PART OF THEIR SUBMISSION AND COMMENTS FROM THE HEARING PANEL**

21. On Tuesday 8 July a number of submitters presented all or part of their submissions and will not be attending the individual topic hearings, including this Land hearing.

22. The following submitters raised matters in relation to the Land Chapters. I draw the Panel's attention to these previous presentations because they will not be repeated at the Land hearing:

|   |                  |
|---|------------------|
| <b>Environment Network Manawatu</b>         | <b>356, X529</b> |
| <b>Gordon McKellar</b>                      | <b>354</b>       |
| <b>The Aggregate and Quarry Association</b> | <b>230</b>       |
| <b>Margaret Millard</b>                     | <b>437</b>       |
| <b>Ngati Kahungunu Iwi Inc</b>              | <b>180</b>       |

23. Of particular note, Horizons have accepted the recommendation that a critical review of the enforceability and legibility of the POP is undertaken. This is in response to concerns raised by submitters and by members of the Hearing Panel that there may be some opportunity for improvements. In response to this recommendation, Chapter 5 and Chapter 12 are being reviewed. The recommended alterations will be presented to the Panel once the review has been completed and this may resolve some of the matters raised in the planning evidence presented on behalf of submitters.

#### **DISCUSSIONS WITH SUBMITTERS**

24. Subsequent to the pre-hearing meeting on David Matthews' farm to discuss the definition of HEL, vegetation clearance and land disturbance, I had some very useful discussions with Patrick Carroll (telephone and email) and Tim Matthews (email) in conjunction with Allan Kirk (Horizons). Both submitters were very helpful in offering to work together to improve how vegetation clearance for maintenance purposes is defined in the One Plan.

25. While we were not able to reach an agreement on what constituted vegetation clearance for maintenance purposes, it may be of assistance to the committee to consider the following points of common ground:

- Land owners should be able to clear plants such as manuka, kanuka, inkweed, etc to maintain the productive use of their land provided that that vegetation is not providing erosion management benefits.
- Established woody vegetation such as manuka, kanuka is the most beneficial for erosion management (compared to soft stemmed or herbaceous plants such as thistle and fern).
- Where vegetation is providing erosion management benefits, removal of that vegetation should be assessed and approved by Horizons (a soil conservator).

26. Areas where agreement was not reached included:

- Exactly how to define the type of vegetation (listing versus a description).
- Defining when the vegetation becomes important for managing erosion (vegetation age, % ground cover).
- Clearance of vegetation from around water bodies (use the existing setbacks in Rule 12-5 or a setback of 6 metres where the land slope is greater than 32 degrees).
- The area of vegetation that can be cleared in a year (per property or a fraction of the property area (e.g. 1/250<sup>th</sup>).

27. Tim Matthews will be discussing this matter from his perspective when he speaks to you and will put forward his current recommendation on revisions to the definition of vegetation clearance and the rules in the Plan. I consider that it will be beneficial to the committee to discuss this matter further with Allan Kirk, John Dymond and Alec McKay when they present their evidence to the committee.

28. Subsequent to the recommended changes to the definition of vegetation clearance that I made in the s42A report, and after further discussions with Horizons' experts and other

submitters, I consider that the revised definition of vegetation clearance as proposed in the s42A report omitted some key matters. I consider that these two points will need to be incorporated into the revised definition (or exclusion) of vegetation clearance.

- Vegetation clearance along the edges of water bodies. As you will hear from the Horizons experts, riparian vegetation plays two key roles. It reduces the amount of sediment directly entering water bodies and it aids in retaining sediment that has been deposited near the beds to those water bodies. Any provisions enabling vegetation clearance adjoining water bodies will need to account for this role.
- Vegetation clearance in Rare and Threatened and At Risk Habitats. As currently worded, the definition of vegetation clearance would enable young vegetation to be cleared from these sensitive habitats without being captured by rules in the Plan. This was not the intention of the recommended changes and adjustments to the definition to account for this will be necessary.

## **CAUCUSSING WITH EXPERTS**

29. Where possible, the experts of Horizons and submitters have caucused on technical matters and, where appropriate, have refined the matters where there is agreement and where there remains disagreement. In relation to the land chapter, the only expert evidence (other than planning evidence) circulated prior to the hearing was that of Dr John McConchie who represents Michael Petersen, Taumarunui Farmers' Group 2008 and Property Rights, New Zealand. A meeting was held between Dr McConchie, Dr Alec McKay and myself on 9 July 2008. Minutes of that meeting have been circulated to you that outline the points that were agreed and those that remain in contention.

30. As you will see from those minutes, there are some complex issues to address. The evidence of Dr McConchie and that of the Horizons experts will hopefully assist the committee in resolving some of the outstanding issues.



## MATTERS RAISED IN PLANNING EVIDENCE SUBMITTED

31. In the following section, I wish to identify those matters that have been raised in expert planning evidence and identify for the Hearing Committee where there are areas where I accept the recommendations of the experts.

32. I have prepared the following summary table to identify the issues raised by each of the planning experts. There are a number of recommendations that they make that I agree with and consider that it is appropriate to advise the hearing committee that my recommendations change as a result. Where either I do not agree with the recommendation put forward or where the matter is complex and requires further consideration of hearing evidence, I have indicated where the issue remains outstanding. This is not an indication that I necessarily disagree with the recommendation of the experts, but that the hearing committee may wish to explore these matters in more detail.

Note: MO = Mary O'Callahan, RS = Robert Schofield, EG = Emily Grace, ER = Ewen Robertson, DL = David Le Marquand, DF = David Forest, DM = David Murphy, LH = Lisa Hooker

| Expert   | Plan heading  | S42A Planning report recommendation | Matter raised  | Degree of agreement |
|----------|---------------|-------------------------------------|--|---------------------|
| MO<br>RS | Objective 5-1 | Land 7 (pg 68-74)                   | Change 'minimised' to 'avoided, remedied or mitigated'.  | Outstanding         |
| EG       | Objective 5-1 | Land 7 (pg 68-74)                   | Enable equivalent of Whole Farm Business Plans for activities outside SLUI (defence force).                        | Outstanding         |
| DF       | Policy 5-3    | Land 9 (pg 85 – 86)                 | Either include specific cross references between RP and RPS or include separate objectives and policies in the RP. | Agree               |
| MO       | Policy 5-3    | Land 10 (pg106 – 112)               | Reword to reflect the enabling approach in the Act   | Agree               |
| RS       | Policy 5-3    | Land 10 (pg106 – 112)               | Remove or replace the word 'significantly'.  | Outstanding         |
| RS       | Policy 5-3    | Land 10 (pg106 – 112)               | Include specific mention of environmental management plans.  | Outstanding         |

|           |  |                        |   |             |
|-----------|--|------------------------|---|-------------|
|           |  |                        |   |             |
| <b>DF</b> | Policy 5-3                                     | Land 10 (pg106 – 112)  | Wording to include formed public roads in policy omitted from s42A report.  | Agree       |
| <b>MO</b> | Policy 5-3                                     | Land 10 (pg106 – 112)  | Remove the words 'and there is no reasonable alternative location' when referring to infrastructure development.          | Agree       |
|           | Policy 12-1                                    | Land 25 (pg 173 – 176) |   |             |
| <b>RS</b> | Policy 5-5                                     | Land 12 (pg 122 – 123) | Include specific mention of environmental management plans.   | Outstanding |
| <b>RS</b> | Method – Infrastructure Protection             | Land 19 (pg 141 – 143) | Include specific reference to infrastructure of regional and national importance.   | Agree       |
| <b>RS</b> | Chapter 5 - Explanations and principal reasons | Land 22 (pg 149)       | Include reference to benefits of low impact land uses such as wind farms.   | Outstanding |
| <b>MO</b> | Policy 12-1                                    | Land 25 (pg 173 – 176) | Include specific mention of environmental management plans.   | Agree       |
| <b>RS</b> |  |                        |   |             |
| <b>DF</b> | Policy 12-1                                    | Land 25 (pg 173 – 176) | Include reference to due process being followed when considering the introduction of codes of practice into the One Plan. | Outstanding |
| <b>DF</b> | Rule 12-2                                      | Land 32 (pg 252 – 255) | Improve certainty of conditions and standards of the rule   | Outstanding |
| <b>DF</b> | Rule 12-2                                      | Land 32 (pg 252 – 255) | Remove controlled activity condition relating to accidental archaeological discoveries.                                   | Agree       |
| <b>MO</b> | Policy 12-4                                    | Land 28 (pg 193 – 193) | Include reference to regionally and nationally important infrastructure.  | Agree       |
| <b>MO</b> | Policy 12-4                                    | Land 28 (pg 193 – 193) | Replace 'network utility operators' with reference to providers of infrastructure.  | Agree       |
| <b>MO</b> | Rules General                                  | Land 23 (pg 166 – 168) | Remove reference to rare and threatened and at risk habitats from land management rules.                                  | Outstanding |
| <b>DL</b> |  |                        |   |             |
| <b>EG</b> | Rules General                                  | Land 23 (pg 166 – 168) | Change 'per property per year' to a per hectare measurement for land disturbance and earthworks.                          | Outstanding |

|                         |                        |                        |  |             |
|-------------------------|------------------------|------------------------|--|-------------|
|                         |                        |                        |  |             |
| <b>MO<br/>ER</b>        | Rule 12-1              | Land 31 (pg 234 – 237) | Reference to Schedule D as a permitted activity performance standard should be removed or replaced with reference to specific erosion and sediment control guidelines. | Outstanding |
| <b>MO</b>               | Rule 12-1              | Land 31 (pg 234 – 237) | Requirement for discharge permit and land use consent if Schedule D not complied with.   | Outstanding |
| <b>DF<br/>DL</b>        | Rule 12-1              | Land 31 (pg 234 – 237) | Resolve circular reference between rule and land disturbance definition for infrastructure.  | Outstanding |
| <b>DL</b>               | Rule 12-1              | Land 31 (pg 234 – 237) | Allow for minor upgrading of transmission lines.   | Outstanding |
| <b>EG</b>               | Rule 12-1              | Land 31 (pg 234 – 237) | Separate land disturbance from roading and tracking by introducing a new rule for roading and tracking.  | Outstanding |
| <b>RS</b>               | Rule 12-1              | Land 31 (pg 234 – 237) | Make renewable energy development a permitted activity or exclude VC and LD from rule where best practice land management practices are used.                          | Outstanding |
| <b>MO</b>               | Rule 12-1<br>Rule 12-2 | Land 31 (pg 234 – 237) | Remove reference to iwi consultation.  | Agree.      |
| <b>RS</b>               | Rule 12-3              | Land 33 (pg 264 – 268) | Make renewable energy development a permitted activity or exclude VC and LD from rule where best practice land management practices are used.                          | Outstanding |
| <b>ER</b>               | Rule 12-3              | Land 33 (pg 264 – 268) | Refine the matters of discretion proposed.   | Outstanding |
| <b>RS</b>               | Rule 12-4              | Land 34 (pg 275 – 278) | Make renewable energy development a permitted activity or exclude VC and LD from rule where best practice land management practices are used.                          | Outstanding |
| <b>MO<br/>RS<br/>DL</b> | Rule 12-4              | Land 34 (pg 275 – 278) | Remove reference to rare and threatened and at risk habitats from conditions and matters of discretion.  | Outstanding |

|  |            |                        |   |                    |
|--|------------|------------------------|---|--------------------|
| <b>MO<br/>ER</b>                             | Rule 12-5  | Land 35 (pg 286 – 288) | Change to restricted discretionary activity and enable non-notification of applications.  | Outstanding        |
| <b>RS</b>                                    | Rule 12-5  | Land 35 (pg 286 – 288) | Change to controlled activity   | Outstanding        |
| <b>LH</b>                                    | Rule 12-5  | Land 35 (pg 286 – 288) | Amend waterway setbacks to the same as in the operative land and water plan.              | Outstanding        |
| <b>MO</b>                                    | Schedule A | Land 37 (pg 305 – 306) | Replace definition of HEL with a map at an appropriate scale.                             | Outstanding        |
| <b>RS<br/>MO<br/>DF<br/>ER<br/>DL<br/>EG</b> | Schedule A | Land 37 (pg 305 – 306) | Amend definition to improve interpretation  | Agree in principle |
| <b>DL</b>                                    | Glossary   | Land 38 (pg 334 – 337) | Amend land disturbance definition to include 'and works on existing transmission assets'. | Outstanding        |
| <b>DF</b>                                    | Glossary   | Land 38 (pg 334 – 337) | Delete exclusion from land disturbance definition.  | Outstanding        |

33. I am happy to discuss any of the issues raised that I have not yet been able to make a decision on whether my earlier recommendations need to be revised, however I anticipate that this discussion is likely to be more helpful to the committee either while the respective submitters are speaking, or on the 24<sup>th</sup> of July when Horizons makes its presentations.

34. To assist the committee, where I agree with the recommendations of the submitters I will explain to you briefly why I propose the alternative recommendations.

### **Recommendation Land 9**

*Recommendation from David Forest: Either include specific cross references between RP and RPS or include separate objectives and policies in the RP.*

35. As was discussed at the hearing on the overall One Plan, there is some merit in exploring whether there are opportunities to create more clarity in the relationship between the RP and the RPS components of the One Plan. Horizons are undertaking a review of the workability of the One Plan and this will be reported to the committee once it has been completed.

#### **Recommendation Land 10**

*Recommendation of Mary O'Callahan: Reword Policy 5-3 to reflect the enabling approach in the Act.*

*Recommendation of David Forest: Insert reference to existing formed public roads as proposed in s42A evaluation.*

36. Ms O'Callahan recommends in her evidence that Policy 5-3 should be reworded to be more enabling to be consistent with the focus in the Act. I consider that her recommendation retains the intent of the policy to provide a strong direction that only certain activities will generally be appropriate on Highly Erodible Land, but it reflects the direction set by the Act.

37. I do suggest that Ms O'Callahan's recommended wording is modified by adding the word 'only' after 'generally' so that any proposed land disturbance or vegetation clearance that does not fit within the listed sub-clauses is not otherwise enabled because it is not controlled by any other policy in the Plan.

38. Ms O'Callahan also recommends that sub clause vii is amended by removing the words 'and there is no reasonable alternative location'. I will discuss this shortly.

39. In light of Ms O'Callahan's evidence, I propose to amend my recommendation on the wording of Policy 5-3 to that shown below, with subsequent changes to the accept/reject recommendations for the submission points relating to that matter.

40. Mr Forest correctly identified that I had made a recommendation at page 108 of the s42A report but had mistakenly not included the proposed wording in the recommended changes to provisions on page 111 of the report. An additional clause should have been added to Policy 5-3(a) referring to the maintenance of existing formed public roads

**Policy 5-3: Regulation of vegetation clearance and land disturbance  
on Highly Erodible Land**

- (a) Vegetation clearance\* and land disturbance\*, including excavation, filling, tracking and soil cultivation, shall generally only not be allowed on Highly Erodible Land\* where unless:
- (i) the activity will result in an environmental benefit, including improved land stability, enhanced water quality, or the establishment of indigenous plant species, or
  - (ii) the activity is undertaken in accordance with a whole farm business plan\*, or
  - (iii) the activity is for the purpose of establishing or maintaining a fenceline ~~and there is no reasonable alternative location~~, or
  - (iv) the activity is for the purpose of harvesting trees that were planted for commercial purposes prior to this plan becoming operative and the area will be replanted in production forestry species, or left to revert to indigenous vegetation cover, or
  - (v) the activity is for the purpose of establishing and undertaking a commercial forestry operation that will operate in accordance with accepted industry standards, or
  - (vi) other exceptional circumstances apply.
  - (vii) the activity is for the purpose of establishing or maintaining infrastructure\* of regional and national importance as defined in Policy 3-1(a). ~~and there is no reasonable alternative location.~~
  - (viii) the activity is for the purpose of maintaining existing formed public roads.
- (b) Any vegetation clearance\* or land disturbance\* that is allowed on Highly Erodible Land\* shall not significantly increase the risk of erosion or land instability.

**Recommendation Land 10**

*Recommendation of Mary O'Callahan: Remove the words 'and there is no reasonable alternative location' when referring to infrastructure development.*

41. Ms O'Callahan, I believe, correctly explains that it is not appropriate that an applicant for a resource consent should be required to assess a range of alternative locations for their activity regardless of whether or not that activity is likely to cause adverse effects on the environment. While the intention of referring to the consideration in Policy 5-3 appears to have been a prompt to applicants and decision-makers that alternative locations should be considered when undertaking activities in HEL where there are potential effects, the current wording of the policy essentially makes that mandatory. I consider that clause (b) of the policy

provides a sufficient trigger to consider alternatives (being methods or locations) where accelerated erosion is likely.

42. Removing this requirement in relation to infrastructure should also be reflected in sub-clause (iii) which relates to establishing or maintaining fencelines to ensure consistency.

43. I therefore propose to amend my recommendation to the wording of Policy 5-3 as specified above (remove the words 'and there is no reasonable alternative location').

**Recommendation Land 19**

*Recommendation of Robert Schofield: Include specific reference to infrastructure of regional and national importance in Method Infrastructure Protection.*

44. While I do not necessarily agree with Mr Schofield's reasons for inclusion of reference to infrastructure of regional and national importance in the method, I consider that it is appropriate to do so as otherwise that infrastructure (as defined in Policy 3-1) may not be incorporated into this method. Being of regional or national importance, it makes sense that the method applies to those resources as well.

45. I therefore propose to amend my recommendation in regard to Method Infrastructure Protection to the following wording (add the words 'including owners of infrastructure\* of regional and national importance as defined in policy 3-1(a),')

| Project Name        | Infrastructure* Protection  |
|---------------------|---|
| Project Description | <p>The aim of this project is to reduce the erosion risk to, and caused by, infrastructure* construction and maintenance. Infrastructure*, such as roading, can in some instances be a contributor to erosion, particularly through poor stormwater management, and is put at risk from erosion.</p> <p>Advice and information will be provided to infrastructure* owners, <u>including owners of infrastructure* of regional and national importance as defined in policy 3-1(a),</u> in the planning stages of new works, the carrying out of maintenance, and protection of existing networks from erosion risks. This project applies to all land types – hill country, plains, sand country and the coast.</p> |

| Project Name    | Infrastructure* Protection   |
|-----------------|--|
| Who             | Horizons Regional Council, network owners (e.g., Transit), District Councils, forestry owners, landowners, power generators, and developers.   |
| Links to Policy | This project links to Policies 5-3, 5-4 and 5-5.   |
| Target          | The Regional Council will have formed working partnerships with all major infrastructure* owners for the purposes of assessing and identifying options to avoid, reduce or mitigate erosion risks. |

### Recommendation Land 25

*Mary O'Callahan and Robert Schofield recommend to: Include specific mention of environmental management plans in Policy 12-1.*

46. Both Ms O'Callahan and Mr Schofield recommend that environmental management plans be specifically referenced in Policy 12-1, which relates to consent decision-making. While my comments in my s42A report (pg 175) are still relevant, adding in specific reference to environmental management plans to the policy 'opens the door' for applicants to propose the use of them and for decision-makers to consider adopting them for conditions of consent. This change would not make environmental management plans compulsory but makes it clear in the Plan that their use would be appropriate in some cases.

47. I therefore propose to amend my recommendation to add a clause to Policy 12-1 which says:

*'whether an environmental management plan should be required as a condition of consent.'*

### Recommendation Land 28

*Mary O'Callahan recommends to: Include reference to regionally and nationally important infrastructure in Policy 12-4 instead of network utility operators.*

48. Ms O'Callahan makes a valid point that the term 'network utility operators' is not used anywhere else in the One Plan. To maintain consistency with the terminology used in the Plan, I agree that reference to infrastructure providers is more appropriate.



49. I therefore propose to amend my recommendation so that Policy 12-4 says:

**Policy 12-4: Large-scale consents**

For vegetation clearance\* and land disturbance\* activities that are widespread and undertaken by a single consent holder including, but not limited to:

- (a) common activities of ~~network utility operators~~ providers of infrastructure\* and infrastructure\* of regional and national importance as defined in Policy 3-1(a)
- (b) forestry operations
- (c) agricultural land use activities

the Regional Council will consider granting consents that are region-wide or cover large areas, provided any such consents are subject to conditions and/or review provisions enabling site-specific concerns to be addressed as necessary.

**Recommendations Land 31, 32, 33 and 34**

*Mary O'Callahan recommends to: Remove reference to iwi consultation from Rules 12-1 and 12-2 where archaeological, koiwi and waahi tapu sites are discovered.*

50. Ms O'Callahan correctly identifies that the wording in the rules as recommended relating to iwi consultation in my s42A report is unclear and does not accurately reflect the process that should be followed when material is discovered. This issue will be dealt with in further detail by Fiona Gordon who prepared the s42a planning report for Historic Heritage (see pg 33 of Mrs Gordon's s42A report )

51. Mrs Gordon's recommendation is to replace the existing wording of the accidental discovery conditions in Rules 12-1 and 12-2 with the following wording, although I note that this wording has been modified slightly from that in her s42A report so as to remove the onus from the Council having to notify the New Zealand Historic Places Trust:

*"In the event of the discovery of an archaeological site, waahi tapu site or koiwi remains being discovered or disturbed while undertaking the activity, the activity shall cease and the Regional Council shall be notified as soon as practicable. The New Zealand Historic Places Trust shall be notified as soon as practicable. The activity shall not be recommenced without the approval of*

*both an archaeological authority from the New Zealand Historic Places Trust and the Regional Council.”*

52. I therefore propose to amend my recommendation to replace Condition (b) in Rule 12-1 and Condition (d) in Rule 12-2 be amended to the above wording subject to any changes that arise through the hearing on Historic Heritage.

53. It is also appropriate at this point to propose another change to my recommendation to bring it into line with the s42A report on Historic Heritage. In that report, changes have been recommended to the conditions of the rules within the One Plan that relate to activities affecting known historic heritage, archaeological sites, waahi tapu or koiwi sites. This change relates to Condition (b) in Rule 12-1, Condition (c) in Rule 12-2 and Condition (c) in Rule 12-3. Explanation for this recommended change can be found in Ms Gordon’s s42A report at page 26.

### **Recommendation Land 32**

*David Forest recommends to: Remove the controlled activity condition relating to accidental archaeological discoveries from Rule 12-2.*

54. Mr Forest recommends that including an accidental discovery condition in the Conditions/Standards/Terms column for Rule 12-2 is unnecessary because it is most likely that a condition to this effect would be placed on any consents granted as a matter of course. I tend to agree with Mr Forest, and the matters of control for Rule 12-2 includes ‘(j) *procedures in the event of discovering or disturbing an archaeological site, waahi tapu or koiwi remains*’.

55. I therefore propose to amend my recommendation so as to delete clause (d), which relates to archaeological discoveries, from the Conditions/Standards/Terms column of Rule 12-2.

### **Recommendation Land 37**

56. Schedule A of the Plan, which includes a map in the Proposed Plan and which I recommended be replaced with a text definition of Highly Erodible Land, is a matter of some

complexity. It may be of assistance to the hearing committee to firstly understand how the definition of Highly Erodible Land came about. I will give a brief overview but the details of the development of the Highly Erodible Land definition is best explained by the relevant experts who will be presenting evidence for Horizons later in this hearing.

57. My understanding is that Horizons commissioned Dr John Dymond, who will present his evidence at this hearing, to identify land that was most susceptible to accelerated erosion. Dr Dymond prepared a definition that utilized land classes. This definition was then applied to existing land use capability maps for the region and a map was prepared which highlighted all of those land use classes.
58. The map that was prepared was based on large scale data and therefore was only accurate to approximately 1:50,000. While useful at a regional level to identify general areas where the relevant land classes vulnerable to erosion were located, the map was not useful at a property scale.
59. This limitation was recognized and Horizons then approached the mapping of Highly Erodible Land by way of identifying the properties within which the applicable land classes fell so that those property owners were made aware that there was a likelihood that there was Highly Erodible Land on their property. The intention, as I understand it was that this map was only to be one trigger for property owners to assess and identify specific parts of their properties – the map was not intended as a statement that all of the land coloured was actually highly erodible, it was to be used in conjunction with the relevant rules, which also included a slope (20 degrees) trigger. This map, quite justifiably, has caused significant concern to a large number of land owners who were of the mis-understanding that their whole property was classified as highly erodible.
60. To move away from the 'broad-brush' approach of the map, I recommended in my s42A report to move back to the text definition that was based on the definition that Dr Dymond developed when identifying Highly Erodible Land. The intention being to enable assessments of individual areas within properties to determine whether those areas were Highly Erodible Land and therefore required consideration of land use activities.

61. Unfortunately the definition currently relies on expertise in erosion processes and soil conservation to accurately use. It relies on a level of expert knowledge to determine whether a particular piece of land fits within the definition.
62. I have spoken at length with Horizons experts on how the definition can be refined to achieve the level of accuracy that is required for effective resource management without the need for expert input. To date, a solution has not been found.
63. The ideal solution would be to develop a map at the appropriate scale to enable each land owner to obtain a map of their property showing the areas of highly erodible land. However the current data available remains at a large scale and cannot be refined without a huge mapping exercise, including ground truthing.
64. So without a map, there appear to be only three alternatives. The first is to refine the definition and include sufficient detail to enable a non-expert to make an accurate evaluation of the land. This may be possible but I suspect will be very difficult to agree on. The second alternative is to recognise that identifying erosion potential on land is a complex matter that requires expert input, and therefore to develop a 'definition' that requires this expertise to be used. The third option is to use the approach in the Operative Land and Water Plan which applies the rules to all land in the Region regardless of its potential for accelerated erosion (i.e. no definition of highly Erodible Land at all). This option, while easier to write in rules in a plan, does not focus the management of effects on the areas where that management is most needed.
65. I am not suggesting that the reliance on expert input is necessarily the right way to approach it legally, but it may be the only way to achieve an accurate result. Using expert input to determining compliance with conditions and standards is not unprecedented. Examples would include:
- a. permitted activity rules that require culverts to be sized to enable appropriate stream flows to pass (requiring engineering expertise to determine the flows in the waterbody and then calculate the culvert requirements).

Comment [hm1]: Perhaps you could also discuss the 3<sup>rd</sup> alternative, which is the current approach in the operative land and water plan which applies the rules to all land in the region, regardless of its potential for accelerated erosion.

- b. Discharge rules that limit changes in water clarity, colour, turbidity, etc (requires an expert in measuring these parameters).
- c. Conditions relating to odour that require no offensive or objectionable odour beyond the boundary (requires a trained person to make the assessment).

66. My preference would be for a map to be developed, as this is the simplest tool to use as a plan user. However at present that option is not available and either a comprehensive definition or a reliance on expertise are the only options as I see it for defining Highly Erodible Land.

### **Summary**

67. While a number of matters have been resolved or moved forwards through discussions, meetings and the review of expert evidence, there remain issues that are outstanding. Horizons will continue to try to resolve as many of those issues as possible before the end of the hearing.

68. Other issues that have not been able to be resolved will be explored at this hearing and I welcome the opportunity to explore some of the proposals by submitters once they have presented their evidence.

69. Thank you for the opportunity to clarify some points before you hear from submitters and I am happy to answer any questions you may have.

Phillip Percy

14 July 2008