

IN THE MATTER OF the Resource Management Act 1991 ('The Act')

AND

IN THE MATTER OF hearings on submissions concerning biodiversity provisions of the proposed One Plan notified by the Manawatu-Wanganui Regional Council ('The Council').

STATEMENT OF EVIDENCE OF JULIAN WATTS

INTRODUCTION

My Qualifications and Experience

- 1 My full name is Julian Derick Watts. I appear in connection with the submission and further submissions on the Proposed One Plan by the Minister of Conservation ('the Minister').
- 2 I am employed by the Department of Conservation as a Resource Management Planner in the Wanganui Conservancy Office. I hold an MA in Town and Regional Planning from the University of Sheffield (UK) and corporate membership of the Royal Town Planning Institute (UK). I have approximately twenty years' experience in the field of environmental planning in the United Kingdom and New Zealand, the majority of it specialising in the planning and protection of significant natural areas and landscapes.
- 3 Prior to my present position I was employed as Environmental Policy manager with South Taranaki District Council. My work at that council included administration of the District Plan during its final stages of preparation,

including matters relating to the resolution of references to the Environment Court and notification of variations to the Proposed Plan under the Resource management Act 1991 (“the Act”).

4 I am currently responsible for providing advice to the Conservator on issues under the Act. This involves assessing notified resource consent applications for their effect on the Department’s interests in the Wanganui Conservancy and representing the Department at all stages of the consent application process. I am also responsible for advice to the Conservator on matters relating to the regional policy statements and regional and district plans for the Manawatu-Wanganui and Taranaki Regions.

5 During the past two years I have been responsible for co-ordinating the Department’s involvement in the Proposed One Plan. The Horizons Region includes parts of five Lower North Island Conservancies, with the largest part lying within the Wanganui Conservancy. In this capacity I have attended numerous meetings and workshops with Horizons’ staff, co-ordinated the Department’s informal comments on the Draft One Plan, and drafted the Minister of Conservation’s submission and further submissions on the Proposed One Plan.

6 I have read the Code of Conduct for Expert Witnesses (Section 5 of the Environment Court Consolidated Practice Note 2006). I agree to comply with this Code of Conduct. This evidence is within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

SCOPE OF EVIDENCE

7 My evidence will, from a planning perspective, cover the following matters in turn in as far as they relate to matters raised in the Minister’s submissions:

- The national legislative and policy framework which I consider particularly relevant to the matters to be determined at the Biodiversity Hearing, in particular the relevant provisions of the Resource Management Act 1991 and the New Zealand Coastal Policy Statement (1994).

- General themes and issues which have been raised in relation to the Proposed One Plan's approach to biodiversity matters by the Minister's submission and other submissions. These provide an evaluation of the appropriateness of including regulatory methods in the Plan; the different types of regulatory approaches in comparison with the Proposed One Plan approach, and the classification of activities within rare or threatened and at-risk habitats under the Proposed One Plan.

- The specific provisions of the Proposed Regional Policy Statement (Chapter 7 of the Proposed One Plan).

- The specific provisions of the Proposed Regional Plan that relate to rare or threatened and at-risk habitats.

- Schedule E, which sets out the scope of the rare or threatened and at-risk habitats which are to be protected under the plan.

8 Where relevant I will refer to the specialist evidence provided separately by my colleagues, Ms Hawcroft and Mr La Cock, the reports prepared for the Panel by Ms Marr and Ms Maseyk (and for the Land Hearing by Mr Percy), and matters raised by other submitters where they help to illustrate the planning issues under consideration.

EXECUTIVE SUMMARY

9 In accordance with the directions of the Chair of the Hearing Panel the following bullet points provide an executive summary of my evidence, focusing

on the conclusions arising from it in relation to the matters raised in the Minister's submissions:

- 10 Horizons Regional Council has functions and responsibilities under the Act for the maintenance of biodiversity of species and ecosystems in the region and the achievement of the purpose of the Act, particularly in relation to Sections 6(c) and 7(d). It also has statutory responsibilities under the New Zealand Coastal Policy Statement, which makes further and more detailed provision for biodiversity protection in the coastal environment.
- 11 The vast majority of the Horizons Region is currently covered by general rules in District Plans which classify clearance of any indigenous (forest-based) vegetation, and in some cases vegetation on wetland margins, above a minimum threshold size and/or area as a discretionary or non complying activity.
- 12 Some District Plans also have limited site-based schedules based on the Department of Conservation's Protected Natural Area survey programme. This provides a degree of statutory protection for other habitat types, but is limited in extent.
- 13 In general, the approach to biodiversity protection in the One Plan is innovative and, in my opinion likely to be more efficient and effective in achieving the purposes of the Act than established alternatives, including continuation of the status quo in the region. It would significantly reduce the geographical area which is currently covered by regulation but provide more selective and targeted protection for a wider range of significant habitat types, including those which are 'at-risk' rather than under immediate threat.
- 14 I agree with my colleagues Ms Hawcroft and Mr La Cock, and Ms Maseyk, that regulation of activities with potential adverse effects under the Act is necessary, but should be subsumed within and, if the approach is successful, a secondary element of, an integrated approach to maintaining biodiversity across the region which focuses on positive management under the stewardship of landowners. In addition to providing a more integrated approach on regulatory

matters, I agree with Ms Marr's statement that such an approach would have a better 'fit' with the Regional Council's core activities, certainly in rural areas, than with the District Councils. It is also, based on information provided in Annual Plans and LTCCP's, likely to have significantly greater resources and expertise available to implement it if this is the case.

15 The Council has chosen to focus its biodiversity maintenance functions on habitats. However, based on the evidence of Ms Hawcroft and Mr LaCock and the wording of the Act and NZCPS, I agree that in order to achieve the purpose of the Act and give effect to the NZCPS, the definition of 'habitat' needs to be broadened to include physical substrate, particularly if the species-based identification of habitats is to be considerably narrowed in scope (through removal of threatened species from Table E3), and nationally rare habitats are to be protected.

16 In relation to active dunelands, based on the evidence of Mr La Cock, I consider that the present approach to protection in the One Plan is too fragmented and does not provide adequate protection for their intrinsic values which rely upon dynamic processes and substrate for the maintenance of their integrity, form, functioning, and resilience, and long-term survival of the range of nationally threatened species and communities which they support. Given the nationally important status of the Manawatu dunelands, and the national priority given to protection of sand dune ecosystems, in my opinion, these active dunelands warrant protection as a whole. Suggestions on how this could be achieved are contained in this evidence and the evidence of Mr La Cock.

17 In addition to the above, I have assessed the other provisions in the Proposed One Plan and drawn conclusions on possible amendments to address the Minister's submission and provided further evidence on matters on which the Minister has submitted in support of the existing provisions.

LEGISLATIVE AND POLICY FRAMEWORK

Relevant Provisions of the Act

18 The maintenance of biodiversity (which I take to have the same meaning as ‘biological diversity’, as defined in the Act) and related matters are important themes which are prominent in the purpose and principles of the Act;

- Subsection 5(2)(b) refers to:

“safeguarding the life-supporting capacity of air, water, soil and ecosystems”
(emphasis added)

- Section 6 sets out that:

“In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

...

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna”.

- Under Section 7(d):

“In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to....

(d) intrinsic values of ecosystems”.

- Section 6(a) relating to preservation of the natural character of the coastal environment, wetlands, and lakes and rivers and their margins, and section 6(b) relating to protection of outstanding natural features and landscapes, are also relevant to consideration of biodiversity matters, since the physical and biological components of ecosystems and associated habitats may form an important element of natural character and landscape values. Requirements to protect biodiversity values may also flow from statutory provisions relating to these matters, including the New Zealand Coastal Policy Statement (see below).

- Under Section 30(1)(ga) the functions of regional councils are include “the establishment, implementation, and review of objectives, policies and methods for maintaining indigenous biological diversity”.
- Under Section 31(1)(f) territorial authorities also have a function to control land use activities, including for the purpose of the maintenance of indigenous biological diversity.
- I note that the meaning of biodiversity under the Act (quoted in paragraph 20) indicates that these functions relate to species and ecosystems which is broader in scope than the matters covered in Section 6(c) and also touches upon the requirements of Section 7(d), quoted above.

19 Section 2 provides the following relevant definitions:

- *“intrinsic values, in relation to ecosystems, means those aspects of ecosystems and their constituent parts, which have value in their own right, including-*
 - (a) *their biological and genetic diversity; and*
 - (b) *the essential characteristics that determine an ecosystem’s integrity, form, functioning, and resilience”*

“biological diversity means the variability among living organisms, and the ecological complexes of which they are part, including diversity within species, between species, and of ecosystems”

New Zealand Coastal Policy Statement (NZCPS)

20 Under Section 62(3) of the Act a regional policy statement must give effect to the New Zealand Coastal Policy Statement. In addition to the general matters relating to preservation of natural character in the NZCPS (e.g. Policies 1.1.1

and Policy 1.1.3) Policy 1.1.2 relates at length and directly to biodiversity and Section 6(c) matters:

Policy 1.1.2

“It is a national priority for the preservation of the natural character of the coastal environment to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna in that environment by:

1. avoiding any actual or potential adverse effects of activities on the following areas or habitats;

(i) areas and habitats important to the continued survival of any indigenous species

(ii) areas containing nationally vulnerable species or nationally outstanding examples of indigenous community types;

(b) avoiding or remedying any actual or potential adverse effects of activities on the following areas

(i) outstanding or rare indigenous community types within an ecological region or ecological district;

(ii) habitat important to regionally endangered or nationally rare species and ecological corridors connecting such areas; and

(iii) areas important to migratory species, and to vulnerable stages of common indigenous species, in particular wetlands and estuaries;

(c) protecting ecosystems which are unique to the coastal environment and vulnerable to modification including estuaries, coastal wetlands, mangroves and dunes and their margins; and

(d) recognising that any other areas of predominantly indigenous vegetation or habitats of significant indigenous fauna should be disturbed only to the extent reasonably necessary to carry out approved activities”

21 This policy further elaborates on and adds detail to the provisions of Sections 6(a) and 6(c) of the Act, in particular for example through reference to

- “*the continued survival of any indigenous species*” in sub- clause(b) (i) (underlining added);
- “*habitat important to regionally endangered or nationally rare species and ecological corridors connecting such areas*” in sub- clause (b)(ii)
- “*protecting ecosystems which are unique to the coastal environment....including....dunes*” in clause (c)

22 These points of emphasis indicate to me that there are additional criteria which should be appropriately applied to the protection of coastal ecosystems, including dunes.

23 These matters are considered further in the evidence of Mr LaCock and Ms Hawcroft .

24 Other policies of the NZCPS include Policy 1.1.4, which (restricting my reference to the most relevant parts of the policy) states that

“It is a national priority for the preservation of the natural character of the coastal environment to protect the integrity, functioning, and resilience of the coastal environment in terms of:

(a) the dynamic processes and features arising from the natural movement of sediments, water and air;

(b) natural movement of biota;

(c) natural substrate composition;

(d) natural water and air quality;

(e) natural bio diversity, productivity and biotic patterns; and

(f) intrinsic values of ecosystems”

25 These are in my opinion also particularly pertinent to matters raised in the evidence of Mr LaCock and Ms Hawcroft in relation to biodiversity, dynamic processes and abiotic components of the coastal environment.

Other relevant documents

26 Although not a statutory document, the New Zealand Biodiversity Strategy (2000) has been adopted by Government after extensive public consultation and provides an overview of national strategic direction on these matters. “Protecting our Places” (2007), a more recent document arising from this strategy, provides guidance on national priorities, which councils can use in decision-making under the Act.

27 Reference is also made to the above documents in the evidence of Ms. Hawcroft and Mr La Cock where appropriate.

GENERAL THEMES AND ISSUES

28 There are a number of general themes which recur at several points throughout the biodiversity provisions of the Proposed One Plan and submissions on it. I will discuss them here and then refer back to them later in my evidence where necessary.

Appropriateness of including regulatory methods in the Plan

27. Leaving aside the issue of how regulatory functions are to be apportioned between the regional and district councils (which is considered below under Policy 7.1), a number of submitters have questioned the necessity for a regulatory approach. For example, in their submission, Palmerston North City Council (PNCC) state that “It seems unreasonable for Horizons to place onerous regulation on individuals who are likely to be already sympathetic to

objective 7-1 and likely to be responsive to the non-regulatory methods offered under the plan.it does not appear that Horizons has adequately considered whether Policies 7-2 and 7-3 are the most efficient and effective means of achieving Objective 7-1 of the One Plan”

28. The justification for a regulatory framework is based on the premise that without such a framework biodiversity will not be maintained or the purposes of the Act met. Evidence has been provided by Ms Hawcroft and Ms Maseyk that biodiversity has continued to decline nationally, at least in part as a result of activities which may be reasonably be amenable to regulation under the Act.
29. To my knowledge there have been no specific primary research within the context of the Resource Management Act on biodiversity loss across the Horizons Region. However the Department of Conservation, as a potentially adversely affected party in such matters, is required to give approval under Section 94 of the Act for non-notification of consents for vegetation clearance and other matters relating to Section 6(c) of the Act. It also receives direct notification of consent applications relating to such matters. Information from my own records and those of my colleagues, together with the information presented in Ms Hawcroft’s evidence indicates there continues to be pressure to clear or otherwise modify or degrade areas of significant indigenous vegetation, wetlands and other significant habitats in the region.. The frequency of such cases (particularly in comparison with activities affecting the rivers of the region) is relatively low. This may reflect a lack of pressure on these habitats, including in parts of the region where very little natural habitat remains, or the possibility that activities with adverse effects are generally not regulated in District (or Regional) Plans. There are also other possible reasons.
30. It also appears reasonable to me to assume that the national trend towards continuing biodiversity decline reported in Ms Hawcroft’s evidence is likely to be applicable to the Horizons Region.

31. In my opinion it is also the case that the relative infrequency of activities with potential adverse effects on significant natural areas would suggest that the demands of regulation are unlikely to be economically onerous for the community. On the other hand the impact of further loss of rare or threatened or at risk habitat, even on an infrequent, cumulative or sporadic basis is likely to be significant.

Conclusions

32. I would conclude that a regulatory framework is necessary to provide protection in specific situations where voluntary non-regulatory mechanisms are not appropriate to secure protection, and to ensure that the provisions of Section 6(c) are taken fully into account, particularly in situations where economic objectives and the requirement to avoid, remedy or mitigate effects on the environment are in conflict, and in situations where damage or destruction of such habitats would not otherwise be subject to the plan provisions. On that basis in my opinion it appropriate that rules are retained in the Regional Plan.

Types of regulatory approaches.

33. The next issue concerns the appropriate form of a regulatory framework. A number of other submitters have also referred to this issue in their submissions.

34. Federated Farmers, in their submission (426/100) have sought the development and retention of schedules of areas which are significant under Section 6(c) of the Act. TrustPower NZ (submission point 265/24) have sought that “such areas.....are mapped and introduced by way of Variation”. Rangitikei District Council has sought that the council maps all areas to which Rule 12-8 relates (p.61 of its submission).

35. A number of submitters have sought that the District Councils continue to exercise their functions as at present, whilst not specifying what form, if any, a regulatory approach should take (see para. 48 below).
36. As noted in Ms Marr's Report, a range of alternative approaches for formulating a regulatory framework to address Section 6(c) matters have been commonly used in District Plans since the inception of the Act. These broadly fall into two categories – schedule-based approaches and general rules. It is in my opinion relevant to compare these approaches with the alternatives (the One Plan approach and the status quo) and to consider their relative advantages and disadvantages. This matter is also considered in Ms. Hawcroft's evidence, but I will consider it here from a planning perspective.
37. **Site schedule-based approach.** This type of approach has the advantage of providing certainty for landowners regarding which sites are or are not protected and may limit compliance costs if much of the assessment of environmental effects has already been carried out as part of the scheduling process prior to a consent being applied for. However it relies on a comprehensive assessment of all potentially significant areas of indigenous vegetation or significant habitats of indigenous fauna and inclusion of a schedule of sites in the plan. It also relies on a valid field assessment or 'ground truthing' of site boundaries at an appropriate scale, which may be costly and/or difficult, for example where the site is remote or where the boundaries of significance are unclear. There is therefore a possibility that significant sites will be missed out or inaccurately recorded. Landowners may also be reluctant to have their sites identified in plans or to allow access onto their property for the survey work required.
38. Early attempts at this type of approach included those which simply incorporated sites which were Recommended Areas for Protection (RAP's) under the Department of Conservation's Protected Natural Area (PNA) programme, where such an assessment had already taken place. However it is important to note that the PNA programme was developed under the Reserves Act 1977 and not in terms of the RMA; it also sought to identify 'elite' sites

which it may be desirable to protect under Reserves Act or Conservation Act, primarily on the basis of representativeness. It was not intended to be sufficient to maintain biodiversity or meet the requirements of Section 6(c) of the Act.

39. Nevertheless, as noted below, a PNA based approach is still used in some District Plans as a basis for a site schedule-based approach, particularly where Councils have been unwilling or unable to devote resources to a more comprehensive assessment.
40. Whilst having the advantage of being tied in to a framework of Ecological Districts and Regions at a national scale which is still relevant today, schedules based on the PNA programme in my opinion may best be seen as partial solutions, and the information on which they were based is now several decades old (at least). The advantages and limitations of this approach are considered further in Ms Hawcroft's evidence.
41. More recent attempts at this type of approach have made greater use of new technology such as or remote sensing such as aerial photographic surveys (for example the New Plymouth District Plan), and the Land Cover Database (LCDB). These have been used either separately (to map approximate site boundaries or vegetation classes), or, increasingly, in combination with modelling techniques, particularly the LENZ Classification. This approach has the advantage of narrowing down the effort required in the field but does not remove the need for field work, or, as noted in Ms Hawcroft's evidence, the need to include significant areas which would not otherwise be 'captured' under the LENZ system (e.g. rare habitat types, small sites, sites of significance for other reasons such as historical, or habitats which are significant for the occurrence of specific threatened plant or animal species).
42. The above approach provides a reasonably high level of certainty for landowners but requires significant resources (including appropriate consultation processes) which it may be difficult to justify where the likelihood of consents being required is low relative to the cost of the

comprehensive survey. It may raise concerns amongst individual landowners that they are being 'targeted' in some way, particularly if they do not accept the basis or reasons for assessing significance. On the other hand a site based approach, coupled with good consultation, enables face to face contact to be established with landowners and discussion to take place on other methods outside a rules framework, including fencing and pest management, with which the consent authority may be able to assist.

43. **General Rules.** The second commonly-used approach utilises a general rule, 'triggered' by specific activities such as indigenous vegetation clearance. Its practical effectiveness is reliant upon landowners or other resource users being able to determine whether the rule is being triggered or not, or seeking advice from the Council or a qualified person. In general such rules are based on activities affecting broad and clearly distinguishable habitat types, typically indigenous forest and wetlands and their associated vegetation. This approach has the advantage of being relatively simple and low cost, since it does not involve field assessment prior to the rules being introduced.
44. The Department of Conservation has generally supported or on occasions successfully sought such an approach through the Environment Court as a 'default' approach in 'first generation' District Plans where adequate information or resources are not available for a comprehensive site schedule-based approach.
45. This approach has the disadvantage however of the regulatory framework being non-selective, which means that a wider range of landowners are subject to regulation, and there is a greater likelihood that consent applications will be required for activities affecting sites which are not assessed as 'significant' in terms of the Act. In effect the cost of compliance is borne more heavily by individual landowners than by the community as a whole, unless the regulatory authority makes some form of contribution, such as waiving of consent processing fees, or providing a 'free' site assessment.

46. **The One Plan Approach.** The approach proposed in the One Plan falls somewhere between the above two established approaches. Ms Hawcroft considers the underlying methodology in her evidence. To the best of my knowledge the One Plan approach has not to date been used in a similar context elsewhere in New Zealand.
47. The main difference from the ‘schedule’ based approach is that the ‘predictive’ component of the LENZ/LCDB based approach is taken a step further through the use of predictive modelling (LVPT) to identify habit types. Based on Ms Hawcroft’s assessment and Ms Maseyk’s evidence this appears to me likely to provide a higher level of certainty that significant areas of indigenous vegetation will be identified through this approach and as a consequence enables non-significant habitats to be excluded from the plan provisions without less need for detailed site assessments. In addition a site assessment would only need to be undertaken if the landowner signalled his/her intention to carry out the specific activity having first checked whether the site concerned was of the type listed in the Plan.
48. **Retention of the status quo.** An analysis of Operative District Plans in the Horizons Region (Table 1) indicates that a mixture of general approaches for regulating indigenous vegetation clearance is currently in use in the region.

Table 1: District Plan approaches to regulation of indigenous vegetation clearance in the Horizons Region:

District Council	Type of approach
Ruapehu	General rules
Rangitikei	General rules and PNA-based schedule
Palmerston North City	PNA-based schedule
Wanganui	General rules
Horowhenua	General rules and schedule
Manawatu	General rules and schedule

Tararua	General rules and PNA-based schedule
Stratford	General rules
Waitomo	General rules
Taupo	General rules

49. Approaches range from Palmerston North City District Plan, which has a schedule (based on the PNA programme) of nine sites, to Manawatu District Council, which has a general rule and a relatively lengthy schedule of sites (which is also based on the PNA programme).

50. General rules are the most commonly used approach, either alone or combined with a PNA-based schedule of sites. Whilst they have common elements, the operative rules themselves vary widely in terms of thresholds or activity classification (which ranges from restricted discretionary to non-complying). Some apply only to indigenous forest whilst others apply to wetland margins as well. Other types of habitats are generally not protected under such general rules and in some cases commercial timber harvesting is also permitted providing that it has approval under the forestry legislation.

51. In addition to the above, the management of activities affecting wetlands (excluding their margins) is regulated by the regional council, and activities affecting drainage and/or clearance of some other terrestrial habitat types (such as swamp forests) are also regulated by both the regional council and district councils.

52. I would characterise the present situation as one of variability and inconsistency, and would suggest that there is scope for a more integrated approach based on more recent knowledge and technology than was available at the time that the above District Plans were prepared.

Conclusions

53. In conclusion to this part of my evidence, I consider that the regulatory framework in the Proposed One Plan provides significant advantages in terms of comprehensiveness, efficiency, effectiveness and integration in comparison with either a non-regulatory approach, the status quo, a site schedule- based approach or an approach based on a general rule.
54. On that basis I consider that it is appropriate the general approach to regulation in the Proposed One Plan be retained.
55. Matters relating to the specific content of Schedule E are the subject of submissions by the Minister and are considered in the evidence of Ms Hawcroft and Mr LaCock and further discussed in paragraphs 132 to 145 of this evidence.

Classification of activities within rare or threatened and at-risk habitats

56. The Minister's submission supported Rules 12-7 and 12-8, which classify certain activities in at-risk and rare or threatened habitats as discretionary or non-complying activities, respectively. A number of submitters, for example Palmerston North City Council and Rangitikei District Council, did not accept the non-complying status of activities regulated in rare and threatened habitats and requested that they be discretionary. Others, for example Ruapehu District Council, sought the deletion of rules protecting at-risk habitats in their entirety.
57. Evidence from Ms Hawcroft and Ms Maseyk suggests that biodiversity declines rapidly once habitat types fall to below 20% of their former extent. However decline is also significant before this point is reached. Given that the Act requires the 'maintenance' of biodiversity it would appear reasonable to seek to limit loss before it reaches the 'critical' point of 80% loss in order to meet this requirement and avoid habitats moving into the 'threatened' category in the first instance. It is also noted in Ms Maseyk's report, which Ms Hawcroft supports, that most of the habitats in the 'at risk' category have

already suffered at least 70% loss, reflecting the dichotomy between habitats occupying land suitable for farming and forestry and land which is not.

58. The distinction between ‘rare or threatened’ and ‘at risk’ habitats represents two levels of protection, in terms of maintaining biodiversity and meeting the requirements of Section 6(c) of the Act. It is therefore appropriate that the RPS reflects these levels of protection through the ‘tests’ against which an activity with potential adverse effects is required to be considered, and the degree of discretion which is retained by decision-makers when applying such a test. Habitats which have reached the category of ‘threatened’ or have always been rare require a high degree of protection which takes into account the probability that all but the most innocuous of activities are likely to have significant adverse effects and conflict with Objective 7-1 of the plan,. Whilst recognising that absolute protection is unlikely to be achieved, any further loss arising from activities subject to regulation under the Act would in my opinion be appropriately restricted to exceptional circumstances. I would consider that a non-complying activity classification is appropriate in such circumstances.

59. “At risk’ habitats are those which are, to a varying degree, ‘on the brink’ of moving into the threatened category and further loss or damage may move them towards or into that category. It may be acceptable for some degree of loss to be tolerated, and for a greater degree of discretion to be reserved to decision-makers in this matter. The ability to decline consent should however be provided for, and therefore discretionary activity status is appropriate.

Conclusion

60. In my opinion it is appropriate that the distinction between ‘rare or threatened’ and ‘at-risk’ habitats in the plan be retained, and reflected in the different degrees of protection provided for them by the One Plan.

PROVISIONS OF THE REGIONAL POLICY STATEMENT (CHAPTER 7)

61. Having considered the above general matters I now turn to specific biodiversity provisions of the Regional Policy Statement section of the Proposed One Plan on which the Minister of Conservation made submissions, and consider each in turn.

Issue 7-1 Indigenous Biological Diversity BIO 4

62. The Minister of Conservation made a further submission in support of submissions seeking acknowledgement in the plan of the adverse effects of vehicular use of sand dunes as a regionally significant issue.

63. In his evidence Mr LaCock states that activities of off-road vehicles in the coastal foredunes are a major factor in foredune destabilisation and, in turn, lead to blow outs and other forms of accelerated erosion, which in turn impact on dune ecosystems and the rate of lateral and inland movement of mobile sand. I note that several District Plans in the region (Tararua and Wanganui and there may be others) include provisions to control such activities in dune areas.

64. Whilst I acknowledge that other methods such as bye laws are also available under other legislation the establishment of organised events or regular activities such as guided 4WD 'safaris' is in my opinion a matter for direct consideration under the Act. The Department was approached several years ago with a request for Section 94 approval for such an activity in the Foxton/Himitangi dune system. In addition, other methods to control such activities are available, some of which may require a resource consent (such as the recent instatement of bollards by the Department at Foxton Beach); others may involve education and awareness raising for example.

Conclusion

65. Given the national importance of the active dunelands in the Manawatu it would in my opinion be appropriate to recognise the adverse effects of vehicular use of the foredunes as an issue of regional significance.

Objective 7-1 – BIO 5

66. Loss of indigenous biodiversity is identified as a key issue for the Region and, as noted in Ms Hawcroft's and Ms Maseyk's evidence, the maintenance of biodiversity also requires proactive management measures such as pest control. It is therefore appropriate that the plan includes an objective to address these matters.

67. The insertion of the words 'more than minor' is accepted as being consistent with the non-complying activity status of activities in rare and threatened habitats in terms of the Section 104D 'gateway' test and recommended amendments in Ms Marr's report to allow for essential maintenance of existing infrastructure.

68. Reference to Schedule E and Change of Reference to Table E4 (BIO 12).

In addition to Regional Council functions there may be decisions required under the Act which relate to the functions of District Councils and require reference to the RPS provisions for rare and threatened or at risk habitats, for example rules for subdivision. I would consider it appropriate for the RPS to provide guidance on assessment criteria when determining the effects of an activity and Schedule E (including Table E4) is a key component in this process. I consider it appropriate to retain the reference to Schedule E within the RPS part of the One Plan and to incorporate Table E4 into Chapter 7 for the convenience of plan users.

Conclusion

69. I agree with the recommendations on p.33 of Ms Marr's report.

70. Further amendments to E4 were also requested in the Minister's submission. These are considered in para. 146 below.

Policy 7-1 Responsibilities for maintaining indigenous biological diversity. BIO 6

71. The Minister's submission supported the proposed policy as written. As noted above, other submitters have sought retention of the status quo with respect to allocation of biodiversity-related functions.

72. My evidence on this policy only relates to matters which have a direct relationship to the Department of Conservation's interests under the Act, rather than any wider governance issues.

73. As I concluded in paragraphs 52, the present allocation of functions on biodiversity-related matters within the region has resulted in inconsistency and the lack of an integrated approach. In addition, the priority accorded to these functions has been limited by the relatively low level of resources and expertise available to implement them at District Council level, particularly with respect non-regulatory approaches to encourage active protection of sites by landowners. I have reached this conclusion from my own experience and from information contained in recent District Council Annual Plans and Long Term Council Community Plans.

74. I therefore support the evaluation set out in paragraph 4.6.3 9 (p.38) of the Planning Report and agree with Ms Marr's assertion that, in terms of efficiency and effectiveness in achieving the purposes of the Act, functions relating to biological diversity have a 'better fit' with the regional council rather than the district councils.

75. However, although the regional council may take a lead role, the District Councils will retain important local biodiversity maintenance functions and responsibilities under the Act and other legislation, for example through management of reserves (under the Reserves Act 1977), notable trees, areas of native vegetation or other habitats which are important for local biodiversity,

and to generally integrate biodiversity considerations into the way in which they carry out their wider functions.

76. In addition to development and implementation of reserve management plans Councils have been proactive in other ways, for example Manawatu District Council's strategy for managing road reserves, and the design guide produced by Palmerston North City Council for the development of the North East Industrial Estate.

77. I agree that the Regional Policy statement should also continue to support and provide for involvement of District Councils on local biodiversity matters, where this relates to functions specific to them, such as subdivision and site-based planning which may be more appropriately undertaken through District Plans and does not fit within the 'One Plan' framework. This may apply in situations where habitats of threatened indigenous fauna (or flora) are known to occur at only a few specifically identified sites. If the amendments recommended in Ms Marr's report are adopted (and the Minister's submission on Table E3 is not allowed in full) then such sites may otherwise remain without statutory protection.

Conclusion

78. I agree with the recommendations in Section 4.6.4.1 of Ms Marr's report which would allow for rules to be developed in District Plans but also regard it necessary for the District Councils to also identify local issues and develop objectives and policies on such matters in order to give proper effect to the RPS.

79. In my opinion it would also consider it appropriate that a further minor amendment is made to Policy 7-1(a)(i) which would then read:

(i) "Ensuring that the objectives and policies of this chapter are given effect when developing objectives, policies and methods in District Plans and are

taken into account when making decisions on subdivision and land use consent applications”.

Policy 7-2 Activities in Rare and Threatened Habitats BIO 7

80. The Minister submitted in support of this policy, subject to minor amendments.
81. The wording of this policy as publicly notified already allows for effects which are no more than minor, and hence would not require specific amendment to make it consistent with the amendment to Objective 7.1 as recommended in Ms Marr’s evidence.
82. The amendments recommended on page 48 of Ms Marr’s report are as I understand it aimed at reducing regulatory control of infrastructure through
- avoidance of ‘significant’ (rather than ‘more than minor’) adverse effects
 - allowance for adverse effects which are more than minor if they have been avoided ‘as far as practicable’ and
 - allowing for offset financial contributions to remedy more than minor (but less than significant) adverse effects, providing that they result in a ‘net conservation gain’ to the habitat type at a Regional scale.
83. Whilst this approach may be somewhat complex, in my opinion the range of criteria in subparagraphs (i) to (iv), when taken as a whole, include a workable set of checks and balances which would enable certain specific activities to pass the Section 104D ‘gateway’ test and hence may enable the council to grant consent for them.
84. I do however have issues regarding the scope of application of the recommended amendments, in particular the lack of any necessity to

demonstrate that the activity for which consent is sought is essential to the provision or maintenance of the infrastructure and the application of the policy to any new infrastructure which can demonstrate that it is 'important' at a regional scale and in particular the reliance on Policy 3-1.

85. The intent of Policy 3-1 is, as I understand it, to ensure that the benefits derived from infrastructure are recognised at the appropriate scale, and a number of submitters have sought the widening of the scope of Policy 3-1, including the term 'regional importance'. For example on page 20 of its submission Rangitikei District Council seeks that Policy 3-1 "be widened to include all assets supporting communities".
86. The outcome of submissions on Policy 3-1 is not known at this stage, and creates uncertainty regarding the scope of Policy 7-2. Given that the scope and interpretation of Policy 3-1 is under question, until this matter is resolved I would recommend that Policy 3-1 is not used as a key component of Policy 7-2. Policy 7-2 is aimed at providing for matters of national importance under Section 6(c), whilst Policy 3-1 addresses matters at a range of spatial scales in order to give weight to this aspect of community wellbeing in decision-making.
87. To adopt Policy 7-2 as recommended without addressing the above issues would in my view undermine its ability to achieve the purpose of the Act and may also be inconsistent with the non-complying status of the rules which flow from it (Rule 12-8 in particular).

Conclusion

88. On the basis of the above in my opinion it would be appropriate that the opening words of the new subparagraph (d) be amended to read "essential for the purpose of providing or maintaining infrastructure of national importance or maintaining existing infrastructure of regional importance"; and that the wording of subclauses (i) to (iv) be accepted as recommended in Ms Marr's report.

Policy 7-3

89. The Minister's submission supported all of the proposed Policy 7-3 apart from the final sub-clause (d)(iii) relating to financial contributions, which the submission sought to be deleted.
90. The Minister's submission sought the removal of this provision on the basis that it would enable applicants to circumvent the achievement of the purposes of the Act, or 'buy their way out of trouble' as Helen Marr describes it in her report (p.53).
91. If the recommended amendments in Ms Marr's report are accepted, consents will generally be granted where financial contributions can be used to adequately compensate for or offset significant adverse effects. The use of 'or' to separate sub-clauses (d)(i) to (iii) in the policy indicates that only criterion (iii) needs to be met in order for the consent to be 'generally...granted'. This places a considerable onus on determining the 'adequacy' of financial contributions as the decision-making criterion rather than the nature and scale of adverse effects or mitigation measures.
92. The Minister's submission expressed concern that such a policy, when articulated in the RPS, with its consequential influence on other plans, creates uncertainty regarding whether the purpose of Section 6(c) will be met. It allows for significant habitats not to be protected providing that 'adequate' financial contributions are made on or off the site.
93. The wording of this policy also raises the issue of how adverse effects on biodiversity which cannot be avoided, remedied or mitigated through consent conditions are to be valued in monetary or non-monetary terms. This is often difficult and in my opinion there is insufficient operational guidance in the plan regarding how the adequacy of compensation is to be determined.

94. I acknowledge that the plan proves for a lesser degree of protection for ‘at-risk’ than for rare or threatened habitats and hence a greater degree of discretion for decision makers when forming an overall judgement on consent applications. However I consider that the wording of Policy 7-3 (d) does not provides adequate discretion for decision makers to decline consent and places too much emphasis on carrying out a potentially difficult and imprecise valuation task rather than focusing on the effects of the activity. Either the deletion of sub-clause (d)(iii) (which would still enable such matter to be dealt with as part of the consent decision-making process) or an amendment to the wording “will generally” would in my opinion address the Minister’s concern.

Conclusion

95. In my opinion the Minister’s concerns would be addressed by either deletion of Policy 7-3 (d) *or* amendment of Policy 7-3 (d) by deleting sub-clause (d)(iii) and adding a new subclause as follows:

“Consents may be granted for the purpose of providing or maintaining infrastructure of regional or national importance as identified in Policy 3-1, and may be granted in other exceptional circumstances where (iv) financial contributions can be used..... (etc, as per existing wording).”

Policies 7-4, 7-5 and 7-6 (BIO 9, 10 and 11)

96. The Minister submitted in support of these Policies. The need for proactive management of representative habitats, working in partnership with landowners is acknowledged. It is appropriate for the Council to give priority to the best representative examples of habitat types, since this is a primary criterion for determining their ecological significance.

Conclusion

97. I agree with the proposed minor wording changes on p.59 of Ms Marr’s report

Chapter 7 Methods BIO 13 to BIO 19

98. The Minister's submission supports these methods. Ms Marr's report recommends that they be generally retained with some minor amendments or additions.

Conclusion

99. I agree with Ms Marr's recommendations on the above.

REGIONAL PLAN PROVISIONS (CHAPTER 12)

100. I now consider the specific provisions of the Regional Plan (Chapter 12 of the Proposed One Plan).

Policy 12-1(g)

101. This part of Policy 12-1 is considered in Mr Percy's report to the Land hearing but, as is demonstrated below, clause (g) is particularly relevant (and perhaps more relevant) to matters under consideration at the Biodiversity hearing.

102. Policy 12-1(g) addresses the circumstances where "particular regard" will be had to "appropriateness of the adopting the best practicable option". The heading and opening sentence of the policy refer only to vegetation clearance and land disturbance, but the wording of this clause, and its similarity to Policies 13-1(c) and Policy 13-2(d) suggests that it applies to discharges as well or instead.

103. Given that in Chapter 12 discharge of contaminants are only regulated under Rules 12-7 and 12-8 (relating to activities within at-risk and rare and threatened habitats) and discharges elsewhere are regulated in Chapter 13, I am assuming that Policy 12-1(g) only relates to discharges in at-risk and rare and threatened habitats. Hence I believe that it is appropriate to consider the Minister's submission at this hearing. My observations and conclusions would also be applicable, however, if this Policy applies to all matters regulated under Rules 12-7 and 12-8.

104. For ease of reference, the relevant parts of Policy 12-1 read as follows:

“When making decisions on resource consent applications, and setting consent conditions for vegetation clearance and land disturbance the Regional Council will have particular regard to:.....

(g) the appropriateness of adopting the best practicable option to prevent or minimise adverse effects in circumstances where:

(i) numerical guidelines or standards establishing a level of protection for a receiving environment are not available or cannot easily be established, or

(ii) the likely adverse effects are minor, and the costs associated with adopting the best practicable option are small in comparison to the costs of investigating the likely effects on land and water”

105. The Minister submitted on Policy 12-1(g) seeking that its two sub-clauses be linked by the word 'and' rather than 'or'.

106. I understand that the Minister's submission has also been considered during the Land Hearing, and, in his evidence, Mr Percy recommended that it be rejected on the grounds (p.174 of his report) that

“The two alternative gateways provided in (g) are intended to be independent of each other. There will be circumstances where it is appropriate to implement best practicable options where only one of the situations in (i) and (ii) occur. There may be a situation where the numerical standards for the level of protection are known, but there is extreme difficulty or cost in actually determining the likely effect of an activity on those standards. Therefore I do not consider it necessary to exchange ‘or’ with ‘and’ as to do so would require both tests to be achieved simultaneously. I also consider that it is important to specifically provide for best practicable options to be adopted in situations of uncertainty as they have been developed as methods to minimise adverse effects in the majority of situations, and therefore I consider that this clause should remain in the policy.”

107. The Minister’s submission sought in effect that Policy 12-1(g) only be applied in circumstances where adverse effects are likely to be minor (i.e. clause (g)(ii) should apply in all circumstances). This would be consistent with the classification of discharges and other activities in rare or threatened habitats as non-complying, and their sensitivity as receiving environments.
108. Given that at-risk habitats are also identified as significant in terms of Section 6c of the Act, and therefore in my view should also be regarded as highly sensitive receiving environments, I consider that adopting a policy which enables significant adverse effects on them to occur (providing a ‘best practicable option’ is adopted) would not adequately provide for their protection, as is required under the Act. By restricting the policy to situations where adverse effects are likely to be minor, the decision maker would still be in a position to have to regard to the nature of the discharge and discharge method as part of the broad overall judgement on the application.
109. If left unamended, sub-clause (g)(i) and hence ‘the appropriateness of adopting the best practicable option’ is likely to apply in most, if not all circumstances, since based on my experience I would consider that it is in generally difficult to apply numerical guidelines or standards to the protection of rare, threatened and at-risk habitats. I would suggest that such standards

would, in any event, be seeking to ensure that only minor effects were likely to occur. If that is the case then sub-clause g(i) may be considered as redundant.

Conclusion

110. In my opinion the Minister's concerns would be addressed by either replacing the word 'or' in place of 'and' between subclauses (i) and (ii) of Policy 12-1 as requested in the Minister's submission or by deleting sub-clause g (i).

111. I would also suggest that the regional council considers amending the heading of the Policy 12-1 and its first sentence, as minor amendments, to reflect the fact that they covers discharges and diversions as well as the activities referred to.

Policy 12-3 Important and essential activities BIO 24

112. The Minister submitted on and sought amendment to this policy. Concern was expressed that the phrase "important and essential" is too broad. Whilst the policy may be appropriately applied to vegetation clearance and land disturbances under other circumstances, I would consider that its potentially wide scope of application to rare, threatened and at-risk habitats and the requirement to provide for their protection is not consistent with Objective 7-1, or Policies 7-2 or 7-3 in particular. I do not consider it appropriate to apply it in such circumstances. The Minister's submission sought amendment and provided for three alternative decisions

- delete "important" from the policy
- reword the policy to indicate that the council would give consideration to such matters (rather than generally allowing the activity)
- delete the policy and replace it with an objective 'to provide for activities that are important or essential to the well-being of communities'. The latter could be located in this or other sections of the plan.

113. In my opinion the preferred option would be to delete the policy insofar as it relates to effects on rare, threatened and at-risk habitats. This would remove uncertainty regarding the effect which is to be given to the relevant objective and policies in the Regional Policy Statement.
114. However clarifying the relationship between Policies 12-3 and 12-5 and making the former subject to the latter (or making Policy 12-3 subject to the relevant RPS provisions) may also address the concerns raised by the Minister.
115. I note also that the Minister's submission on this Policy has also been considered and amendments recommended in Mr Percy's report to the Land Hearing. The recommendation below is not inconsistent with Mr Percy's recommendations, which accepts the Minister's submission in part, and does not in my opinion preclude both recommendations being accepted.

Conclusion

116. I would consider the simplest way to address the Minister's concerns would be to add the following words at the beginning of Policy 12-3 (or words to like effect):

“Subject to Objective 7-1 and Policies 7-2 and 7-3 of the Regional Policy Statement...” *Or* "Subject to Policy 12-5"

Policy 12-5 Consent decision-making regarding Rare and threatened Habitats, and At-Risk Habitats BIO 25

117. The Minister submitted in support of this policy through a further submission.

118. In my opinion it is appropriate that the Regional Council makes decisions in accordance with the objectives and policies in Chapter 7 in order to give effect to the relevant section of the RPS and Section 6(c) of the Act. That section of the Act does not provide for the exclusion of specific activities from its provisions. It would not therefore be appropriate to exclude any particular activity, including renewable energy generation, from the plan provisions.

119. The recommendation to include more specific reference to the relevant objectives and policies in the RPS, as described on page 87 of Ms Marrs's report is supported since it would add clarity and certainty for plan users.

Conclusion

120. I agree with Ms Marr's recommendations regarding amendments to this policy as proposed in her report (p.87).

Rule 12-7 Activities within At Risk habitats BIO 27

Rule 12-8 Activities within Rare and threatened Habitats including Wetlands BIO 28

121. The Minister submitted in support of both of these rules and sought their retention as notified. Based on the reasons given above (paras 56 to 60), which I will not repeat here, I consider that the use of rules in these circumstances is appropriate and therefore do not consider that they should be deleted.

122. As a point of clarification my understanding is that Section 4 of the Act provides an exemption for the Department of Conservation for any activities associated with management of areas not only for pest control; but for recreation and other conservation purposes, where these activities are consistent with a Conservation Management Strategy. I would ask that the wordings in Rules 12-7 and 12-8 are examined carefully to ensure consistency with Section 4 of the Act as a minor amendment to those rules.

123. I note that submitters have sought a range of exclusions from these rules to provide for their specific interests.
124. With respect to Rule 12-7 I am in agreement for the most part with Ms Marr's evaluation as set out on pages 100, 101 and 102 of her report, including those with respect to habitat comprising exotic plantation forestry, renewable energy, Defence Force land and fertiliser discharges.
125. I also agree that it is reasonable to make provision for maintenance of significant habitats as well as enhancement.
126. With respect to Rule 12-8 the issue of non-complying as against discretionary classification of activities has been considered in paragraphs 56 to 60 above. As indicated there, the general distinction in my opinion reasonably reflects the 'two tier' approach to protection in the plan and provides appropriate degrees of protection.
127. Accordingly I am in agreement with the analysis set out in section 4.28.2 (pages 109 and 110) of Ms Marr's report.
128. I note that Ms Marr's report (p.92 and top of p.101) also refers to a submission by Horizons Regional Council seeking the exemption from Rule 12-5 for the council's operational activities in rare or threatened habitat on coastal foredunes or near water bodies, providing that they take place in accordance with the Code of Practice for River Works (which they are seeking to incorporate into the plan by way of reference). The Minister did not make a further submission on that matter. The submission was in relation to Rule 12-5, which does not refer to (or provide exclusions from) activities within 'at-risk' habitats (which includes Sites of Significance –Aquatic).
129. The commentary at the top of page 100 may have been included in error, since it does not relate to a matter raised in the submission, and

reference is not made to it in the 'recommended changes to provisions' section (4.27.3.1) of Ms Marr's report.

130. It would not therefore in my opinion be appropriate to amend the plan in the manner indicated in Ms Marrs' commentary (ie to exclude Horizons Regional Council from the requirement for a resource consent for activities adversely affecting Sites of Significance- Aquatic or other "at risk" habitats), since other interested parties have not had the opportunity to make further submissions on the matter..

131. The panel may wish to note that the Minister has submitted in opposition to exclusions based on the River Works Code of Practice in relation to matters covered in the 'water' chapters of the plan, on the basis of reservations regarding the consistency of specific parts of that document with the purpose of the Act.

Conclusion

132. I agree with the 'recommended changes to provisions' with respect to Rule 12-7 as set out on page 102 of Ms Marr's report, and with respect to Rule 12-8, as set out on page 110 of Ms Marr's report.

SCHEDULE E

Schedule E General BIO 34

133. Schedule E is a key component of the One Plan because it provides the basis for decision making in relation to matters on which the regional council has obligations under the Act, as described in paragraphs 18 to 24 above, and the New Zealand Coastal Policy Statement, as described in paragraphs 25 to 30.

134. In paragraphs 46 to 47 and 53 and 54 above I have described why I consider that the approach taken by the council to meet its obligations, which includes the use of Schedule E, is generally appropriate.

135. The Minister supported Schedule E in general and opposed submissions seeking its deletion or withdrawal in whole or part or other changes which would undermine its role in assisting the Regional Council to carry out its functions.

136. The Minister's submissions also sought additions to the Schedule and related plan provisions. These fall into the following categories:

- Amendments and additions to habitat types defined or identified as rare or threatened or at risk (Tables E1 and E2).

- Amendments and additions to the list of flora and fauna species in Table E3 to include a wider range of threatened species, whose habitats would then be protected as 'at risk' habitats.

- Amendments to definitions and terms, including Table E4.

137. The evidence provided by Ms Hawcroft and Mr La Cock provides an evaluation of the significance of habitats and threatened species within the region and their requirements in terms of the regulatory approach which is included within the One Plan. I will not repeat that evidence here but will consider its relationship to the format and contents of Schedule E in the light of submissions and pre-hearing discussions. I will refer selectively to specific parts of the evidence where it is most pertinent to possible amendments to Schedule E, including those recommended in Ms Ms. Marr's report.
138. **Matters raised by other submitters.** I consider that many the matters raised by other submitters regarding the difficulty of interpreting Schedule E would be substantially addressed through the proposed reformatting, removal of unnecessary material, and addition of explanatory text and a diagram, coupled with supplementary information to landowners and other plan users which the council has indicated that it intends to provide (as per Ms Marr's reports to this hearing and to the hearing on the Overall Plan).
139. Other matters relating to the efficiency of the approach and extent of land and activities which may be subject to consent requirements across the region has been considered in paragraphs 33 to 54 above. I have concluded that the One Plan approach strikes a reasonable balance between a site-specific schedules-based approach and a 'general rule' approach and incorporates their respective benefits whilst avoiding their respective costs.
140. A number of submitters alluded to the difficulties associated with the size and complexity of the lists in Table E, which would increase if the Minister's submission were allowed, in particular the difficulty of identifying habitat types 'on the ground' where they may be defined by individuals of the species which occupy them, as would be the case with Table E3. For example in their submission, Palmerston North City Council expresses concern that 'it is unrealistic to expect individual landowners affected by regulation to be, or to become, familiar with the permutations created by 20+ habitat types; a complex definition of "habitat" for the purposes of the Plan; together with

100+ threatened species; all of which are applied to 100+ water management zones”

141. I consider the general approach in the proposed plan to be potentially workable, providing in particular that the habitats themselves, including those referenced from Table E3, are reasonably distinct, particularly in comparison with ‘normal’ production land (i.e. land dominated by plantation forest, grasses sown for pasture, or crops), and adequate information and advice is available to landowners contemplating activities regulated under the plan (which on the basis of recent experience noted above is, I suggest, likely to be a very small proportion of landowners in the region at any one time). However, where this is difficult then I agree with the evidence of Ms Hawcroft, Ms Maseyk and Ms Marr, that providing certainty for plan users may be problematic.
142. As a result of submissions, pre-hearing discussions and on the basis of evidence presented in Ms Maseyk’s report, Ms Marr recommends that Schedule E3 be significantly reduced in length. Ms Hawcroft agrees with this recommendation, providing that additional habitats types are added, which Mr LaCock is also recommending in relation to active dunelands.
143. On the basis of my colleagues’ evidence I am in agreement with the recommendation providing that all reasonable measures are taken within the Plan (including measures which will have a ‘flow on’ effect into District Plans) to ensure that the regional council carries out its biodiversity functions with respect to species (as noted in para 24 of this evidence) and, in accordance with proposed Policy 7-1, with respect to protection of areas of significant indigenous vegetation and habitats of significant indigenous fauna.
144. In their evidence Ms Hawcroft and Mr Lacock recommend how this can be achieved, in particular by the addition of a limited number of new habitat types and species to those recommended by Ms Maseyk. I do not consider that the requirements of the Act or the NZCPS would be adequately met without the addition of these habitats and species.

145. Taking the above approach would still leave a range of nationally threatened species, or sub-populations or individuals of the species, unprotected in terms of s6c, including those whose habitats are relatively non-specific (and include 'production' farm land or forestry), those which are highly mobile (such as New Zealand falcon) and those which are highly scattered within large tracts of otherwise unprotected native or exotic forest (such as kakariki). Protection of these species would rely on other methods such as voluntary protection and industry codes of practice, or other legislation, including the Wildlife Act 1953.

146. On balance I would consider that the trade-off implied in above approach is reasonable and the increased emphasis on habitat protection (through addition or redefinition of habitats) combined with reduced emphasis and reliance on the need for landowners to recognise habitats of individual plants or animals is justified.

Additional Amendments sought to Table E4

147. In addition the Minister also sought descriptions or guidelines for interpreting a number of terms used in the Schedule E in the Proposed Plan. In particular the Minister sought further elaboration of the description and definition of rarity and distinctiveness to include instances of limits of distribution of species, type localities, and disjunct populations. This has also not been specifically evaluated in the officers' reports, but is supported in Ms Hawcroft's evidence. In my opinion this would provide additional clarity and guidance for decision-makers.

Conclusions

148. That the amendments to Schedule E, as recommended in Ms Maseyk's evidence, be accepted, subject to further amendment in accordance with Ms Hawcroft's evidence (in particular pages 32 onwards) and at the conclusion of Mr La Cock's evidence.

