

**BEFORE THE HEARINGS COMMITTEE**

**IN THE MATTER**

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

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**SECTION 42A REPORT OF PHILLIP PERCY  
ON BEHALF OF HORIZONS REGIONAL COUNCIL**

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# 1 INTRODUCTION

## **My qualifications/experience**

1. My full name is Phillip Harry Percy. I have a Bachelor of Resource and Environmental Planning with honours degree (specialisation in physical geography) from Massey University. I have been practising as a planner for over ten years. This has included working as a policy planner for Greater Wellington Regional Council as well as a range of senior planning positions in multidisciplinary consultancies in New Zealand. I have also worked as a Planner in the United Kingdom, including in enforcement and monitoring roles. I am currently director of a planning consultancy business which I established in 2007.
2. I have read the Environment Court's practice note 'Expert Witnesses – Code of Conduct' and agree to comply with it.

## **My role in One Plan**

3. I have been involved in the later stages of the development of the Proposed One Plan. I was involved in developing components of the provisions for managing non-point source discharges and prepared the Section 32 report prior to notification of the Proposed One Plan.

## **Scope of evidence**

4. My evidence will be limited to generic matters raised by submitters in relation to the Section 32 evaluation and reporting processes followed by Horizons in developing the Proposed One Plan. I will not address s32 matters that relate to specific provisions of the Proposed One Plan as I consider that these are more appropriately dealt with at the time the substantive matters to which they relate are heard. Such specific matters will be addressed through the evidence presented during hearings related to the relevant One Plan chapters to which the matters relate.
5. Where I refer in my evidence to the way in which Horizons has met the requirements of s32 of the Act, particularly in relation to the manner in which the s32 evaluation has been conducted, I am able only to offer my own observations and what I have determined through discussions with Horizons staff and external experts. I have not been intimately involved throughout the formulation of the Proposed One Plan, and clarification as to the degree of compliance with s32 in relation to specific matters does not fall within my area of expertise.

# 2 EXECUTIVE SUMMARY OF EVIDENCE

6. Section 32 of the Act has two principal requirements:
  - i to undertake an evaluation of the provisions of a proposed planning document; and
  - ii to prepare a report summarising that evaluation

## **Evaluation**

7. Section 32 requires, firstly, an evaluation of the appropriateness of each of the objectives of the Proposed One Plan in achieving the purpose of the Act. It then requires an evaluation of whether the policies, rules and methods are the most appropriate (having regard to efficiency and effectiveness) in achieving the objective to which they relate.
8. The Act does not prescribe how the evaluation should be conducted, other than specifying some overarching requirements when evaluating policies, rules and methods. Those overarching requirements are:
  - that the efficiency and effectiveness of the provisions must be had regard to.
  - the benefits and costs must be taken into account
  - the risk of acting or not acting where there is insufficient or uncertain information about the subject matter must be taken into account.
9. The evaluation can be conducted in any way that Horizons deems appropriate, and there is no limitation on the range of evaluative methods or techniques employed. The Act does not require that the evaluation is undertaken in writing, but simply that an evaluation is undertaken.
10. The evaluation of objectives, policies, rules and methods must occur on at least two occasions in the development of the One Plan. The first is prior to the Proposed One Plan being publicly notified. The second is prior to the Council making its decision on the Proposed One Plan after hearing submissions. This two-step process ensures that any changes brought about as a result of submissions on the Proposed One Plan will be evaluated before coming into effect.
11. It is my observation that Horizons undertook a comprehensive iterative evaluation of the appropriateness of the provisions of the Proposed One Plan prior to publicly notifying it. It is my opinion that Horizons have evaluated the objectives, policies, rules and methods during the formulation of the Proposed One Plan in a manner that meets the requirements of s32 of the Act.

## **Summary Report**

12. Section 32 requires that Horizons prepare a report that summarises the evaluation that has been undertaken up until the point when the One Plan was notified. This report needed to be made publicly available at the time the Proposed One Plan was publicly notified.
13. The Act does not prescribe the format or level of detail of the report. The only requirements of the report are that it:
  - summarises the evaluation undertaken prior to the Proposed One Plan being publicly notified.
  - gives reasons for the evaluation
14. Horizons is free to structure, format and present the summary report in any manner it chooses, provided the report summarises the evaluation that has occurred.

15. The report only needs to be a summary of the evaluation. It does not need to be a comprehensive record of the evaluation and does not need to document every consideration that constituted the evaluation.
16. Horizons made publicly available at the time the Proposed One Plan was notified, a report that summarised the evaluation that Horizons had undertaken during the preparation of the Proposed One Plan. It is my opinion that the summary report prepared by Horizons prior to the notification of the Proposed One Plan meets the requirements of s32 of the Act.
17. It is my observation, after being privy to conversations between staff and experts involved in preparing the Proposed One Plan, and recognising that the Proposed One Plan has been subject to comprehensive public and political scrutiny during its formulation, that there has been thorough consideration and evaluation given to the environmental, social and economic implications of the proposed provisions. I am confident that the objectives, policies, rules and methods have been subjected to a thorough evaluation and that the provisions put forward in the Proposed One Plan are those that the Council considers are the most appropriate. Should any submitters be of an alternative opinion, the Act provides a full and proper process to enable them to voice their concerns and offer alternative evaluations and/or solutions.

### **3 REQUIREMENTS OF SECTION 32 OF THE ACT**

18. In this section of my evidence, I will outline what is required by s32 and discuss how Horizons addressed those requirements to date. I have arranged my evidence to firstly address the requirements for evaluation and secondly to address the requirements for reporting. I will then address the way in which challenges to provisions that make reference to s32 are to be dealt with.

#### **Evaluation**

19. S32 provides a prompt to Councils to evaluate the planning document they are preparing to ensure that that document will be instrumental in achieving the purpose of the Act. This requirement is implicit in s32(1) which begins, "*In achieving the purpose of the Act...*" and then goes on to require that local authorities must undertake an evaluation before notifying their proposed planning document. This is consistent with the Act's specification of the role of regional councils (s30), the purpose of regional policy statements (s59) and the purpose of regional plans (s63), all of which require that the purpose of the Act is to be achieved.
20. The evaluation required by Section 32 is a procedural requirement built into the Act to guide Horizons in achieving its administrative responsibilities. While it is implicit in those sections of the Act that define the role of regional councils and the purpose of policy statements and plans that the purpose of the Act is to be achieved, s32 is an explicit statement that this should be done. S32 could be paraphrased to 'check that what you are doing is going to help achieve the purpose of the Act'.

21. Despite making it explicit that Horizons has to evaluate whether the provisions in the Proposed One Plan will contribute to achieving the purpose of the Act, s32 only provides a basic prescription of what the evaluation should entail. It does not prescribe when the evaluation should occur other than that the first part of the evaluation should have been done before the Proposed One Plan was publicly notified (s32(1)). The evaluation could therefore have occurred as a concerted event near the end of the development phase of the Proposed One Plan or it could have been an iterative activity that occurred throughout the plan development process.
22. The intention of s32, in my opinion, is not to require a stand-alone evaluation procedure that is undertaken outside the plan development process. To do so would result in significant inefficiencies in developing planning provisions as each time those provisions are evaluated and found wanting, the provision development process (which could have been occurring over a period of years as in the case of the Proposed One Plan) would need to be restarted from the beginning. I prefer the approach that the evaluation required by s32 is an integral and iterative component of the plan development process.
23. The whole way through the development of a planning document and the formulation of its provisions, the responsible council should be evaluating whether the purpose of the Act will be achieved. This promotes efficiency of process. As each concept, idea or methodology to potentially be incorporated into a planning document is promoted and examined, an evaluation of that component occurs. That evaluation may be fleeting as the appropriateness of the proposition is easily considered.
24. An example is if a person suggested that to control erosion on hill country, all farming should be made a prohibited activity and all existing farmed land retired. Such a proposal, while having some ecological merits, would likely be quickly evaluated as having an unacceptably high cost to individual farmers affected by such a proposal, as well as the wider community through major economic change. Where the implications of such a proposal are not so simply evaluated, further analysis would be required. Investigation of potential financial implications may be considered, investigations into the practicality/workability of a proposal, and a clearer understanding of the actual benefits that may accrue may be investigated. This more detailed evaluation may be informed by discussions with experts, discussions with those potentially affected, research, or a raft of other methods for developing a clearer understanding of the implications of the proposal. Once it is considered that sufficient information is available to make an evaluation, that evaluation would be made and the proposal further developed, modified or discarded.
25. Furthermore, the approach to evaluation I have outlined above does not rely on a plan provision only being evaluated at its conception. That provision will be continually evaluated as it is developed and refined over time. As more information is gathered about how the provision might work, what benefits it may have and what costs it may have, the provision is iteratively evaluated. If, at any stage during the development of that provision, it is discovered that it will have an implication that will not help in achieving the purpose of the Act, the provision will be either modified or it will be discarded.

26. It is my opinion that the evaluation required by s32 is simply a legislated reinforcement of best practise that councils should naturally go through when preparing planning documents. Councils employ expert staff and engage the assistance of other experts to prepare planning documents that are consistent with their purpose under the Act. It is recognised that the people involved in preparing planning documents will be combining their professional expertise with the input from a wide range of information sources and will be constantly evaluating the provisions of the planning document as they are being prepared. S32 reinforces that plans and policy statements cannot just be thrown together without the appropriate evaluation.

### 3.1 Evaluating costs and benefits

27. In terms of the method by which the costs and benefits of a provision in a planning document are evaluated, there is no requirement in s32 or in other sections of the Act to undertake an evaluation of costs and benefits using financial, numeric or other methods. The method by which a council evaluates the costs and benefits of a particular provision is left entirely to the council's discretion.

28. Some costs and benefits can be quantified, while a qualitative approach is more appropriate for others. For example, evaluating the costs of a specific discharge into a river could include the following matters that could be evaluated quantitatively or qualitatively.

Matter of consideration	Quantitative evaluations	Qualitative evaluations
<b>Effect on a drinking water abstractor</b>	<ul style="list-style-type: none"> <li>• Financial cost of installing, operating and maintaining a water treatment system.</li> <li>• Number of people likely to become ill as a result of contamination.</li> <li>• Medical costs of treating those people that become ill.</li> <li>• Costs to businesses of lost production due to employees being away sick</li> </ul>	<ul style="list-style-type: none"> <li>• Perception of diminished quality of the environment by people supplied with water.</li> </ul>
<b>Effects on recreational river users (swimming, boating, fishing, etc)</b>	<ul style="list-style-type: none"> <li>• Number of people likely to become ill as a result of contamination.</li> <li>• Medical costs of treating those people that become ill</li> <li>• Costs to businesses of lost production due to employees being away sick</li> </ul>	<ul style="list-style-type: none"> <li>• Perception of diminished quality of the environment.</li> <li>• Diminished levels of enjoyment.</li> <li>• Impact of reduced water quality on availability of sport fish.</li> <li>• Social effect on children not being able to swim in the river.</li> </ul>
<b>Visual effects</b>	<ul style="list-style-type: none"> <li>• Estimated reduction in the number of tourists visiting the river.</li> </ul>	<ul style="list-style-type: none"> <li>• Reduction in people's enjoyment of their environment.</li> </ul>

<b>Effects on cultural and spiritual values</b>	<ul style="list-style-type: none"> <li>• Impacts on the mauri of the river.</li> <li>• Implications on the spiritual relationship Maori have with the waterway.</li> <li>• Implications for mahinga kai.</li> </ul>
<b>Effects on ecosystem values</b>	<ul style="list-style-type: none"> <li>• Likely reduction in the number of species in the river.</li> <li>• Impacts on the impacts of changes in the food chain.</li> <li>• Implications on the ecosystem as a whole.</li> </ul>

29. The cost of installing a filter system in the drinking water supply in the example above, and the maintenance of that filter, could be quantified and a dollar value placed on it. However it would not be as easy to place a dollar value on the costs and benefits to ecosystem values, recreational water use, and visual amenity of that same discharge. Such costs and benefits are highly variable and subjective, and are probably best considered in qualitative, descriptive terms. The challenge to councils undertaking cost and benefit evaluations is determining which is the most appropriate approach for the particular situation.
30. It is not a requirement of s32 to complete the evaluation using economic analysis. In *Minister of Conservation v Otago Regional Council* (C071/02), the Environment Court, at paragraph 162, concluded in relation to a discussion on whether economic cost benefit analysis was required in a s32 evaluation, that “*however, we suggest that the benefit of economic analysis is limited in cases such as this where the Court is having to evaluate interests such as habitat for native fish, trout and salmon; recreational use; landscape and amenity use; against abstractive uses and the impacts of those not only on industries but on the people living in the farming community and supported by that community.*”
31. The Court had earlier referred to interests such as habitat for native fish and amenity use as ‘non-use’ values. The Court considered that if a particular method of analysis was to be used, in this case economic analysis, values in those terms needed to be attributable to all of the variables to be assessed. “*In any proper analysis of economic matters it is our view that the valuation of the non-use values including externalities are essential to any proper balancing for sustainable management under section 5 of the RMA.*” (para 159). I interpret this to mean that when evaluating the costs and benefits of a proposal in relation to a range of matters, it is most appropriate to use an evaluative technique that uses the same ‘unit’ of measurement. It is essentially the age-old recommendation to ‘compare apples with apples’ when evaluating two or more matters.
32. Using economic analysis has a valuable role in understanding the appropriateness of particular planning provisions. A Horizons example is that to understand the likely costs and benefits to individual farmers of implementing the Farmer Applied Resource Management Strategy (FARM Strategy) approach proposed in the Proposed One Plan, an evaluation of the financial costs to those farming operations needs to be assessed. In that particular case, Horizons has undertaken an assessment programme of FARM Strategies on a number of local farms, with

an analysis of the likely business costs and benefits to the individual farmers. The outcomes of this study will inform the decisions on that particular component of the Proposed One Plan.

33. However there is not an obligation on the Council to evaluate the costs and benefits of a proposed provision right down to the individual property level. To do so throughout the entire Region would be an unwieldy task that would be time and cost prohibitive. The expectation is that those people who consider they may be impacted on by a specific provision are able to make a submission and put forward an alternative. This notion is supported by the Environment Court in *Capital Coast Health Limited v Wellington city Council (W4/2000)*.

*“The duties under s.32 relate generally to generic plan provisions - ie. those mentioned in subsection (1). The obligation of the council is to carry out this duty in relation to the district as a whole, and in relation to the constituent or distinct parts of the district identified in the plan. It is not a duty which generally extends to every separate property in the district. Generally, the consideration and assessment required by s.32 need only be carried out in respect of an individual property where the appropriateness of controls relating to that particular property are raised on a submission under the First Schedule.”*

34. S32 also requires that a further evaluation must be made before the Council makes a decision on the Proposed One Plan. This further evaluation requires the same level of rigour as the evaluation conducted during the formulation of the Proposed One Plan. This further evaluation is an opportunity to review the originally proposed provisions in light of additional information that has come available since the planning document was originally notified. This additional information may be supplied in submissions and hearing evidence, or it may be as a result of additional information or research provided by the Council itself.
35. The requirement in s32 for a further evaluation prior to making a decision suggests that it was the intention of Parliament that the evaluation of the appropriateness of the provisions of a planning document is an iterative process, recognising that the planning document development process sees the input of large amounts of information right through until the document is finalised and made operative. It is also perhaps a recognition that the ‘proposed’ phase of a planning document is a testing period when the provisions proposed by the Council are trialled and examined in the ‘real world’. Subjecting a complex document to a testing period is essential to enable others outside the Council to thoroughly examine the document and evaluate it for themselves.
36. The on-going evaluation under s32 appears to be a recognition that the onus does not sit wholly on the Council to identify and examine every single cost and benefit of the document, particularly those costs and benefits that occur at a single property level. There is a responsibility on those people potentially affected by the planning document to examine its costs and benefits in relation to their particular activity or use and to advise the Council decision-makers of the conclusions of their evaluation.
37. In very basic terms, Horizons might think of the s32 process in this way:

38. “We, as the council responsible for preparing this planning document, have thought about these things, have considered these points, and have been informed by this information (a summary of this has been provided to you in a report). We have made a proposal based on our subsequent conclusions reached after evaluating that information. If you, as a potential submitter, do not agree with the proposal that we have put forward, provide us with an alternative and with reasons to show that your suggested alternative is better than what we’ve put forward. In making our decision on the planning document, we will evaluate it again, taking into account your proposal. If your alternative achieves the desired outcomes in a better way, we will adopt it.”

### **The Evaluation by Horizons**

39. Having outlined my opinion of how the s32 evaluation process can be applied, I will now give consideration to the approach adopted by Horizons Regional Council in fulfilling the s32 evaluation requirements prior to the notification of the Proposed One Plan.
40. Overall, Horizons have adopted an iterative approach to evaluating the provisions of the Proposed One Plan. The proposed provisions of the One Plan have been developed over a period of approximately four years and have been examined and tested comprehensively by staff, external experts, politicians, stakeholders, and the community. The findings, responses and feedback from those multiple examinations have contributed to the ongoing evaluation of the provisions. Where necessary, Horizons have explored the implications of proposed provisions on the environment and on the community, taking into account social, economic, cultural, health and safety considerations.
41. My observation is that Horizons have adopted an open approach to developing the Proposed One Plan and have stated from the outset of the process the approach they propose to use to underpin the development of the One Plan. This excerpt from the Horizons website summarises the approach Horizons have taken to the Proposed One Plan development.

#### **“Our intention is to:**

- *be clearer about what is acceptable and what is not in relation to resource use*
- *work closely with our community to identify and realise environmental outcomes*
- *focus our environmental enhancement efforts on priority BIG FOUR problems – water quality, water demand, hill country land use and threatened habitats.*

#### **Our method:**

- *be clearer about what is acceptable and what is not in relation to resource use*
- *a more integrated planning approach, with clear connections between air, land, water, and coastal resource management*
- *a host of new scientific research underpinning new policy and rules (particularly in the Land, Living Heritage and Water themes)*

- *an emphasis on protecting what is important to our Region and focusing on what we can achieve.*

*Although the One Plan will be a formal legal document, we're trying hard to make it more user-friendly, simpler to navigate around and easier to find what you need."*

42. This series of statements, which has provided guidance to how Horizons have approached the Proposed One Plan development, has been clearly articulated to the regional community, including stakeholders. Of these statements of intent, I consider the following two to be most pertinent in demonstrating how Horizons has endeavoured to develop an understanding of the costs and benefits of the Proposed One Plan to the community.
- *work closely with our community to identify and realise environmental outcomes*
  - *an emphasis on protecting what is important to our Region and focusing on what we can achieve.*
43. These two statements demonstrate that, from the outset, Horizons have been conscious of balancing environmental outcomes with the well-being of the community. They suggest that Horizons intention has been to work with the community to identify what is important and what needs to be achieved, but also to understand what the community is happy to achieve. The second statement implies that protection or enhancement of the environment should not be at all cost, and that the goals that are set should be achievable for the Council and the community.
44. Horizons implemented a very comprehensive community consultation process, which began back in 2004 with meetings with the public and stakeholder organisations, including the district councils in the Region. Meetings have continued to occur with a wide range of organisations, groups and individuals and iterations and development of the components of the Proposed One Plan were discussed and feedback obtained during those meetings. Full opportunity has been provided through a comprehensive consultation period for any concerns or comments in relation to the appropriateness of the provisions of the Proposed One Plan to be aired with the Council.
45. On top of meetings and discussions with people, Horizons undertook the 'Picture Our Environment roadshow' which travelled throughout the Region in 2005 informing communities about what Horizons did and requesting feedback from the public about what they saw as important issues to them and the Region.
46. Horizons also took a proactive step to develop an understanding of community concerns and issues by issuing four working drafts of the One Plan for consultation with key stakeholders. During this time (2005 to 2006) more than 200 meetings with over 500 individuals and stakeholder groups were undertaken to gain feedback and input into the One Plan development process.<sup>1</sup> Many individuals and organisations took up this opportunity and contributed substantially to the development of the Proposed One Plan.

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<sup>1</sup> Proposed One Plan Section 32 Report

47. It is my observation that Horizons have supported the development of the Proposed One Plan through an extremely comprehensive public consultation process where members of the public, and stakeholders, have had numerous opportunities to test the proposed provisions (or iterations of them) of the Proposed One Plan and to engage with the Council to discuss or explore any concerns with those provisions. I believe that this approach has provided Horizons with a very solid base from which to develop the provisions of the Proposed One Plan in such a way as to consider the costs and benefits to the community as well as the costs and benefits to the environment of the Proposed One Plan.
48. Horizons' evaluation of the objectives, policies, rules and methods of the Proposed One Plan has taken into account the large amount of input from the community as well as the large amount of scientific knowledge developed on the environment. This information has provided the underlying understanding of social, economic, cultural and environmental costs and benefits of the provisions the Council has proposed.
49. I accept that there are likely to be situations when the data, advice and information available to Horizons at the time they made their evaluations may be able to be contested or challenged. I also accept that submitters may be able to add additional information to the evaluation process during the course of the hearings which will result in a modification to the way in which an issue is addressed in the Proposed One Plan. However this is not a failing of Horizons. This is exactly the reason why the Act has been drafted to enable full public participation in the policy development process. The Act recognises that the Council will use its best endeavours to understand and evaluate the provisions that it is putting forward in its policy documents, but there will invariably be information from others that results in those provisions having to be amended. Submitters are provided with the formal process by which to raise these concerns and to seek that the Council reconsiders its position. Horizons, I believe, understands and accepts this approach and does not profess to hold all of the knowledge on all matters.
50. Reflective of this iterative approach is Horizons commitment to continuing to investigate the implications of the provisions they have proposed in the Proposed One Plan. While the results of these studies will be discussed in other evidence specific to the matters in questions (analysis relating to land will be discussed in hearings pertaining to that chapter in the Proposed One Plan), it is worth noting that they have been occurring at this time.
51. I consider that the Act provides a fundamental checking system in the plan development process. That is, if Horizons choose to promote provisions in the proposed One Plan that are not founded on an adequate evaluation of their appropriateness in achieving the purpose of the Act, there is a risk that those provisions will be found wanting by submitters. It would seem unlikely that a council would intentionally promote provisions in its planning documents that it was not confident would stand up to public scrutiny – to do so would seem to serve no end.
52. My reading of the submissions made in relation to the cost and benefit evaluation undertaken by Horizons is that there are no matters or issues raised that cannot be resolved through addressing the relevant substantive matters in the Proposed One

Plan. Submissions requesting the removal of whole sections, chapters or the One Plan as a whole only appear to make generic statements that the s32 evaluation is not adequate, but do not offer evidence to support an alternative position to that adopted by Horizons. Submitters may choose to present evidence to support their concerns over particular matters (including any evidence they have which demonstrates that the social, economic or environmental costs of a particular provision are so significant as to make that provision inconsistent with the purpose of the Act) and those concerns will be considered at the appropriate hearings on those matters.

### Summary Report

53. Section 32(5) of the Act requires that Horizons prepare a report which summarises the evaluation of the Proposed One Plan’s provisions and that the reasons for that evaluation are given.

*“The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.”*

54. On face value, s32(5) seems reasonably straightforward. Simply prepare a summary document of the evaluation that has been undertaken. I believe that s32(5) is indeed that simple. It requires no more than to summarise the evaluation that has previously occurred.

55. However to summarise such a complex evaluation, as described earlier in my evidence, can be a daunting task. The detail of the evaluation that contributes to the development of a document such as the Proposed One Plan is enormous and to extract the essence of that evaluation and document it in a meaningful way is not a simple task. I suspect that the lack of specificity as to how a s32 summary report should be prepared was a recognition by Parliament that people should be left to their own devices to determine how best to summarise the evaluation they have completed.

56. By way of example, I have included several s32 evaluation summary reports that use differing methods for summarising costs and benefits.

Largely qualitative	Largely quantitative
<i>Proposed National Policy Statement on Electricity Transmission - Evaluation under Section 32 of the Resource Management Act 1991</i>	<i>Proposed National Environmental Standards for Air Quality Resource Management Act Section 32: Analysis of Costs and Benefits</i>
<i>Waitaki Catchment Water Allocation Regional Plan - Section 32 Report</i>	<i>Proposed National Environmental Standard for Sources of Human Drinking-water Resource Management Act Section 32 Analysis of the costs and benefits</i>
<i>Proposed New Zealand Coastal Policy Statement 2008 - Evaluation under section 32 of the Resource Management Act 1991</i>	<i>Proposed National Environmental Standard to Control Greenhouse Gas Emissions from Landfills Resource Management Act Section 32: Analysis of the costs and benefits</i>
<i>Proposed Variation 7 Rule 2 Proposed Regional Water and Land Plan - Section 32</i>	

Record Environment Bay of Plenty Bay of Plenty Regional Council
<i>Proposed Change No. 1 to the Canterbury Regional Policy Statement (Development of Greater Christchurch) - Section 32 Report</i> 26 July 2007

57. A summary report prepared under s32 appears to be simply a method by which the Council is able to explain to potential submitters that it has gone through an evaluation process and that it has reached a reasoned outcome. Submitters who wish to challenge a particular provision within the proposed planning document and who consider that the evaluation undertaken by the Council is inadequate in some way, will make a submission specifying their concerns with that provision and, probably, also raising concerns with the means by which the provision came about.
58. The approach adopted by Horizons in preparing the summary report for s32 was to provide a summary of the considerations given to the respective provisions of the Proposed One Plan and to provide a summary of the key background reports that supported the evaluation. The summary report stated clearly in section 1.4 the detail in which the report would go into.
- “There are a potentially vast number of alternative approaches to dealing with each issue. Documenting and analysing every single option in this evaluation would result in an onerous and large report of little use. The evaluation will only take into account realistic objectives, policies and methods, and will analyse them at a macro scale to minimise complexity. The evaluation avoids detailed analysis of the provisions and will consider the overall costs and benefits rather than costs and benefits that apply to a specific site or part of the Region.”*
59. Some submitters have suggested that Horizons has neglected to evaluate the costs and benefits of some of the provisions in the Proposed One Plan. I assume that these assertions are made based on those submitters’ reading of the s32 summary report prepared prior to the Proposed One Plan being publicly notified and not on consideration of the entire evaluation process that the summary report summarises.
60. To require the report to be more than a summary report – to require it to include a record of every discussion, meeting, document, report, etc, that contributed to the Council’s evaluation of the provisions on the proposed planning document would be overly onerous. It is a *summary* report that *summarises* the considerations the Council has made and the process it has been through to develop the proposed planning document. The s32 report is simply evidence that the Council has made an evaluation, however they have chosen to do so, of the appropriateness of the provisions in their planning document. The summary report is not the evaluation itself.
61. I believe that it is also important to consider that the s32 summary report may be looked upon as a ‘trigger’ for people to investigate matters further. Horizons has a

well-publicised open door policy in terms of discussing issues and providing information to people who are interested in provisions in the Proposed One Plan. Where a person doubts the authenticity of a component of an evaluation undertaken by Horizons, they have the clear ability to request that more information is provided to them or the evaluation process explained in more detail. As mentioned above, the s32 summary report is only a summary and the opportunity to understand the complexities of the evaluation that informed the summary report is available to people.

62. I believe that the s32 report prepared for the Proposed One Plan meets the requirements of s32 of the Act. It provides a summary of the evaluative process that Horizons undertook to develop the Proposed One Plan and provides a summary of the key documents, consultation and investigations that had informed the One Plan up until the date it was publicly notified.

#### **4 CHALLENGES TO THE S32 REQUIREMENTS**

63. I will now address how I consider submissions raising concerns with the s32 evaluation undertaken by Horizons are intended to be address under the Act.

64. Submitters have raised some generic concerns over the evaluation that Horizons has undertaken in developing the Proposed One Plan. Some submitters have requested that the Proposed One Plan in its entirety is withdrawn and further evaluation undertaken. Others request the specific sections of the Proposed One Plan are withdrawn until further evaluation has been completed.

65. The Act intends that challenges to the s32 evaluation are directed through submissions that deal with specific provisions in the Proposed One Plan. S32A(1) states that:

*A challenge to an objective, policy, rule, or other method on the ground that section 32 has not been complied with may be made only in a submission under Schedule 1 or a submission under section 49.”*

66. This clause of the Act suggests that it is the objective, policy, rule or method that must be challenged, rather than the s32 process itself. It suggests that the focus of a submission should be on the particular provision, and that the case for challenging that provision can be supported by an assertion that s32 has not been complied with. Such a submission would need to promote the argument that the provision needs to be altered on the grounds that the evaluation process by which it was formulated was not adequate. I believe that the submitter would need to go a step further and demonstrate how the provision is not appropriate as there would be a reasonable chance that even though the provision was not adequately evaluated, it may still be appropriate. To discard an appropriate provision that achieves the purpose of the Act simply on the grounds that the process by which that provision was generated was not ideal would not seem to be consistent with the intent of the Act. Therefore a submission must focus on the appropriateness of the provision rather than the appropriateness of the evaluation (or lack of) that led to that provision being promoted.

67. A submitter may offer an opinion and supporting evidence that the s32 evaluation is incorrect or inaccurate, however this would not seem to suggest that s32 has not been complied with – rather it would be a difference of opinion on what is often a subjective evaluation.
68. At the time submissions on those particular substantive provisions of the Proposed One Plan are considered by the decision-makers, the adequacy of the s32 evaluation undertaken by the Council prior to public notification of the planning document can be considered. Where a submitter is able to demonstrate that any inadequacy in the s32 evaluation undertaken by the Council has resulted in an inappropriate objective, policy, rule or method being promoted, the submitter's more appropriate alternative may be considered favourably.
69. In *Kirkland v Dunedin CC* (CA121/01), the Court of Appeal clarified the standing of a challenge to the s32 evaluation undertaken by a council.

*"[17] If a step, such as the carrying out of a cost benefit analysis, is omitted or seriously inadequate, the draft plan may be flawed in material respects. Nevertheless it does not appear to us that Parliament was of the view that if a step were omitted it ought to follow that the local authority should be required to begin again. Rather, it would seem that Parliament anticipated that the flaw which results would be corrected by addressing the merits of the plan by means of the submission and referral process. In s32(3)<sup>2</sup> it was stipulated that someone who had a complaint about the local authority's s32 process must pursue that complaint "only" by way of submission to the local authority. That is directed, we think, not only to preventing such challenges after a plan has come into force (for example, in the defence of a prosecution for non-compliance) but also while the final form of the plan is being settled. The mandatory use of a submission for this purpose provides an opportunity for the Council to reconsider its s32 processes, before making a decision whether or not to modify the plan. The Council will take into account criticisms made by a submitter of its processes."*

70. Submitters who consider that particular provisions of the Proposed One Plan are not appropriate in achieving the purpose of the Act will need to provide evidence to support their position rather than simply attacking the evaluation already undertaken by the Council.

#### **Issues Raised By Submitters**

71. The following principal issues have been raised by submitters. I address each issue below, and my recommendation should be considered in conjunction with the remainder of my evidence. Submission points that refer to specific provisions within the One Plan have not been considered here, except in general terms where appropriate.

#### **Issues 1 - S32 analysis does not consider costs, particularly to dairy farmers.**

72. The evaluation of the provisions in the Proposed One Plan did include considerable consideration of the potential costs to landowners. Particularly in

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<sup>2</sup> The Resource Management Amendment Act 2003 replaced s32(3) with s32A.

relation to the proposed provisions relating to the management of nutrient from non-point sources, it was recognised that there would be both financial and management costs to dairy farmers if they were required to implement some of the measures proposed. While this matter will be discussed in more detail during hearings on other chapters of the Proposed One Plan, it is noted that Horizons commissioned a comprehensive study of the implications of particularly the FARM Strategy method on farmers. Due to practical constraints, the results from this investigation were not available prior to the notification of the Proposed One Plan, however they are now available and will be presented during the relevant hearing. This is not to say that Horizons did not evaluate the costs and benefits of those provisions prior to the Plan being notified, just that the initial evaluation, which was informed by input from a range of professionals and agricultural experts, indicated that the cost to benefit ration was likely to be favourable.

#### **Issue 2 – The S32 evaluation does not identify other methods**

73. Throughout the development of the Proposed One Plan, a large number of alternatives were considered and evaluated. Some of those main alternatives were summarised in the s32 summary report, however others were not. There is no obligation in the Act to consider all methods available, only that those methods considered are evaluated. Where submitters consider that alternative methods are more appropriate than the methods proposed in the One Plan, they are able to make a supporting case at the respective hearings.

#### **Issue 3 – The s32 report does not define terms such as appropriate, efficiency, benefits and costs.**

74. There is no requirement to define those terms in the s32 report. They are terms that are taken directly from the Act and are used in that context. Where costs and benefits were described in the report, those descriptions gave sufficient indication as to the characteristics of the costs and benefits documented.

#### **Issue 4 – The s32 report does not distinguish between policy statement and plan components of the Proposed One Plan**

75. The report clearly stated that the Proposed One Plan was being addressed in a s32 summary report. The reason for this is that s32 does not require an evaluation of the planning documents in their entirety, it requires only evaluation of specific components of those documents (i.e. it requires evaluation of each individual objective in its own right).

#### **Issue 5 – The costs of administration of POP and costs to landowners of new provisions are not taken into account in the s32 evaluation.**

76. The implementation of the provisions in the Proposed One Plan are intrinsically linked to the Long Term Council Community Plan and the Annual Plan. The costs of administering Horizons responsibilities are addressed through those documents and they are subject to public scrutiny in much the same way as the Proposed One Plan is. The current LTCCP makes provision for the administration costs anticipated by the Proposed One Plan.

77. As previously discussed, the costs to some individual land owners has been considered in relation to specific methods. However it is not for Horizons to examine the costs and benefits to each individual land owner in the region. It is the purpose of the submission process to enable landowners to examine the provisions proposed by the Council and to make substantive submissions where they consider there are inappropriate costs.

**Issue 6 – s32 has not been complied with and the Proposed One Plan or components of it should be withdrawn.**

78. It is my opinion that the evaluation required by s32 has been appropriately undertaken by Horizons and that the summary report has been properly prepared and made available. If it were demonstrated that a component of the evaluation or report was not adequately completed, that matter is best corrected by way of the further evaluation to be undertaken prior to decisions being issued.

**Issue 7 – Independent analysis of the Proposed One Plan was not completed.**

79. It is not a requirement that the evaluation of the provisions is undertaken by an independent person. The evaluation is for the Council itself to undertake and to do so in the manner it considers most appropriate. Where the Council has not had in-house expertise to investigate certain matters, it has engaged external experts to contribute. However the evaluation of the appropriateness of provisions is more appropriately undertaken by the Council while it is actually formulating those provisions.

**Issue 8 – Social, economic and cultural costs and benefits have not been adequately evaluated**

80. As discussed in my evidence, how to evaluate the methods by which the costs and benefits of matters is not specified in the Act and the Council is free to use any evaluation method it chooses to. To assist in their evaluation of social, economic and cultural costs and benefits to the community, Horizons have engaged in comprehensive consultation with the community, stakeholders, including Maori, throughout the One Plan development process. Where individuals or groups are of the opinion that costs and benefits have not been evaluated and the resulting provisions in the Proposed One Plan are inappropriate, those people are able to submit and put forward justification of alternative provisions.

Phillip Percy  
21 May 2008