

IN THE MATTER **of the Resource Management Act 1991**

AND

IN THE MATTER OF **of a Submission on Chapters 5 and 12:
(Land) of the Proposed Horizons One
Plan**

TO **Horizons Regional Council**

SUBMITTER **Meridian Energy Limited (363)**

BRIEF OF EVIDENCE OF MARY O'CALLAHAN

Introduction

1. My name is Mary Elizabeth O'Callahan. I hold a Bachelor of Science degree from Victoria University and a Bachelor of Planning degree from Auckland University. I am a full member of the New Zealand Planning Institute and am the chairperson of the Wellington Branch of the New Zealand Planning Institute. I am a Principal Planner employed by GHD Ltd, based in Wellington.
2. I have over 14 years experience in planning and resource management in New Zealand and in Britain. This includes extensive experience in development control and policy development at the local authority level. Before my appointment to GHD Ltd in September 2005, I was a Team Leader for Wellington City Council's Resource Consents Team. My employment prior to Wellington City Council was with the London Borough's of Hackney and Lambeth. Prior to working in the UK, I worked at Marlborough District Council (a unitary authority), where I carried out RMA plan review work and processed resource consents in relation to the Council's regional and district council functions.
3. I have provided planning advice to a number of local authority clients and to Meridian Energy Ltd (Meridian) in relation to proposals within the Horizons Region, so I am a regular user of the Horizons regional plans. I have also assessed a number of proposals in relation to the Proposed One Plan rules since it was notified on 31 May 2007. Through this work, I have a good understanding of the geography of the area, the issues facing the Horizons Region and the practical implementation of the Proposed One Plan provisions.
4. In preparing this evidence I have reviewed:
 - Chapters 5 and 12 of the Proposed One Plan;
 - Relevant sections of Meridian's submission and further submissions on the Proposed One Plan;
 - The Officer's reports particularly in relation to Meridian's submissions on Chapters 5 and 12.
5. This evidence will cover Meridian's submissions on Chapters 5 and 12, with particular attention on land disturbance activities. These relate to:
 - The need for an appropriate policy framework for land disturbance and vegetation clearance on Highly Erodible Land (HEL) or near waterbodies such that an appropriate balance is reached between enabling regionally and nationally importance infrastructure (including renewable energy facilities) and managing the effects within the Regional Council's jurisdiction;
 - The need for an appropriate rule regime for land disturbance and vegetation clearance on Highly Erodible Land and near waterbodies in order to achieve the purpose of the Resource Management Act 1991 ('RMA' or 'Act') as well as efficiency and effectiveness for the Council and consent applicants;
 - The inappropriateness of the conditions relating to rare, threatened and at-risk habitats within Rules 12-1 to 12-6;
 - The need for certainty on the location of Highly Erodible Land (HEL) and my concern with the Officer's recommendation on this issue;

- A conclusion that there needs to be clear and simple rules, which are easily understood by those carrying out land disturbance and vegetation clearance activities within the Horizons Region.
6. This evidence is set out in relation to the key areas of submission made by Meridian, structured as the provisions occur within the Proposed One Plan in a similar manner to the Officer's report.

Code of Conduct

7. I have read the Code of Conduct for expert witnesses in the Environment Court Practice Note (31 March 2005). I agree to comply with this Code of Conduct. The evidence in my statement is within my area of expertise, except where I state that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Section 32 of the Resource Management Act 1991

8. My evidence will discuss the provisions of Section 32 of the RMA. I have set out the key parts of Section 32 that I will refer to:

(3) An evaluation must examine—

(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and

(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives...

(4) an evaluation must take into account—

(a) the benefits and costs of policies, rules, or other methods; and

(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

9. It is my understanding that Section 32 requires an evaluation of alternatives, benefits and costs. The evaluation for the objectives should examine:

- is it the most appropriate way to achieve the purpose of the Act?
- does it assist the authority to carry out its functions in order to achieve the purpose of the Act?
- is it in accordance with Part 2 of the Act?

10. Similarly the tests for a policy, rule or other method included in a plan:

- is it the most appropriate way to achieve the objectives of the plan?
- does it assist the authority to carry out its functions in order to achieve the purpose of the Act?
- is it in accordance with Part 2 of the Act?
- and if a rule, does it achieve the objectives and policies of the plan?

11. I have approached my assessment of the plan provisions with the questions in mind, taking into account all relevant provisions of the RMA including the overarching purpose of the Act as set out in section 5.

Objective 5-1(c)

12. I note the Mighty River Power submission requests the word "minimise" in Objective 5-1(c) is changed to "avoid, remedy or mitigate". Meridian submitted in support of this request in respect of a number of the provisions within the Proposed One Plan.
13. I consider that the terminology around expectations for managing environmental effects should be used consistently throughout the Proposed One Plan. In my experience "avoid, remedy or mitigate" is appropriate and is used universally in the RMA and all cases I have been involved in with regard to the management of environmental effects. It is the statutory obligation in relation to management of environmental effects under Section 5(2)(c) for achieving the purpose of the RMA. As a result, it is generally well understood by applicants and submitters to resource consent applications. The use of the term 'minimise' has the potential to create confusion as to whether measures to manage environmental effects are appropriate when applications are assessed against Objective 5-1(c).
14. With reference to Section 32(3), use of the words "avoid, remedy or mitigate" within Objective 5-1(c) will directly achieve the purpose of the Act, whereas "minimise" may not and it will create uncertainty for applicants and submitters, which lessens the efficiency and effectiveness of the plan provisions relating to accelerated erosion. In my opinion, sustainable management of the Region's soil and water resources would be better achieved by express reference to the options created by the phrase "avoid, remedy or mitigate".
15. Accordingly, I recommend that clause (c) of Objective 5-1 be reworded as follows:

...accelerated erosion caused by vegetation clearance and land disturbance* is avoided, remedied or mitigated minimised*

Policy 5-3 (X131, X552, ME56)

16. Policy 5-3 sets the key policy framework for vegetation clearance and land disturbance within / on Highly Erodible Land ('HEL'). It states that vegetation clearance and land disturbance *shall generally not be allowed* on HEL, unless one of the criteria listed in Policy 5-3(a) is satisfied. I support the general approach of controlling vegetation clearance and land disturbance within areas of HEL, as per the apparent intention of the Proposed One Plan. However I believe that the presumption created by the wording used in Policy 5.3 is inappropriate in that it purports to preclude activities unless they are of the type listed. That is, it starts from a restrictive presumption rather than an enabling one. In my view this is at odds with the provisions of the Act (especially section 9(3) and section 5).
17. Section 9(3) states "*no person may use any land in a manner that contravenes a rule in a regional plan...*". The net effect of section 9(3) is that it allows any land use that is not prohibited or regulated. This is different from the restrictive presumption established under other provisions of the Act such as in respect of discharges and the taking, damming, diversion or use of water. These activities are not allowed unless provided for by rules in plans. In my opinion, sections 5

and 9 in combination call for the Committee to impose the most liberal provisions available, unless it is satisfied that good reasons exist for greater restrictions to be imposed.

18. In the context of this hearing, the purpose of the RMA is better met by enabling people and communities to undertake land disturbance and vegetation removal activities, provided the potential for adverse effects from accelerated erosion and increased sediment discharges is appropriately avoided, remedied or mitigated. In the context of HEL, this can only be achieved if there is certainty around the location and extent of HEL and an appropriate list of circumstances as to when vegetation clearance and land disturbance within HEL would be appropriate, within Policy 5-3(a)(i)-(vi). The overriding purpose of the Policy must be that activities on HEL are acceptable, provided the potential for accelerated erosion and increased sediment discharges is appropriately avoided, remedied or mitigated. At present there is no sub-clause stating the matter this simply and in my view, the Policy would benefit from such a statement being added.
19. I consider that a policy which enables land disturbance and vegetation clearance in line with the enabling purpose of the RMA is a more appropriate way of achieving section 5 of the Act than the policy proposed in the Proposed One Plan and by the officer. Accordingly, I recommend that the wording of the policy be amended to better reflect the enabling presumptions of the Act. I have included suitable wording below.
20. I note that the rules generally reflect my recommended amended policy, in particular Rule 12-3, which is an "enabling" rule. This provides for land disturbance within HEL as a controlled activity, whereby consent must be granted provided effects are appropriately managed.
21. I support the Officer's recommendation to delete "or other infrastructure" from Policy 5-3(a)(iii) and the desirability of addressing infrastructure separately from fences within this policy. Linking this to the policy (or policies) that identify infrastructure of regional and national importance provides appropriate recognition of the necessity for carrying out land disturbance and vegetation clearance as a key part of establishing renewable energy facilities in the Region.
22. It is, however, noted that Meridian has sought through its submissions on Chapter 3 to de-couple renewable energy facilities from the general definition of "infrastructure" in order to provide appropriate recognition for this important resource, in line with the special recognition provided in Section 7 of the RMA. If this submission is pursued by Meridian and it is successful, I note that consequential amendments may be required to the suggested clause (viii). This matter will be addressed at a later hearing.
23. I also have concerns about the Officer's recommended wording for clause 5-3(viii), specifically the retention of "*and there is no reasonable alternative location*". In my view, this approach is inconsistent with the requirements laid out in Schedule 4(1)(b) of the RMA, which relates to the preparation of an assessment of effects to support a resource consent application. Consideration of alternatives is only required in relation to proposals which are likely to lead to significant adverse effects on the environment. Infrastructure of regional and national importance does not necessarily lead to significant adverse effects.
24. I note that the Officer's recommendation on the need for the qualification "*and there is no reasonable alternative location*" within Policy 5-3 is inconsistent with the recommendation on the same matter in the context of Policy 12-3. With regard to Policy 12-3, the Officer agrees with specifically recognising the need for vegetation clearance and land disturbance associated with the provision of infrastructure of regional and national importance (as defined in Policy 3-1)

without any reference to the consideration of alternative locations. In my opinion, the acknowledgement for the provision of infrastructure of regional and national importance should be similar in both Policies 5-3 and 12-3.

25. The Officer's approach for Policy 5-3 also fails to recognise the importance of infrastructure and in doing so, does not give effect to Part 2 of the Act or the objectives and policies in Chapter 3 of the Plan.
26. The policy as suggested by the Officer will place a significant burden on applicants to provide details on possible alternative locations for their proposal. Any infrastructure proposal would need to firstly identify alternative locations throughout the Region then explain why they are not "reasonable alternatives". The cost and time associated with such an extensive comparative undertaking would be disproportionate to the value obtained and would not meet the purpose of the Act. In my view, it is inappropriate that this requirement be stated within the policy in this way. It is not necessary to require consideration of alternative locations within the policy framework as the Act already sets out when this is required under Schedule 4. The clause recommended by the Officer is inconsistent with the Act's requirements on alternatives, in that it does not acknowledge this is only required where significant adverse effects are likely to arise. Furthermore, it is inconsistent with the general policy and rule framework in the One Plan around accelerated erosion and sediment discharges, whereby these issues are clearly identified and provided any activity can control these effects (erosion risk and sediment) there is no need for applicants to embark on a Region-wide survey of alternatives.
27. In my opinion, the policy which I set out below is more effective than that recommended by the Officer and is the more appropriate means of achieving the Proposed One Plan objectives around managing erosion and sedimentation together with the need to provide for infrastructure of regional and national importance. The policy which I recommend does not require applicants to incur unnecessary costs assessing alternatives, so better meets Section 32(4)(a) of the RMA, than the Officer's recommendation.
28. With the above in mind, I recommend that Policy 5-3 be amended as follows:

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 not be allowed on Highly Erodible Land* unless where:*
 - (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 fence/line or other infrastructure* 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 a commercial forestry operation that will operate in accordance with accepted industry standards, or*
- (vi) *other exceptional circumstances apply, or*
- (vii) *the activity is for the purpose of establishing or maintaining infrastructure* of regional and national importance as defined in Policy 3-1(a).*

(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.*

Policy 12-1 (X522 point 296, X522 point 297 and 518, ME137, ME138)

29. Meridian requested acknowledgement of environmental management plans (EMPs) within Policy 12-1. The Officer states (on p174 of the Officer's report) that it is not considered necessary to specifically mention EMPs in the policy and notes the considerations required by the policy make it possible that the use of EMPs may be the best method for achieving the necessary performance standards and therefore a consent condition requiring compliance with such a plan may be appropriate. I note that the Officer clearly supports the use of EMPs but does not consider it necessary to refer to them in this policy.
30. I consider that express recognition of EMPs is needed within One Plan so that Horizons Regional Council clearly expresses its intentions with respect to the role of EMPs in the context of land disturbance and vegetation clearance activities. In my opinion, EMPs play a vital role in managing the effects from larger scale projects, where not all relevant details can be known at the time of consenting. Provided environmental objectives are clearly specified at the consent stage, the specific details of how those objectives will be achieved can be appropriately left for approval at a later stage.
31. EMPs, which in relation to land disturbance activities, usually contain "sediment and erosion plans", are a key tool for managing sediment and erosion effects in relation to larger scale projects and are often required via resource consent conditions. In my experience, consent authorities and/or interested parties can sometimes be reluctant to rely on EMPs to manage localised sediment and erosion effects when they seek very detailed sediment and erosion control information at the consent assessment stage. In practice, the management of these effects requires integration between the detailed design of the works, the contractor's construction methodology and nature and type of sediment and erosion control devices appropriate for a particular section of earthworks. On occasions, consent authorities have sought to obtain very detailed sediment and erosion control information at the consent assessment stage – which then "locks" in these methods. These may not in fact be the best techniques for sediment and erosion control once detailed design and construction works commence. On other occasions EMPs or detailed sediment and erosion control plans/methodologies are provided following approval of a resource consent application, as a condition on a resource consent. In my opinion, the latter approach will achieve the best environmental outcomes on large-scale projects.
32. Renewable energy and other infrastructure projects are often large-scale developments, and as such, detailed project design work cannot practically or feasibly be undertaken at the consent assessment stage. This "two-step" design process (i.e. concept design and detailed design) is

required, as until there is assurance that the project will proceed, funding is secured and matters such as detailed geotechnical investigations are undertaken, there is not the required detail on the design of the development. Best practice sediment control is best achieved through developing sediment and erosion controls concurrently with final detailed design work as this ensures integration. This process typically involves Council officers considering the condition sign-off process and the undertaking of performance monitoring.

33. In my view, a policy that specifically acknowledges EMPs is more effective than the policy recommended by the Officer at achieving the Proposed One Plan objectives around managing erosion and sedimentation, together with the need to provide for infrastructure of regional and national importance and the objectives within Chapter 3 of the Proposed One Plan. The policy that I set out does not require applicants to incur unnecessary costs at the concept design stage and offers greater environmental benefits around managing erosion and sedimentation effects. It also reflects the RMA provisions in terms of the need to avoid, remedy or mitigate adverse effects. So in my opinion satisfies Section 32(4)(a) of the RMA.
34. Accordingly, given the importance of EMPs for renewable energy and other infrastructure projects, and in particular the environmental outcomes they can secure, it is essential that EMPs or "sediment and erosion plans" be specifically recognised within the policies included in Chapter 12, to ensure the benefits of these tools are clear. I have offered suggested wording (below) to achieve the appropriate acknowledgement of this in the policy.
35. I support the retention of Clause (i), and in particular the cross reference to Policy 3-1 (benefits of infrastructure) and have no concerns with the Officer's recommendation for more specific cross-references within Policy 12-1(i). Linking this to the policy (or policies) that define infrastructure of regional and national importance, provides appropriate recognition of the necessity for carrying out land disturbance as a key part of establishing renewable energy facilities in the Region.
36. As I have mentioned previously, Meridian has sought, through its submissions on Chapter 3, to de-couple renewable energy facilities from the general definition of "infrastructure" in order to provide appropriate recognition for this critical resource, in line with the special recognition provided in Section 7 of the RMA. If this submission is accepted, I note that consequential amendments may be required to Policy 12-1(i). This matter will be addressed at a later hearing.
37. Meridian opposed Clause (h) as currently worded and requested the replacement of the word "minimise" with "avoid, remedy or mitigate" as this phrase is used universally in the RMA and in case law with regard to the management of environmental effects. As a result, it is also generally well understood by applicants and submitters to resource consent applications.
38. The use of term 'minimise' has the potential to create confusion as to whether measures to manage environmental effects are appropriate when applications are assessed against Policy 12-1.
39. With the above in mind, I recommend that Policy 12-1 be amended as follows:

Policy 12-1: Consent decision-making for vegetation clearance and land disturbance

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:*

- (a) *the objectives and policies of Chapter 5*
- (b) *whether a whole farm business plan* or an environmental management plan / sediment and erosion control plan should be required as a condition of consent*
- (c) *any industry standards that are relevant to the activity in accordance with Policy 12-2*
- (d) *whether the vegetation clearance* or land disturbance* is for an important or essential activity as described under Policy 12-3*
- (e) *the degree of compliance with the standards for managing surface water turbidity as set out in Chapter 6, to the extent that this is necessary and can reasonably be determined*
- (f) *effects on sensitive areas including, but not limited to:*
 - (i) *dwelling houses and other buildings and structures*
 - (ii) *waahi tapu, marae and other places of significance to tangata whenua*
- (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*
- (h) *measures including, but not limited to, sediment and erosion control measures required to reasonably minimise avoid, remedy or mitigate adverse effects caused by rainfall and storm events*
- (i) *~~the objectives and policies of Chapter 2 regarding codes of practice and other good practice initiatives, Chapter 3 regarding infrastructure and energy, Chapter 7 regarding indigenous biological diversity, landscapes and natural character, and Chapter 10 regarding natural hazards to the extent that they are relevant to the activity.~~ Objective 2-1: Consent duration, review and enforcement; Policy 2-1: Consent conditions; Policy 2-2: Consent durations; Policy 2-3 Consent review; Policy 2-4: Sites with multiple activities, and activities covering multiple sites; Objective 3-1: Infrastructure and energy; Policy 3-1: Benefits of infrastructure; Policy 3-2: Adverse effects of their activities on infrastructure; Policy 3-3 Adverse effects of infrastructure on the environment; Objective 4-1: Environmental management; Policy 4-1 Hapu and iwi involvement in resource management; Policy 4-2 Waahi tapu, waahi lupuna and other sites of significance; Policy 4-4: Other environmental issues; Objective 7-1 indigenous biological biodiversity; Objective 7-2: Landscapes and natural character; Policy 7-2 Activities in Rare and Threatened Habitats; Policy 7-3: Activities in at-risk habitats; Policy 7-4: Proactive management of representative habitats; Policy 7-6: Pest plants and animals; Policy 7-7: outstanding landscapes; Policy 7-8: Natural character; Policy 7-10 historic heritage; Objective 10-1: Effects of natural hazard events; Policy 10-2: Development in areas prone to flooding; Policy 10-3: Activities that need to be located in areas prone to flooding; Policy 10-4: Critical infrastructure; Policy 10-5: Other types of natural hazards; Policy 10-6: Climate change.*

Policy 12-3 (X522 various points, X358)

40. Meridian's submission on Policy 12-3 sought specific acknowledgement of renewable energy generation within Policy 12-3.
41. I support in principle the Officer's recommended amendment to Policy 12-3 as it provides clarification over what is meant by essential infrastructure. However I again note that Meridian's submission on Chapter 3 seeks to de-couple renewable energy facilities from the general definition of "infrastructure" in order to provide appropriate recognition for this infrastructure, in line with the special recognition provided in Section 7 of the RMA. If this submission is successful, I note that consequential amendments may be required to Policy 12-3. This matter will be addressed at a later hearing,

Policy 12-4 (X363 point 141)

42. Meridian's submission on Policy 12-4 sought specific acknowledgement of renewable energy generation within Policy 12-4.
43. The Officer states that renewable energy generation facilities may fall into the large-scale consents category but does not consider it necessary to specifically refer to these facilities. The Officer notes the policy is inclusive and where an applicant considers that there are merits in applying for resource consent(s) to cover various renewable energy facilities, the policy enables the council to consider such applications. The Officer applies the same rationale to the assessment of agricultural land use activities, yet recommends that these are expressly included in the policy.
44. I also note that there is nowhere else in the Proposed One Plan (from my reading) where the term "network utility operators" is used. Rather, the Proposed One Plan refers to infrastructure of regional and national importance. Accordingly, it is more consistent with objectives and other policies within the Proposed One Plan to make reference to infrastructure of regional and national importance than to introduce another concept, which does not necessarily capture all types of infrastructure addressed within Chapter 3. For example, electricity generation does not fall within the definition of "network utility" provided in the RMA, so would not be covered by Policy 12-4 as recommended by the Officer.
45. As an alternative, I would recommend that this policy includes a cross reference to Policy 3-1, noting again there may be need for consequential amendments depending on the outcome of Meridian's submissions on Policy 3-1. Suggested wording is provided in the tracked changes version of the plan attached to this evidence.

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 and providers of infrastructure* of regional and national importance (as defined in Policy 3-1)*
- (b) forestry operations*

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.

46. In my view, a policy that specifically acknowledges "infrastructure of regional and national importance" better reflects the outcomes sought within the objectives around providing for infrastructure of regional and national importance and the objectives within Chapter 3 of the plan. The policy that I set out does not introduce a term (network utility operators) that is not used elsewhere in the plan and only captures part of the infrastructure covered by Chapter 3. As such it is more effective than the alternative policy recommended by the Officer.

Rules General (X502 point 309)

47. Meridian supported a submission of TrustPower Limited (submitter number 358/76, page 76) which opposed the inclusion of all conditions and matters of control/discretion relating to rare, threatened and at risk habitats within Rules 12-3, 12-4 and 12-5.
48. The inclusion of a condition on the HEL and waterbody setback rules (Rules 12-3, 12-4 and 12-5) preventing assessment of land disturbance proposals sited within rare and threatened habitats under these rules is unnecessary. In my opinion, it will result in un-intended and/or inappropriate elevating of consent statuses. Furthermore, it will increase the potential for multiple component resource consent applications to be bundled to more restricted activity status than is necessary.
49. For example, the inclusion of the rare and threatened habitat condition in Rule 12-3 means that if an applicant wishes to seek resource consent for works within an area identified as HEL, and which meets the criteria for rare and threatened habitats, consent will be required under Rule 12-6, as well as 12-8. There is an inconsistency in the drafting of the provisions which exclude consideration of works within rare and threatened habitats as a condition in rule 12-3 and the Officer's revised 12-4, yet require assessment of effects on these habitats through the matters over which control/discretion is retained.
50. In my opinion, assessment on rare and threatened habitats should be limited to land disturbance and vegetation clearance located within such areas via the specific rules applicable to this matter (12-7 and 12-8) only. Biodiversity is dealt with under a different policy framework and land use consent is only needed when you actually undertake land disturbance and vegetation clearance within a rare, threatened or at risk habitat, for the reasons established by the objectives and policies specific to biodiversity. Rules 12-1 to 12-6 stem from Chapter 5. There is no support in Chapter 5 for mixing the two matters together and there are no objectives or policies within Chapter 5 which suggest effects on biodiversity needs to be considered when you are managing HEL and/or land disturbance/vegetation clearance within proximity to streams.
51. There are no objectives or policies within Chapter 7 requiring assessment of land disturbance and vegetation clearance activity on rare, threatened or at risk habitats other than when the land disturbance and vegetation clearance is directly affecting these areas. (That is, there are no objectives or policies requiring applicants undertaking land disturbance and vegetation clearance undertaken outside of rare, threatened or at risk habitats, to consider effects on biodiversity).
52. I note that rules must give effect to objectives and policies. The objectives and policies in Chapter 5 are given effect to through Rules 12-1 to 12-6. Chapter 7 is given effect to through Rules 12-7 and 12-8 (among other rules that are not relevant to my evidence for this hearing). The rules I recommend in the following section better reflect the outcomes sought within the objectives and policies for managing HEL and land disturbance/vegetation clearance within

proximity to streams, so are therefore more effective than the alternative rules recommended by the Officer.

53. As such, I recommend that all conditions and matters of control/discretion relating to rare, threatened and at risk habitats be deleted from Rules 12-3, 12-4 and 12-5. These amendments are incorporated into the specific discussion for each of these rules below.

Rule 12-1 (ME 143, ME 144)

54. Meridian's submission generally supported Rule 12-1. It is my interpretation, following further analysis of the rule, that it applies to land disturbance and vegetation clearance not captured by the other rules in Chapter 12. That is, Rule 12-1 does not just apply to those activities with Whole Farm Business Plans (WFBPs). This is consistent with sections 5 and 9 of the Act. However, I am concerned with the Officer's recommendation for amendments suggested to conditions (a) and (b) of this rule.

55. Firstly, condition (a), which the Officer suggests be amended by the addition of the following clause: *"The erosion and sediment control measures shall ensure the stormwater from the site entering surface water does not cause, after reasonable mixing, the percentage change standard for turbidity outlined in Schedule D for the receiving waterbody to be breached"* is of concern. In my opinion, this amendment would create a confusing overlap between the controls on land use and the relevant stormwater discharge rules. I have concerns regarding the usability of Schedule D generally, but this is a matter for a later hearing.

56. The confusing overlap is best illustrated by noting an inability to meet condition (a), as recommended by the Officer, would then require consideration under Rule 12-6 - the "catch-all" land use rule. I consider that failure to meet water quality standards should be assessed via a discharge permit application, rather than a land use consent process. In addition, the use of "a zone of reasonable mixing" in a permitted activity condition does not offer sufficient certainty to plan users on whether or not resource consent is required. In this respect, it is unclear how a plan user is supposed to determine whether reasonable mixing has been achieved in order for an activity to be considered a permitted activity – particularly with respect to a non-point source discharge. I would also suggest that condition (a) would represent some problems for Horizon's to regulate from an enforcement perspective. This matter is addressed in Mr Robertson's evidence.

57. The Officer also recommends an amendment to condition (b) which either requires iwi consultation on a permitted activity or the condition attempts to prescribe the way in which territorial authorities or the Historic Places Trust approach the approval of a district plan heritage application or an archaeological authority under the Historic Places Act (HPA). For completeness, I note that the officer is recommending the following change to Rules 12-1 through to 12-4:

The activity shall not disturb any archaeological site, waahi tapu or koiwi remains as identified in any District Plan, in the New Zealand Archaeological Association's site recording scheme, or by the Historic Places Trust except where Historic Places Trust approval in consultation with iwi for waahi tapu or koiwi remains has been obtained.

58. In my view, the words recommended for addition are ambiguous in terms of whether it is intended that the applicant has to undertake consultation with iwi or whether that consultation

has to occur as part of the Historic Places Trust approval process. The Officer's reasoning does not shed any particular light on this issue and notes "...submitters request amendment to the wording of condition (b) which refers to archaeological materials. It is requested that reference to consultation with iwi in the case of waahi tapu or koiwi occurs as part of the Historic Places Trust approval. I agree that this would be the normal course of events in obtaining approval from the Trust and it is therefore appropriate to make reference to this in the condition".

59. It is still unclear whether the intention is to impose an obligation on the applicant to obtain Historic Places Trust approval in combination with consulting with iwi. The decision requesting this amendment is summarised at page 229 of the Officer's Report and comes from the NZHPT (Central Region). This does not clarify where in the process consultation with iwi is intended to arise as an obligation
60. The Historic Places Act provides (relevantly):
- Section 11(2)*
- An application for an authority to destroy, damage, or modify an archaeological site shall include the following information:-*
-
- (c) An assessment of any archaeological, maori, or other relevant values and the effect of the proposal on these values:-*
- (d) A statement as to whether consultation with tangata whenua and any other person likely to be affected -*
- (i) Has taken place, in which case details of such consultation shall be provided, including the identity of the parties involved and the nature of the views expressed; or*
- (ii) Has not taken place, in which case reasons as to why such consultation has not taken place shall be provided...*
61. Also, Section 14(3) provides:
- Where an application made under sub-section (2) of this section relates to a site or sites that the Trust considers to be a site of Maori interest, the Trust shall refer the application to the Maori Heritage Council to make such recommendations as the Council may consider appropriate, following such consultation as the Council considers appropriate.*
62. Two things are clear:
- There is no obligation on an applicant to consult with tangata whenua/iwi (although there is a clear expectation); and
 - Anything affecting waahi tapu or koiwi will be referred to the Maori Heritage Council to make recommendations following any consultation the Council considers appropriate.
63. In short, the HPA establishes its own procedure and this procedure does not oblige an applicant to undertake consultation with iwi. It is not appropriate for the Plan to impose an obligation greater than that contained in the HPA.
64. Similarly, under the RMA there is no legal obligation on an applicant seeking resource consent to consult with tangata whenua. Rather, the obligation falls on the consent authority through its

officers. However it is generally understood that consultation between an applicant and tangata whenua is good practice, particularly where proposals affect Section 6(e) or 7(a) matters.

65. In my opinion, the suggested amendment is inappropriate, and the condition should not be amended, as it is unclear and potentially duplicates district council and HPA provisions (in an inconsistent manner). Given the above, I recommend that no amendments be made to Rule 12-1 of the plan.

Rule 12-3 (ME 145, ME 146)

66. Meridian opposed Rule 12-3 and sought that it be replaced with a specific rule for renewable energy development.
67. I generally support Rule 12-3, subject to an appropriate definition of HEL. However in my view, an appropriate definition has not been offered to date via either the map in Schedule A of the Proposed Plan, or through the definition suggested by the Officer. Notwithstanding this, I consider it is appropriate to delete the slope reference from within this rule, as appropriate identification of HEL should factor this in already.
68. However, I do not agree with the amendment suggested by the Officer to clause (c). I note this provision either requires iwi consultation on a permitted activity or attempts to prescribe the way in which territorial authorities or the Historic Places Trust approach the approval of a district plan heritage application or an archaeological authority under the Historic Places Act (HPA). My reasons for opposition to this clause have already been discussed in this evidence.
69. I do support the Officer's recommendation for a new exclusion for maintaining existing infrastructure in condition 12-3(f). I believe it is critical that infrastructure can be maintained efficiently and consider this amendment means the rule better meets the objectives and policies contained within Chapters 3, 5 and 12 of the plan. The amendment provides for efficiency and effectiveness and offers reduced compliance costs and increased benefits (e.g. timely maintenance) for infrastructure providers, enabling these providers to supply social, economic and community wellbeing, and health and safety for the Region.
70. Accordingly, I recommend that Rule 12-3 be amended in the manner set out in Appendix 1 to this evidence.

Rule 12-4 (ME 147, ME 148)

71. Meridian opposed Rule 12-4 and sought its deletion. I support the Officer's recommendation that this rule be amended to restricted discretionary, subject to appropriate identification of HEL. I believe the suggested consent status is appropriate for managing the effects of vegetation clearance on HEL, as this will facilitate efficient consent processing. It will streamline both the AEE and consenting process by allowing applicants and the consent authority to focus on the effects of concern, which are clearly outlined in Chapter 5. Such a rule category also retains discretion for the consent authority to decline applications if necessary.
72. The suggested rule includes a non-notification clause, which is appropriate in my opinion but again, the rule presented by the Officer either requires iwi consultation on a permitted activity or attempts to prescribe the way in which territorial authorities or the Historic Places Trust approach the approval of a district plan heritage application or an archaeological authority under the

Historic Places Act (HPA). As a result, an inappropriate conflict would result if this recommendation were accepted. A non-ambiguous non-notification clause is essential if the Council is aiming for "in the field" consent assessment, as discussed in the Officer's report. I support the Council on this approach and believe that this will greatly assist with promoting sustainable management within the Region. A non-notified consent process is appropriate for addressing erosion and sediment effects as this is a technical/specialist field and the results of third party consultation are unlikely to offer any environmental benefit.

73. Condition (a) in Rule 12-4 is also not required in my view. Clause (f) in the Control/Discretion/Non-notification column drafted by the Officer provides the consent authority with discretion to consider effects on rare, threatened and at risk habitats. As discussed earlier, both of these references to rare, threatened and at risk habitats are inappropriate in Rule 12-4, as works within rare, threatened or at risk habitats will be subject to other rules and assessment under other objectives and policies.
74. Reserving discretion over effects on rare, threatened or at risk habitats will also preclude an "in the field" consent assessment as significant specialist assessment work is needed to assess effects on these habitats. Accordingly, I consider clause (f) is redundant and should be deleted. I note that rules must give effect to objectives and policies. The objectives and policies in Chapter 5 are given effect to through Rules 12-1 to 12-6. Chapter 7 is given effect to through rules 12-7 and 12-8. My wording for Rule 12-4 better reflects the outcomes sought within the objectives and policies for managing HEL, so is therefore more effective than the alternative wording recommended by the Officer.
75. I support exclusion (h) for Rule 12-4 recommended by the Officer, subject to the definition of infrastructure. Clause (h) is an exclusion for maintaining existing infrastructure, which in my opinion is critical for community wellbeing and provides certainty for infrastructure providers. I believe it is critical that infrastructure can be maintained efficiently and consider this amendment means the rule meets the objectives and policies contained within Chapters 3, 5 and 12 of the plan. Clause (h) provides for efficiency and effectiveness and offers reduced compliance costs and increased benefits (e.g. timely maintenance) for infrastructure providers, enabling these providers to supply social, economic and community wellbeing, and health and safety for the Region.
76. Accordingly, I recommend that Rule 12-4 be amended in the manner set out in Appendix 1 to this evidence.

Rule 12-5 (ME 149, ME 156)

77. Meridian lodged several alternative requests in relation to Rule 12-5, which is not apparent in the Officers report, due to the way in which the original submission was coded by Horizons staff. Meridian firstly sought renewable energy generation facilities as a permitted activity where carried out in accordance with a renewable energy development plan (coded as points 149 and 150). The first alternative request was the removal of the slope variation for stream setbacks and provision of a standard 5 metre setback together with defining streams to 2 metres bed width or permanently flowing (coded as point 151). The second alternative request was for controlled activity status for all renewable energy land disturbance and vegetation clearance within HEL and habitat areas – i.e. in the place of all of rules 12-1 to 12-8 (this request was

coded as point 156). Meridian also supported a general request for no rules controlling land disturbance and vegetation clearance.

78. I wish to propose a modified relief for Rule 12-5. I consider the discretionary activity status of Rule 12-5 is overly restrictive and suggest that this can appropriately be amended to a restricted discretionary category, which is a "middle ground" outcome in relation to that originally requested by Meridian (i.e. permitted and controlled activity status or no rules at all).
79. In reviewing the Officer's recommendation in relation to Rule 12-4 and the reasons provided for this (pages 204, 205 and 276), it seems appropriate that Rule 12-5 is categorised in a similar manner. I have discussed the option of the restricted discretionary status, as compared to a fully discretionary activity within the next paragraphs, using the framework of Section 32 of the RMA, as is required.
80. Rule 12-5 is a stream setback rule for land disturbance and vegetation removal activities. It is my understanding that this rule is imposed to manage erosion and sedimentation effects, which are also the effects controlled by the HEL rules (12-3 and 12-4). Accordingly, a similar approach should in my opinion be adopted for Rule 12-5. Such a rule category retains discretion for the consent authority to decline applications if necessary. It is often necessary to seek consents under this rule for renewable energy facilities and other critical infrastructure. I note also that the rule in the Operative Land and Water Plan relating to stream setbacks is classified as a restricted discretionary activity also.
81. In deciding the appropriate activity status, I believe it is important to consider the hierarchy of classifications available to the Council and the overall permissive approach in the RMA towards land use activities. This was discussed above in relation to Policy 5-3. Additionally, rules should be devised to intervene in or restrict activities only to the extent that is necessary for the Council to perform its functions under Section 30 of the RMA.
82. In relation to works within proximity to streams, the relevant reasons for controlling the use of land is limited to those set out in Section 30(1)(c) of the Act, namely:
- soil conservation
 - the maintenance and enhancement of the quality of water
 - the maintenance and enhancement of ecosystems in water bodies
83. With reference to the above, the Regional Council cannot, for example, control the visual effects of land disturbance or vegetation removal activities undertaken within proximity to streams.
84. When it comes to classifying activities in the range of controlled through to non-complying, it is my experience that this represents a sliding scale of the difficulty for an applicant to obtain resource consent. Care is needed to set the bar no higher than is necessary for the Council to satisfy the purpose of the Act, as it relates to the Regional Council's jurisdiction as set out above.
85. A consent authority has the power to decline consent for a restricted discretionary activity and the power to impose conditions. I believe a restricted discretionary classification is appropriate where the range of relevant effects can be readily identified. On the other hand, in situations where there is a wide range of environmental effects that might need to be considered, a fully discretionary activity status is more appropriate. With reference to the potential effects that are relevant for the Regional Council to consider in respect of land disturbance and vegetation

removal undertaken within 100 metres of a stream, these are indeed limited and they are readily identified. The relevant effects fall into the following inter-related matters:

- slope stability
- sediment retention and control of sediment run-off
- riparian management

86. A restricted discretionary classification provides the opportunity for focused applications and assessment of effects statements (AEEs). It provides the Council with the opportunity to focus its assessment on effects of the activity that are actually of concern and it offers a streamlined administrative process. Through modifying Rule 12-5 to a restricted discretionary classification, the Council can pre-determine the matters which need to be addressed to just those of concern, reducing application and processing costs for both applicants and the consent authority. In addition, a restricted discretionary category for Rule 12-5 will provide greater certainty to landowners and public interest groups over what effects are relevant.
87. In my opinion, a restricted activity status for Rule 12-5 would better meet the objectives and policies contained within Chapters 3, 5 and 12 of the plan, and would better assist the Regional Council in undertaking its responsibilities under Section 30. It would also better reflect the permissive presumption in Section 9(3), and the enabling premise of Section 5 of the RMA. A restricted discretionary status is also consistent with Policy 11.1 of the Proposed One Plan. A restricted activity status provides for efficiency and effectiveness and offers reduced compliance costs and increased benefits (e.g. focused consent processes) for those undertaking a range of necessary activities involving land disturbance and vegetation removal within proximity to streams.
88. In addition to the above, I support the Officer's discussion on Page 286 of the report of the need for an exclusion relating to the maintenance of existing infrastructure in the interests of adequately providing for social, economic and community wellbeing. This is particularly important in terms of the importance of infrastructure maintenance for the community. However, I note that this assessment was not reflected in the recommendation on page 288. I have included suitable wording for this in Appendix 1.
89. I also support clause (g) recommended by the Officer as this provides for consistency between the permitted stream crossing rules in Chapter 16 and Rule 12-5. This is appropriate in my view, as it is not physically possible to construct a stream crossing without undertaking land disturbance within riparian areas. Without this recommended exclusion, there would be little benefit in providing a permitted activity culvert rule in the plan.
90. I also support the Officer's recommended wording for identifying when an intermittent watercourse or overland flow path constitutes a stream for the purposes of this rule. This is essential for ensuring that the rules provide certainty.
91. Based on Mr Robertson's evidence and the relevant section 42A assessments, I support the 5-metre stream setback rule for flat land.
92. Given the above, I recommend that Rule 12-5 be amended to a restricted discretionary status in the manner set out in Appendix 1 to this evidence.

Schedule A

93. Meridian opposed Schedule A in its submission. In this respect, Meridian was concerned that the maps in Schedule A lacked detail for use in determining whether activities required resource consent or not.
94. I refer to Mr Robertson's evidence on this matter also. I note the Officer agrees that the current map in Schedule A is at a scale that is too large and is not adequate for the Proposed One Plan rules. The Officer recommends deletion of the Schedule A and a written definition in its place.
95. The Officer's definition for HEL included in Appendix A is highly complex and refers to a percentage of the hill surface, "soft rock areas", "medium rock areas", "hard rock areas" and land slope. From a consent administration viewpoint, this approach is overly complicated and the areas need be mapped for certainty.
96. In my opinion, any person proposing any land disturbance or vegetation clearance anywhere within the Horizons Region would need to engage a specialist geologist and possibly other specialist technical advice to enable a determination as to whether the site constitutes a HEL under the definition proposed by the Officer (and therefore, whether a resource consent is required under Rules 12-3 or 12-4). This approach provides no certainty to resource consent applicants or to Horizons Regional Council as an enforcement agency. It will have considerable time and financial cost implications for applicants.
97. In my opinion, the HEL definition recommended by the Officer fails to take account of Section 68 of the RMA, which sets out the requirements for regional rules. I note that every rule has the force and effect of a regulation. This in turn brings with it the requirement that rules in the plan, and the provisions of the plan in general, must be clear and precise so that those who administer the plan or are affected by it should be able to identify without difficulty the provisions which apply to specific properties. It is my understanding that uncertain rules can be found to be void at any time. The definition of HEL is the key regulating matter in Rules 12-3 and 12-4. Therefore it needs to be identified precisely. In my view, the definition recommended by the Officer does not provide this.
98. I would therefore recommend that the definition of HEL recommended by the Officer not be adopted in the Proposed One Plan and that the Regional Council provide maps at scale whereby applicants and compliance / planning staff from the Council can reasonably determine whether an activity is located within / on HEL. To this end, I note that Environment Bay of Plenty utilises a 1:25,000 scale map to confirm the location of areas it has identified as Erosion Hazard Zones in its Proposed Land and Water Plan. A map at this, or a similar, scale would give confidence to all parties over what activities are and are not captured by the rules in Chapter 12. I recognise that the production of a map of HEL at a more detailed scale may require some time and resource to implement. As a result, I would recommend that such an exercise be undertaken as a variation or plan change to the Proposed One Plan within a specific timeframe of decisions being released and that in the interim Figure 5.1 be utilised as the trigger for the rules in Chapter 12.
99. Figure 5.1 from the Proposed One Plan illustrates the extent of HEL in the Region (without extending it to the entire land holding). I consider this is a suitable interim definition of HEL, until such time as a variation is completed. I acknowledge that the scale is not ideal for users and the mapping becomes somewhat inaccurate at a site-specific scale.

100. However, I have had the opportunity to request an enlarged copy of Figure 5.1 to determine the actual location of HEL in order to assess the effects of a specific project. The map included as Appendix 2 to this evidence is such a map, which Horizon's staff provided me with. For the site in question, the map was useful and generally reflected my observations (as a planner) for the erosion on the land in question. In my opinion, if Figure 5.1 formed the basis of the HEL definition, then applicants could readily determine whether resource consent under Rules 12-3 and 12-4 were necessary. A note should also be included in the Plan that larger versions of Figure 5.1 are available in order for people to evaluate its applicability to given sites.
101. In my opinion, a HEL definition that provides certainty through use of Figure 5.1 would better meet the objectives and policies contained within the Plan, than the Officer's HEL definition. My approach provides for efficiency and effectiveness and offers reduced compliance costs and increased benefits for those undertaking land disturbance and vegetation removal within the Horizons Region. The benefits offered by my suggested HEL definition include the fact that Council resources will be able to be directed towards preparing more detailed mapping of HEL to feed into a variation, rather than managing the uncertain rule framework suggested by the Officer.

Conclusion

102. In conclusion there is need for an appropriate policy and rule framework for renewable energy facilities. I believe there is a need for certainty on the location of Highly Erodible Land (HEL) and that this can best be achieved by mapping such areas. Furthermore, there is a need for clear simple rules, which are easily understood by any person potentially carrying out land disturbance activities within the Horizons Region. Rules that will realise the Council's aim for fast and efficient "in the field" consent processing would greatly assist the sustainable management of natural and physical land resources within the Horizons Region.
103. Objectives, policies and rules that best reflect the requirements set out in the RMA are essential for ensuring the One Plan promotes the sustainable management of natural and physical resources.



Mary O'Callahan

30 June 2008

**Appendix 1 – Tracked Changes Version of Recommended Amendments to Proposed
One Plan – Chapters 5 and 12, relating to the Land Hearing**

Objectives

Objective 5-1: Accelerated erosion

Land is used in a manner that ensures:

- (a) 50% of farms with Highly Erodible Land* (see Schedule A) are either being sustainably managed, or have a whole farm business plan* in place by 2017
- (b) sediment loads entering waterways as a result of accelerated erosion are reduced to the extent required to be consistent with the water management objectives and policies set out in Chapter 6 of this Plan and the targets established in Schedule D for those water management zones with elevated sediment levels
- (c) accelerated erosion caused by vegetation clearance* and land disturbance* is ~~minimised/avoided~~, remedied or mitigated
- (d) the damage to roads and other infrastructure* caused by landslides and sediment run-off from hill country is minimised
- (e) the damage to property, infrastructure* and significant habitat areas caused by accelerated wind erosion of coastal sand is minimised.

Whāinga 5-1: Te tere whakahoro whenua

Ka whakamahia te whenua kia hua ai:

- (a) *hei mua mai i te tau 2017 e 50% o ngā pāmu whenua horo nui (irohia Schedule A) ka āta whakahaeretia i runga i te tikanga tauwhiro rānei, e whai ana rānei i tētahi mahere pāmu katoa*
- (b) *ka whakaitingia ngā kuhunga paru, nā te tere whakahoro whenua, ki roto i ngā rerenga wai kia hāngai tonu ki ngā whāinga whakahaere wai, pūrongo hoki kei roto i Chapter 6 – Water o tēnei mahere me ngā keonga i whakatauria i roto o Schedule D e pā ana ki aua rohe whakahaere wai nui kē ngā taunga paru*
- (c) *ka whakaitingia te tere whakahoro whenua nā te whakapara tipu me te rāweke whenua*
- (d) *ka whakaitingia te pakaru o ngā huarahi me kaupapa o raro kē nā te horowhenua me te rerenga parataiao i ngā puke, ā*
- (e) *ka whakaitingia te pakaru o ngā rawa, ngā kaupapa o raro, me ngā wāhi noho whakahirahira nā te tere whakahoro ā-heu o ngā oneone takutai moana.*

5.1

Policies

5.....1.1

Accelerated Erosion

Policy 5-1: Sustainable management of Highly Erodible Land – whole farm business plans

The Regional Council will encourage the adoption of sustainable land management practices on all farms identified as Highly Erodible Land* (as shown in Schedule A) by working with relevant landowners/occupiers to prepare a whole farm business plan* identifying sustainable land management practices for each farm and programmes for implementing any required changes.

- (a) The Regional Council aims to have 50% of farms with Highly Erodible Land* covered by a whole farm business plan* by 2017.



- (b) The Regional Council will monitor the implementation of sustainable land management practices on Highly Erodible Land* and report this information on a two-yearly basis.
- (c) A non-regulatory approach has been adopted to encourage the use and uptake of whole farm business plans* to achieve sustainable land use on Highly Erodible Land*. If, however, monitoring indicates that this approach is not achieving sustainable land use, other methods to achieve the outcome will need to be considered.

Policy 5-2: Sustainable management of other land – whole farm business plans

The Regional Council will respond to requests from owners/occupiers of land that is not Highly Erodible Land* to prepare a whole farm business plan*, provided this does not impede the achievement of Policy 5-1.

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 ~~not~~ be allowed on Highly Erodible Land* unless where:
 - (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 fence line ~~or other infrastructure*~~ 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 a commercial forestry operation that will operate in accordance with accepted industry standards, or
 - (vi) other exceptional circumstances apply, or
 - (vii) the activity is for the purpose of establishing or maintaining infrastructure* of regional and national importance as defined in Policy 3-1(a).
- (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.

Policy 5-4: Regulation of significant land disturbance on land that is not Highly Erodible Land

Land disturbance* on land that is not Highly Erodible Land* shall be regulated in order to avoid any significant increases in the risk of erosion, land instability, or sediment discharges to waterways.

12 Land-Use Activities and Land-Based Biodiversity

Policies

Policy 12-1: Consent decision-making for vegetation clearance and land disturbance

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:

- (a) the objectives and policies of Chapter 5
- (b) whether a whole farm business plan* or an environmental management plan / sediment and erosion control plan should be required as a condition of consent
- (c) any industry standards that are relevant to the activity in accordance with Policy 12-2
- (d) whether the vegetation clearance* or land disturbance* is for an important or essential activity as described under Policy 12-3
- (e) the degree of compliance with the standards for managing surface water turbidity as set out in Chapter 6, to the extent that this is necessary and can reasonably be determined
- (f) effects on sensitive areas including, but not limited to:
 - (i) dwelling houses and other buildings and structures
 - (ii) waahi tapu, marae and other places of significance to tangata whenua
- (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
- (h) measures including, but not limited to, sediment and erosion control measures required to reasonably minimise avoid, remedy or mitigate adverse effects caused by rainfall and storm events

6a/10 ~~the objectives and policies of Chapter 2 regarding codes of practice and other good practice initiatives, Chapter 3 regarding infrastructure and energy, Chapter 7 regarding indigenous biological diversity, landscapes and natural character, and Chapter 10 regarding natural hazards to the extent that they are relevant to the activity. Objective 2-1: Consent duration, review and enforcement. Policy 2-1: Consent conditions. Policy 2-2: Consent durations. Policy 2-3 Consent review. Policy 2-4: Sites with multiple activities, and~~

activities covering multiple sites. Objective 3-1: Infrastructure and energy; Policy 3-1: Benefits of infrastructure; Policy 3-2: Adverse effects of their activities on infrastructure; Policy 3-3 Adverse effects of infrastructure on the environment; Objective 4-1: Environmental management; Policy 4-1 Hapu and iwi involvement in resource management; Policy 4-2 Waahi tapu, waahi tupuna and other sites of significance; Policy 4-4: Other environmental issues; Objective 7-1 indigenous biological biodiversity; Objective 7-2: Landscapes and natural character; Policy 7-2 Activities in Rare and Threatened Habitats; Policy 7-3: Activities in at-risk habitats; Policy 7-4: Proactive management of representative habitats; Policy 7-6: Pest plants and animals; Policy 7-7: outstanding landscapes; Policy 7-8: Natural character; Policy 7-10 historic heritage; Objective 10-1: Effects of natural hazard events; Policy 10-2: Development in areas prone to flooding; Policy 10-3: Activities that need to be located in areas prone to flooding; Policy 10-4: Critical infrastructure; Policy 10-5: Other types of natural hazards; Policy 10-6: Climate change.

Policy 12-2: Recognition of industry standards

The Regional Council will examine relevant industry-based standards and codes of practice, including those for production forestry, and will accept compliance with industry standards as being adequate to avoid, remedy or mitigate adverse effects to the extent that such standards address the matters in Policy 12-1.

Policy 12-3: Important and essential activities

The Regional Council will generally allow vegetation clearance* or land disturbance* associated with an activity that is important or essential to the well-being of local communities, the Region or a wider area of New Zealand. Such activities might include, but not be limited to, vegetation clearance* or land disturbance* associated with the provision of infrastructure* of regional and national importance (as defined in Policy 3-1) and natural hazard management, and the provision of essential infrastructure.

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* of regional and national importance (as defined in Policy 3-1)
- (b) forestry operations

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.

Policy 12-5: Consent decision-making regarding rare and threatened habitats, and at-risk habitats

The Regional Council will make decisions on resource consent applications involving rare and threatened habitats*, and at-risk habitats* in accordance with the objectives and policies in Chapter 7.

Rules – Vegetation Clearance and Land Disturbance

		Permitted	
<p>12-1 Vegetation clearance and land disturbance not covered by other rules</p>	<p>Any vegetation clearance* or land disturbance* pursuant to s 9 RMA that is not specifically regulated by any other rule in this Plan. For the avoidance of doubt, this rule includes vegetation clearance* and land disturbance* that is carried out in accordance with a whole farm business plan*.</p>	<p>(a) For any land disturbance involving a volume of fill or excavation of more than 1000 m³ per property*, effective erosion and sediment control measures shall be installed and maintained during and following completion of works. (b) The activity shall not disturb any archaeological site, waahi tapu or koivi remains as identified in any district plan, in the New Zealand Archaeological Association's Site Recording Scheme, or by the Historic Places Trust except where Historic Places Trust approvals have been obtained. (c) In the event of an archaeological site, waahi tapu or koivi 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 activity shall not be recommenced without the approval of the Regional Council.</p>	<p>Control is reserved over: (a) the nature, scale, timing and duration of vegetation clearance or land disturbance (b) compliance with best management practices, including forestry industry standards (c) measures to maintain slope stability (d) the method of sediment retention and control of sediment run-off, (e) effects on riparian margins and water bodies (f) effects on rare and threatened</p>
<p>12-2 Production forestry</p>	<p>Vegetation clearance* or land disturbance* pursuant to s 9 RMA for the purposes of harvesting production forestry or developing land for production forestry planting, in the following circumstances: (a) in the case of land adjoining rivers, lakes and natural wetlands: (i) for areas where the land slope* is between 0° and 15°, within 10 m of the bed of a river, lake or wetland (ii) for areas where the land slope* is greater than 15°, within the strip of land bordered by the bed of a river,</p>	<p>(a) The activity shall not take place in any rare or threatened habitat* or at-risk habitat*. (b) The activity shall not take place on a coastal foredune as regulated by Rule 12-5. (c) The activity shall not disturb any archaeological site, waahi tapu or koivi remains as identified in any district plan, in the New Zealand Archaeological Association's Site Recording Scheme, or by the Historic Places Trust except where Historic Places Trust approval has been obtained. (d) In the event of an archaeological site, waahi tapu or koivi remains being discovered or disturbed while undertaking the activity, the activity shall</p>	<p>Control is reserved over: (a) the nature, scale, timing and duration of vegetation clearance or land disturbance (b) compliance with best management practices, including forestry industry standards (c) measures to maintain slope stability (d) the method of sediment retention and control of sediment run-off, (e) effects on riparian margins and water bodies (f) effects on rare and threatened</p>

<p>12-3 Land disturbance on highly erodible land</p>	<p>lake or wetland, and a setback distance (being not less than 10 m) at which the slope reduces to 15° or 100 m, whichever is the lesser</p> <p>(b) in the case of hillcountry highly erodible land*, the affected area is more than 1 hectare per property*.</p> <p>(c) in the case of coastal highly erodible land*, the affected area is more than 100 m² per property*.</p> <p>This rule does not apply to production forestry activities that are:</p> <p>(d) accredited by the Forestry Stewardship Council programme (these are a permitted activity under Rule 12-1)</p> <p>(e) on land mapped as hillcountry highly erodible land* in Schedule A, but where all land that is the subject of the activity has an existing slope of less than 20° (these are a permitted activity under Rule 12-1)</p> <p>(f) for the purposes of controlling pests pursuant to a pest management strategy prepared under the Biosecurity Act 1993 (these are a permitted activity under Rule 12-1).</p>	<p>Controlled</p>	<p>(a) The activity shall not take place in any rare or threatened habitat* or any at-risk habitat*.</p> <p>(b) The activity shall not take place on a coastal foredune or near a water body as regulated by Rule 42-5.</p> <p>(c) The activity shall not disturb any archaeological sifa, waahi tapu or kotahi remains as identified in</p>	<p>habitats*, and at-risk habitats* effects on existing structures</p> <p>(g) qualifications required of contractors</p> <p>(h) revegetation requirements</p> <p>(i) procedures in the event of discovering or disturbing an archaeological site, waahi tapu or kotahi remains</p> <p>(k) duration of consent</p> <p>(l) review of consent conditions</p> <p>(m) compliance monitoring.</p> <p>Resource consent applications under this rule will not be notified and written approval of affected persons will not be required (notice of applications need not be served on affected persons).</p>
<p>12-3 Land disturbance on highly erodible land</p>	<p>Land disturbance* on highly erodible land* pursuant to s 9 RMA in circumstances where either the affected area is more than 100 m² per property* or the volume of fill or excavation is more than 100 m³ per property*.</p> <p>This rule does not apply to land disturbance*</p>	<p>Controlled</p>	<p>(a) The activity shall not take place in any rare or threatened habitat* or any at-risk habitat*.</p> <p>(b) The activity shall not take place on a coastal foredune or near a water body as regulated by Rule 42-5.</p> <p>(c) The activity shall not disturb any archaeological sifa, waahi tapu or kotahi remains as identified in</p>	<p>Control is reserved over.</p> <p>(a) the nature, scale, timing and duration of land disturbance</p> <p>(b) compliance with best management practices</p> <p>(c) measures to maintain slope stability</p> <p>(d) the method of sediment retention</p>

	<p>that is:</p> <p>(a) carried out in accordance with a whole farm business plan* (this is a permitted activity under Rule 12-1) on land mapped as highly erodible land* in Schedule A, but where at least that is the subject of the activity has an existing slope of less than 20* (this is a permitted activity under Rule 12-1);</p> <p>(b) for the purposes of controlling pests pursuant to a pest management strategy prepared under the Biosecurity Act 1993 (this is a permitted activity under Rule 12-1);</p> <p>(c) for the purposes of recontouring or planting dunes to improve dune stability (this is a permitted activity under Rule 12-1, except activities on foredunes regulated under Rule 12-5);</p> <p>(d) for production forestry purposes (this is a permitted activity under Rule 12-1 or a controlled activity under Rule 12-2);</p> <p>(e) for the purposes of maintaining existing infrastructure* (this is a permitted activity under Rule 12-1).</p>		<p>any district plan, in the New Zealand Archaeological Association's Site Recording Scheme, or by the Historic Places Trust except where Historic Places Trust approval has been obtained.</p>	<p>and control of sediment run-off effects on riparian margins and water bodies</p> <p>(e) effects on rare and threatened habitats*, and at-risk habitats*</p> <p>(g) effects on existing structures</p> <p>(h) qualifications required of contractors</p> <p>(i) revegetation requirements</p> <p>(j) procedures in the event of discovering or disturbing an archaeological site, waahi tapu or kōwhiri remains</p> <p>(k) duration of consent</p> <p>(l) review of consent conditions</p> <p>(m) compliance monitoring.</p> <p>Resource consent applications under this rule will not be notified and written approval of affected persons will not be required (notice of applications need not be served on affected persons).</p>
<p>12-4 Vegetation clearance</p>	<p>Vegetation clearance* pursuant to s 9 RMA in the following circumstances:</p> <p>(a) in the case of coastal highly erodible land*, the affected area is more than 100 m² per property*</p> <p>(b) in the case of hillcountry highly erodible land*, the affected area is more than 1 ha² per property*.</p>	<p>Restricted Discretionary</p>	<p>(a) The activity shall not take place in any rare or threatened habitat*.</p> <p>(b) The activity shall not take place on a coastal foredune or near a water body as regulated by Rule 12-5. The activity shall not disturb any archaeological site, waahi tapu or kōwhiri remains as identified in any district plan, in the New Zealand Archaeological Association's Site</p>	<p>(a) the nature, scale, location, timing, and duration of vegetation clearance</p> <p>(b) compliance with the best management practices</p> <p>(c) measures to maintain slope stability</p> <p>(d) the method of sediment retention, and control of sediment run-off</p> <p>(e) effects on riparian margins and</p>

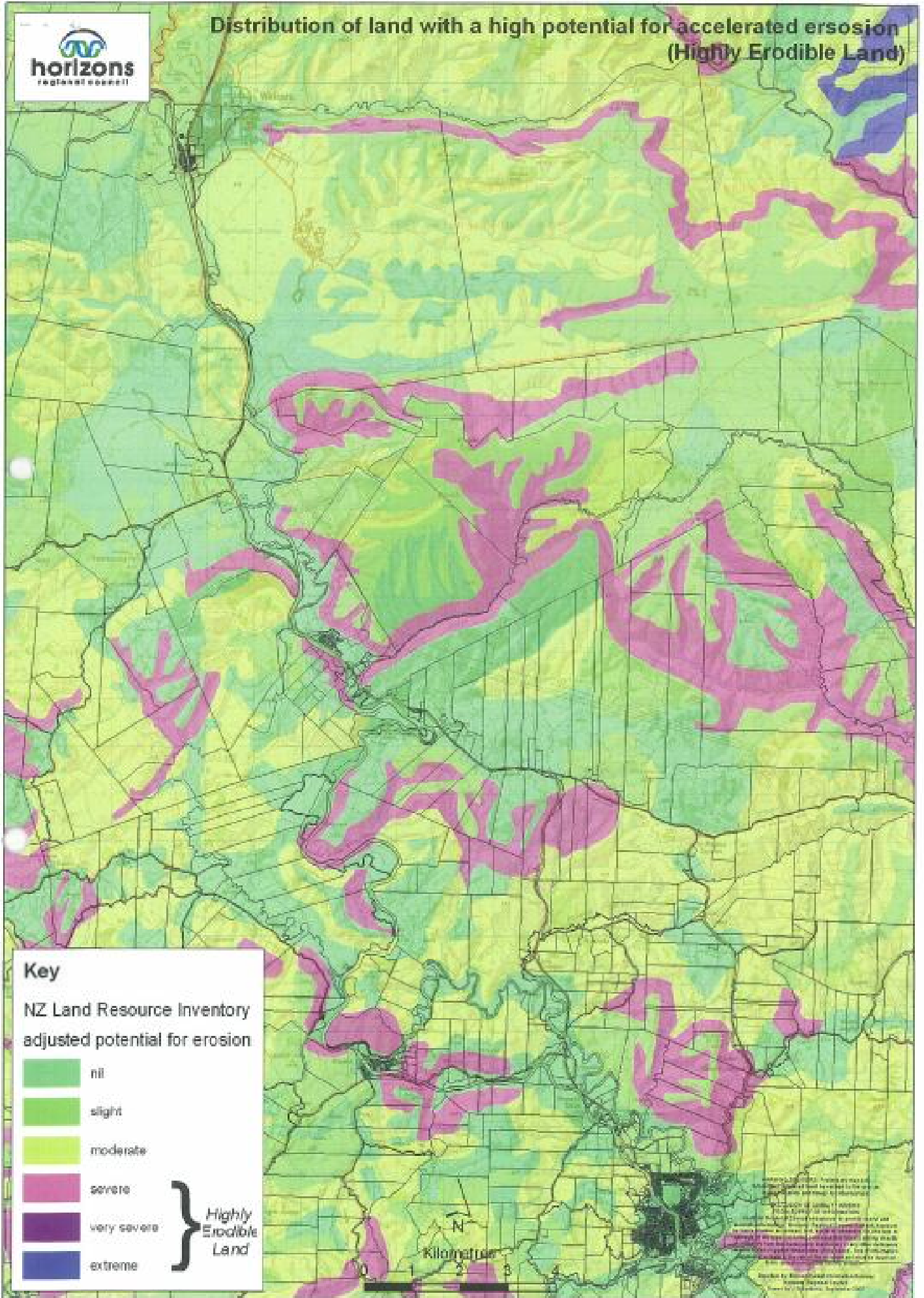
	<p>This rule does not apply to vegetation clearance* that is:</p> <p>(c) carried out in accordance with a whole farm business plan*</p> <p>en-land-mapped-as-hillcountry-highly-evident-land* in Schedule A, but where all land- that-is-the-subject-of-the-activity-has-an-existing-slope-of-less-than-20* (this-is-a-permitted-activity-under-Rule-12-1)</p> <p>(d) for the purposes of controlling pests pursuant to a pest management strategy prepared under the Biosecurity Act 1993 (this is a permitted activity under Rule 12-1)</p> <p>(e) for production forestry purposes (this is a permitted activity under Rule 12-1 or a controlled activity under Rule 12-2).</p> <p>(f) For the purposes of clearing vegetation where, within 18 months of being cleared, the land that has been cleared is reclaimed in woody vegetation that provides an equivalent or greater level of erosion protection to the vegetation that was cleared. (these are a permitted activity under Rule 12-1).</p> <p>(g) for the purposes of maintaining existing infrastructure* (this is a permitted activity under Rule 12-1).</p>	<p>Recording Scheme, or by the Historic Places Trust, except where the Historic Places Trust approval has been obtained.</p>	<p>water bodies</p> <p>(f) effects on rare and threatened habitats* and at-risk habitats*</p> <p>(g) effects on existing structures</p> <p>(h) qualifications required of contractors</p> <p>(i) revegetation requirements</p> <p>(j) procedures in the event of discovering or disturbing an archaeological site, wahi tapu or kōwhiri remains</p> <p>(k) duration of consent</p> <p>(l) review of consent conditions</p> <p>(m) compliance monitoring</p> <p>Resource consent applications under this rule will not be notified and written approval of affected persons will not be required (notice of applications need not be served on affected persons).</p>
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<p>12.5 Vegetation clearance and land disturbance on coastal foredunes and near water bodies</p>	<p>Vegetation clearance* or land disturbance*, including cultivation, pursuant to s 9 RMA in the following areas:</p> <p>(a) for coastal foredunes* on any land along the west coast of the Region between the coastal marine area and the inland margin of the coastal foredune</p> <p>(b) for rivers that are either permanently flowing or with a bed width in excess of 2 metres, lakes and natural wetlands:</p> <p>(i) in areas where the land slope is between 0° and 5°, within 5 m of the bed of a river, lake or wetland</p> <p>(ii) in areas where the land slope is between greater than 5° and 15°, within 10 m of the bed of a river, lake or wetland</p> <p>(iii) in areas where the land slope is greater than 15°, within the strip of land bordered by the bed of a river, lake or wetland, and a setback distance (being not less than 10 m) at which the slope reduces to 15° or 100 m whichever is the lesser</p> <p>(c) for artificial water bodies, within 5 m of the wetted perimeter of the water body.</p> <p>This rule does not apply to vegetation clearance* and land disturbance* that is:</p> <p>(d) for the purposes of controlling pests pursuant to a pest management strategy prepared under the Biosecurity Act 1983 (this is a permitted activity under Rule 12-1) or</p>	<p><u>Restricted/Discretionary</u></p>	<p>(a) The activity shall not take place in any rare or threatened habitat.</p>	<p>(a) <u>the nature, scale, location, timing and duration of land disturbance</u></p> <p>(b) <u>compliance with the best management practices</u></p> <p>(c) <u>measures to maintain slope stability</u></p> <p>(d) <u>the method of sediment retention and control of sediment run-off</u></p> <p>(e) <u>effects on riparian margins and water bodies</u></p> <p>(f) <u>effects on existing structures</u></p> <p>(g) <u>qualifications required of contractors</u></p> <p>(h) <u>revegetation requirements</u></p> <p>(i) <u>procedures in the event of discovering or disturbing an archaeological site, waahi tapu or kōwhiri remains</u></p> <p>(j) <u>duration of consent</u></p> <p>(k) <u>review of consent conditions</u></p> <p>(l) <u>compliance monitoring</u></p> <p><u>Resource consent applications under this rule will not be notified and written approval of affected persons will not be required (notice of applications need not be served on affected persons).</u></p>
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	<p>(e) for production forestry purposes (this is a permitted activity under Rule 12-1 or a controlled activity under Rule 12-2).</p> <p>(f)</p> <p>(g) <u>for the purposes of establishing or maintaining river crossings and artificial watercourses that are permitted activities under Rules 16-6, 16-11, 16-12 and 16-18 (these are permitted activities under Rule 12-1).</u></p> <p>(h) for the purposes of maintaining existing infrastructure* (this is a permitted activity under Rule 12-1).</p>		
<p>12-6 Vegetation clearance and land disturbance that do not comply with permitted and controlled activity rules</p>		<p>Discretionary</p>	

Appendix 2 – HEL Map for Site North of Taihape

Distribution of land with a high potential for accelerated erosion (Highly Erodible Land)



Key

NZ Land Resource Inventory
adjusted potential for erosion

- nil
- slight
- moderate
- severe
- very severe
- extreme

} **Highly Erodible Land**

0 1 2 3 4
Kilometres

Information on this map is derived from the NZ Land Resource Inventory (NZLRI) and is subject to change. The NZLRI is a national database of land use and cover information. It is compiled from a variety of sources, including aerial photography, ground-based surveys, and other data. The NZLRI is used to assess the potential for erosion and other land use impacts. This map is based on the NZLRI data and is intended to provide a general overview of the distribution of land with a high potential for accelerated erosion. It is not intended to be used for legal or other purposes. For more information, please contact the Horizons Regional Council.