

BEFORE THE HEARINGS COMMITTEE

IN THE MATTER

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

**Rebuttal Planning Evidence of Phillip Percy
for the reconvened Land hearing**

INTRODUCTION

1. As provided for in the Chairperson's direction #3, I provide this supplementary report as rebuttal evidence. The matters addressed in this evidence are restricted to matters raised in the evidence that has been provided to Horizons for the reconvened Land hearing as well as areas of agreement that have arisen from further discussions with other submitters who have not submitted further evidence to date. I also include some further recommended changes to Rule 12-1 in relation to sensitive habitats.
2. Only one piece of technical evidence has been received in relation to the reconvened Land hearing, that being from Dr McConchie. No rebuttal evidence is provided either by me or other Horizons officers in relation to this evidence. Planning evidence has been submitted by Emily Grace (New Zealand Defence Force). Other correspondence has been tabled by:
 - a. David Murphy (Palmerston North City Council)
 - b. David le Marquand (Transpower)
 - c. Lisa Hooker (Airways Corporation)
 - d. John Forrest
3. I note that evidence has not been provided by representatives of the forestry submitters or Federated Farmers at the time this rebuttal evidence was prepared. However further discussions have taken place with the forestry submitters representative in light of the evidence and tracked changes provisions presented by Horizons. While not strictly rebuttal evidence, I include comment and further evidence in relation to these discussions in order to assist the Panel and clarify areas where there is agreement between submitters and myself.

MATTERS RAISED IN PLANNING EVIDENCE SUBMITTED

4. Emily Grace has provided planning evidence on behalf of the New Zealand Defence Force (NZDF). I will refer to the headings in Ms Grace's evidence.
5. **3.0 Excluding NZDF land from the Hill Country Erosion Management Area**
6. Ms Grace agrees with the reason for the NZDF being excluded from the Erosion Management Areas (EMA) as expressed in the officer's reports, however she adds that there are two additional reasons for the NZDF land to be excluded from the EMA (being the nature of the activities undertaken on the land, and the NZDF's nationally important function). I agree with Ms Grace that these additional reasons further support the exclusion of the NZDF land from the EMA.
7. Ms Grace also recommends that some explanation text be included in the POP to explain why the NZDF land has been excluded from the proposed maps in Chapter 5 and Schedule A. This is primarily to provide clarity to plan users.
8. While I agree that it may be helpful to future plan users on occasion, I do not consider that it is necessary given that there has been no evidence from other submitters questioning the exclusion of these areas. I can only envisage an explanation for the NZDF land being excluded from the EMA being needed on the rare occasion that the NZDF apply for resource consent for an activity that would otherwise have fallen within the EMA. In those very occasional circumstances where the exclusion of the NZDF land might be of issue, it would be reasonable for the consent processing officer to refer to the planning and technical evidence presented at this hearing, or to the Panel's decision report.
9. I note that there has been no other evidence submitted that questions the exclusion of the NZDF land (and other land) from the EMA.
10. An explanation of the reasons for excluding the NZDF and other land (DOC estate and QEII covenants) does not sit comfortably within the introductory section of Chapter 5, and would add a significant amount of text to the POP document that is not likely to be useful or relevant for the majority of the time the plan is used.

11. Should the Panel consider that an explanation is required in the POP, it may consider an introductory paragraph at the beginning of Schedule A as an appropriate place to locate the explanation.
12. While an explanation would be useful on rare occasions, I do not consider that it is necessary for ensuring the usability of the POP.
13. **4.0 Per property per year**
14. Ms Grace, consistent with her previous evidence on this matter, recommends that the 'per property' control in Rule 12-3(d) should be amended to a 'per hectare' equivalent (she provides suggested wording in her evidence at paragraph 4.11).
15. While I agree that the per property trigger for large-scale earthworks would require that the NZDF would need to prepare and implement an erosion and sediment control plan for second and subsequent land disturbance activities over the 2500m²/1000m³ threshold despite those areas potentially being separated by several kilometres, I consider that the NZDF situation is exceptional. As Ms Grace states, the NZDF property at Waiouru is approximately 60,000 hectares in area. This is likely to be the largest single 'property' in the Region, apart from perhaps parts of the conservation estate, and is therefore unusual. The activities of the NZDF are also significantly different from those of other land uses in the Region, with the majority of other properties being used for agricultural, horticultural or conservation purposes. The NZDF also use a management plan to guide its land use activities, which would generally require management of the discharges from land disturbance areas and would likely meet the requirements for an erosion and sediment control plan relevant to the scale of land disturbance activities with minimal alteration required.
16. Ms Grace offers in her evidence an alternative 'per 10,000 square metres' condition that includes a minimum dimension (100m) for the 10,000 m² area which would essentially require that the area would be a square measuring 100m x 100m. My concern with the 'per hectare' approach still stands in relation to this variant in that four 1ha squares could be abutted to enable a total area of 10,000m² (4 x 2500m²) to be earthworked without the need for an erosion and sediment control plan. I agree with Ms Grace that her suggested approach would

be advantageous to properties like the NZDF property as small but isolated land disturbance activities could be undertaken without the need for an erosion and sediment control plan. However the opportunity for exploitation (as described above) results in the approach being problematic.

17. Ms Grace and I have discussed this matter at some length and have explored several alternatives to the per property/hectare approaches. Some alternative approaches resolve the issue with Rule 12-3(d) for the NZDF land but create problems for other properties.

18. I consider that the per property approach remains relevant for the majority of situations and will provide a trigger for good erosion and sediment control practices to be implemented where large-scale land disturbance activities are proposed. The approach does not preclude land users from implementing the same good practice for smaller scale land disturbance activities which also have the potential to contribute contaminants to water and result in the loss of the soil resource.

19. **5.0 Amendments to improve clarity, effectiveness and operation**

20. **Policy 5-1**

21. I agree with Ms Grace's observation that the integration of the previous Policy 5-2 (which related to Whole Farm Business Plans being prepared for other land where requested) into Policy 5-1 limits the scope of requested Whole Farm Business Plans to 'farms' only. I understand that the intention is that the SLUI programme may expand in the future to address other land uses such as forestry. While the implementation of the SLUI programme is largely independent of the POP and could therefore be expanded to encompass other land uses regardless of what the POP prescribes, it is considered appropriate to recognise that flexibility on the POP at this stage.

22. I recommend removing the reference to subsection (a) of Objective 5 from the first sentence of Policy 5-1 (as was recommended in the latest version of the tracked changes), thereby eliminating the requirement for the Policy to only relate to farms.

Policy 5-1: ~~Sustainable management of Highly Erodible Land – whole farm business plans~~ Encouraging and supporting sustainable land management

The Regional Council ~~will~~ shall encourage and support the adoption of sustainable land management practices ~~in order to meet subsection (a) of Objective 5-1,~~ by:

- (a) ~~on all farms identified as Highly Erodible Land* (as shown in Schedule A) by Working with relevant land owners and occupiers of farms within the Hill Country Erosion Management Area* (as shown in Schedule A) to prepare a whole farm business plan* identifying voluntary management plan under the Council's Sustainable Land Use Initiative or Whanganui Catchment Strategy which identifies sustainable land management practices for each farm and work 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~~ Monitoring the implementation of sustainable land management practices ~~on Highly Erodible Land* within the Hill Country Erosion Management Area* and report~~ reporting this information on a two-yearly basis; and
- (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.~~

23. Policy 5-2(c)(iv)

24. Ms Grace recommends that Policy 5-2(c)(iv) be amended to be consistent with Policy 12-2(b) in relation to the establishment of activities, in addition to infrastructure, that are essential to the well-being of local communities, the Region or a wider area of New Zealand. However the inclusion of a reference to other activities without defining what those activities may be creates uncertainty in the application of the policy. Policy 5-2(c) presently lists activities that are of particular importance and are to be provided for through regulation, with infrastructure being one of those activities.

25. Ms Grace mentions that some NZDF activities would fall into the category of being essential or important to the well-being of communities, however it is unlikely that all of the NZDF's

activities would be. This creates a challenge for decision-makers to try to determine when an activity becomes important or essential to the community. Infrastructure, as defined in the POP, is considered to be important or essential and is therefore listed in Policy 5-2.

26. The wider scope of Policy 12-2, as referred to by Ms Grace, is reflective of the relevance of that policy to all sections of the POP, including Chapter 3 (Infrastructure, Energy and Waste) and Chapter 10 (Natural Hazards). The included activities (provision of infrastructure and natural hazard management) provide some guidance to decision-makers as to the types of activities that the policy is intended to relate to.

27. I do not consider that Policy 12-2(b) should be expanded as recommended by Ms Grace given the degree of uncertainty that it may cause.

28. Policy 5-2(c)(viii)

29. I agree in principle with Ms Grace's recommendation to include reference to maintenance of indigenous plant species in Policy 5-2(c)(viii). Providing for the beneficial maintenance of indigenous plant species that are allowed to be planted via the policy is considered to be consistent with the intention of the policy to enable activities that result in environmental benefits. However it would seem more appropriate that the wording be extended beyond just 'plant species' to 'indigenous biodiversity' in a wider sense I therefore propose revised wording of Policy 5-2(c)(viii) as follows:

(viii) Allow other activities that result in an environmental benefit including improved land stability, enhanced water quality and the establishment, maintenance or enhancement of indigenous biodiversity plant species.

30. Rule 12-1 activity classification

31. I note the omission of the activity classification of Rule 12-1 in the relevant column of the rule table.

32. I therefore recommend that the word 'Permitted' is added to the 'Classification' column for Rule 12-1.

33. Rule 12-5

34. Rule 12-5 is not intended to be a 'catch-all' rule. Reflective of the assumption in the Act that land uses are permitted unless they contravene a rule in a plan, the rule cascade assumes that all activities are permitted except where specifically captured by a rule. Therefore Rule 12-5 is only intended to capture activities that do not comply with either the general permitted activity rule (Rule 12-3) or the forestry controlled activity rule (Rule 12-4). Any activities that do not contravene either Rule 12-3 or 12-4 are deemed to be permitted activities pursuant to s9(3) of the RMA.

35. Other areas of support

36. I note Ms Grace's recommendations supporting Policy 5-3 and Policy 5-2(c) in relation to codes or practice and other sector-based initiatives targeted at achieving sustainable management.

37. I note Ms Grace's support of the new Rule 12-1 as a means of listing activities intended to be permitted rather than listing them as exclusions in the definitions of vegetation clearance and land disturbance. I also note the support indicated for providing for maintenance and upgrade of structures, protecting or enhancing indigenous vegetation and military training activities as permitted activities.

MATTERS RAISED IN OTHER DISCUSSIONS

38. Some further discussion with Sally Strang of Hancock Forest Management (NZ) Ltd who is acting as contact person for the forestry submitters has been helpful in identifying some further issues in relation to the rules in Chapter 12 as they relate to forestry activities. While rebuttal evidence has not been provided by forestry submitters at the time of preparing this report, I have included the following discussion and further recommendation to assist the Panel and the forestry submitters in focussing hearing evidence on outstanding issues.

39. In the originally notified version of Chapter 12, rules controlling forestry were intended to apply only to land within the Hill Country EMA (formerly HEL) with a slope over 20 degrees, as well as within the Coastal EMA, riparian margins and coastal foredunes. In the re-draft of

Chapter 12, reference to the slope angle in Hill Country EMAs was omitted thereby requiring forestry activities within the *entire* hill country EMA to be Forestry Stewardship Council accredited in order to be permitted activities. Ms Strang has correctly identified that this was not the intention of the originally notified provisions and that the revised provisions should include a slope trigger in conjunction with being in the EMA. I therefore recommend that condition (c) of Rule 12-2 is amended to refer to land over 25 degrees within the Hill Country EMA.

Rule	Activity	Classification	Conditions/Standards/Terms	Control/Discretion Non-Notification	Links
12-2 <u>Production forestry</u> <i>[Chair-person's Minute #3 Points 38, 39 and 41]</i>	<p><u>Any planting, vegetation clearance* or land disturbance* pursuant to s9 RMA for the purpose of production forestry*, and any ancillary:</u></p> <p>(a) <u>Disturbance of the bed of a river or lake pursuant to s13 RMA; or</u></p> <p>(b) <u>Diversion of water pursuant to s14 RMA; or</u></p> <p>(c) <u>Discharge of sediment or other contaminants pursuant to s15 RMA.</u></p> <p>This rule does not include the planting or management of trees for soil conservation purposes, which is permitted by Rule 12-1.</p>	<u>Permitted</u>	<p>(a) <u>The activity shall not take place on land that is within:</u></p> <p>(i) <u>A Rare Habitat*, Threatened Habitat* or At-Risk Habitat*;</u> <u>or</u></p> <p>(ii) <u>A Coastal Foreddune*.</u></p> <p>(b) <u>Any planting of production forest shall not occur on land that is within:</u></p> <p>(i) <u>5m of the bed of a river that either is permanently flowing or has a bed width greater than 2m; or</u></p> <p>(ii) <u>5m of a natural wetland or the bed of a natural lake.</u></p> <p>(c) <u>Where the activity occurs takes place within:</u></p> <p>(i) <u>the Hill Country Erosion Management Area* on any land with a slope greater than 25°; or</u></p> <p>(ii) <u>the Coastal Erosion Management Area*;</u></p> <p>those persons undertaking the activity shall be accredited by the Forest Stewardship Council programme.</p>		<u>This Rule implement s Policy 12-1.</u>

40. Forestry submitters propose to address other matters in evidence at the reconvened Land hearing.

CONSISTENCY WITH BIODIVERSITY RECOMMENDATIONS

41. With further review of both the Biodiversity and the Land provisions through the hearing process, some adjustments are recommended to provide consistency between the recommendations from officers at the respective hearings. Consideration of the recommended Rule 12-1 by officers presenting evidence at the Biodiversity hearing has identified that there are some activities listed in Rule 12-1 that may affect Rare, Threatened or At Risk Habitats. While there are unlikely to be many situations where these particular activities affect sensitive habitats, they would create a permitted baseline which may be used to argue in resource consent applications that similar effects of other activities within sensitive habitats should be allowed. It is not the intention of these listed permitted activities to establish a permitted baseline for activities in sensitive habitats. Therefore, it is recommended that reference to sensitive habitats is included in the conditions so that the Biodiversity rules take precedence over Rule 12-1. The relevant conditions are:

- a. Condition (iii) – Conservation planting and management
- b. Condition (viii) – re-contouring sand dunes.
- c. Condition (x) – domestic gardening
- d. Condition (xi) – shelter belts
- e. Condition (xii) – fallen or dead vegetation

42. Therefore, the following amendments to Rule 12-1 are recommended:

Rule	Activity	Classification	Conditions/Standards/Terms	Control/Discretion Non-Notification	Links
12-1 <u>Minor, essential and beneficial activities</u>	<u>Any vegetation clearance* or land disturbance* pursuant to s9 RMA for any purpose listed in condition (a) of this Rule, and any ancillary:</u> (a) <u>Diversion of water pursuant to s14 RMA; or</u>	Permitted	(a) <u>The activity shall be for one or more of the following purposes:</u> (i) <u>Grazing or cutting of grass;</u> (ii) <u>Pruning or thinning operations associated with production forestry* and the clearance of understorey.</u>		<u>This Rule implements Policy 12-1.</u>

Rule	Activity	Classification	Conditions/Standards/Terms	Control/Discretion Non-Notification	Links
<p>[Chair-person's Minute #3 Points 33 and 34]</p>	<p>(b) <u>Discharge of sediment or other contaminants pursuant to s15 RMA.</u></p>		<p>including indigenous understorey, beneath plantation forests:</p> <p>(iii) <u>The planting or management of trees, including forestry, for soil conservation purposes provided the activity does not take place within a Rare Habitat*, Threatened Habitat* or At Risk Habitat*:</u></p> <p>(iv) <u>The control of pests as defined in a Regional Pest Management Strategy prepared under the Biosecurity Act 1993:</u></p> <p>(v) <u>The maintenance* or upgrade* of existing structures, including fences, buildings, roads, tracks, railway lines and other infrastructure*:</u></p> <p>(vi) <u>Activities undertaken for transport safety purposes, including road safety:</u></p> <p>(vii) <u>Activities undertaken for the purpose of protecting or enhancing areas of indigenous vegetation or habitat:</u></p> <p>(viii) <u>The recontouring or planting of coastal dunes to improve dune stability provided this activity either does not involve a Coastal Foredune* or does not take place within a Rare Habitat*, Threatened Habitat* or At Risk Habitat* ;</u></p> <p>(ix) <u>The collection of</u></p>		

Rule	Activity	Classification	Conditions/Standards/Terms	Control/Discretion Non-Notification	Links
			<p>firewood for an individual's reasonable domestic needs, provided the firewood is not sourced from a Rare Habitat*, Threatened Habitat* or At Risk Habitat*.</p> <p>(x) Domestic gardening provided the activity does not take place within a Rare Habitat*, Threatened Habitat* or At Risk Habitat*.</p> <p>(xi) The establishment or management of shelter belts provided the activity does not take place within a Rare Habitat*, Threatened Habitat* or At Risk Habitat*.</p> <p>(xii) The clearance of vegetation that is fallen or dead provided the activity does not take place within a Rare Habitat*, Threatened Habitat* or At Risk Habitat*.</p> <p>or</p> <p>(xiii) Military training using live ammunition under the Defence Act 1990.</p>		

43. A revised set of tracked changes documents has been prepared to reflect the changes recommended in this rebuttal evidence.

Phillip Percy

1 December 2008