

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

AND

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

**SUPPLEMENTARY STATEMENT OF EVIDENCE – JULIAN WATTS,
DEPARTMENT OF CONSERVATION**

1. In accordance with the Chairperson’s directions and responses to submitters’ enquiries I am tabling supplementary evidence on matters relevant to the Minister of Conservation’s submissions. This relates in particular to further issues raised at pre-hearing meetings and further amendments recommended in Ms Marr’s supplementary recommendations and ‘tracked changes’ documents.
2. The statement is confined to a brief description of my position where this has changed or developed since lodging my initial statement of evidence, with respect to the following three matters:

1. Biodiversity outside habitat types identified in Schedule E3.

3. This matter was not referred to in my initial evidence but was raised at the pre-hearing meeting on October 22nd. It relates to the implications of substantially reducing or even deleting Schedule E3 of the Proposed One Plan.
4. The Proposed One Plan sought to protect certain significant habitats of indigenous fauna, and areas of significant indigenous vegetation, on the basis of the individual species which occurred within them, regardless of their general vegetation or habitat type. This was to be achieved primarily through the inclusion Schedule E3 and related provisions. These provisions complemented the provisions for Schedules E1 and E2 which in the main identify significant habitats on the basis of plant communities and physical characteristics.
5. The Minister’s submission sought to extend the range of sites in Schedule E3 in order to provide a more comprehensive approach to maintenance of biodiversity and Section 6(c) matters.

6. In the light of the pre-hearing discussions Ms Hawcroft and I have supported the reduction in length and possible deletion of Schedule E3 on the basis that, firstly, Schedules E1 and E2 (as now recommended) provide habitat for a wide range of significant indigenous fauna in addition to being significant indigenous vegetation in their own right and, secondly, that the use of Schedule E3 as per the Proposed Plan (and the Minister's submission) may not be the most efficient and effective means of achieving the relevant objective (of maintaining indigenous biological diversity). This second point is particularly relevant with regard to threatened plant species which are difficult to distinguish from, or occur sporadically within exotic vegetation, and to threatened fauna which are highly mobile and may range across different indigenous and/or exotic habitat types.
7. However, as indicated in Ms Hawcroft's evidence, indigenous biological diversity is clearly not confined to the areas of indigenous vegetation and associated physical habitat identified in Schedules E1 and E2. Large tracts of other indigenous vegetation in the region also support threatened species, and areas of exotic vegetation, 'man-made' environments and even urban areas also support biodiversity. Furthermore, Section 6(c) requires that significant habitats of indigenous fauna are protected, and does not restrict this to areas of under-represented indigenous vegetation (to which Schedules E1 and E2 largely relate).
8. The protection of biodiversity in general, and threatened species and their habitats outside areas of significant indigenous vegetation is therefore still important and it is in my opinion appropriate to include an objective and policy in the RPS which provides for this, beyond the specific significant habitat types identified in the One Plan. For example wind farms developed at certain locations have potential to adversely affect threatened species of native fauna such as New Zealand falcon, migrating seabirds and threatened bat species; quarrying and roading development can destroy habitat of native skinks, and intensive subdivision in proximity to sensitive bird nesting sites can have effects which in my opinion may need to be managed in terms of Section 6(c) of the Act and the wider biodiversity provisions.
9. Issue 7-1 of the Proposed One Plan identifies declining biodiversity in the region as a whole as a significant resource management issue for the region. If, as I consider it should, the RPS section of the plan is to also provide objectives and policies for addressing this issue then reference needs to be to maintenance of indigenous biodiversity and protection of significant habitats of indigenous fauna beyond the specific areas of significant indigenous vegetation and physical habitats identified in Schedules E1 and E2. This would then provide a clearer basis for District Plans and decision making on resource consents than only relying solely on the Act (and NZCPS where relevant) .
10. In my opinion, and as indicated in Ms Hawcroft's supplementary evidence, other means (both regulatory and non-regulatory) of securing their protection of significant habitats of indigenous fauna and maintenance of biodiversity in

general will still be necessary if the recommended amendments to Schedule E are accepted.

11. I accept that that the revised wording of Policy 7-1, as recommended in Ms Marr's supplementary evidence, would go some way towards providing for the requirements of the Act, but in my view this would not be explicit enough with respect to District Council functions, and would not provide for situations where biodiversity considerations may be a relevant concern in consent decision-making under other parts of the Proposed One Plan (e.g. Rules 12-5, 12-6, 13-22, 13-23, 13-27, and 16-20) and in relation to Policy 18-1 (c) (financial contributions - biodiversity).
12. At the pre-hearing meeting on October 22nd a revised and broader wording of Objective 7-1 was tabled which would in my opinion have addressed the issue; however this has not subsequently been adopted in Ms Marr's supplementary report. A proposed new policy relating to protection of biodiversity across the wider region was also tabled by the Department of Conservation representatives.
13. For the reasons stated above in my opinion a general objective and policy to provide for maintenance of biodiversity and protection of significant habitats of indigenous fauna elsewhere in the region would be appropriate.

Recommendation

- i) With respect to Objective 7-1

Either reword to read

“Indigenous biological diversity is maintained or enhanced”

Or alternatively retain the revised wording of Objective 7-1 as proposed in Ms Marr's supplementary evidence but add the following:

“(d) Maintaining or enhancing biodiversity elsewhere in the region, including protection of habitats of threatened species”.

- ii) Add a new policy as follows:

“Biological diversity elsewhere in the Manawatu-Wanganui region, including habitats of threatened indigenous species, will be protected, maintained or enhanced through appropriate regulatory or non-regulatory methods”

2. Offsetting significant adverse effects on rare and threatened habitats

14. The provision for biodiversity offsets to occur in limited circumstances in relation to rare and threatened habitats was introduced in Ms Marr's initial planning report in response to submissions. As I understand it the purpose of

such an amendment, in relation to rare and threatened habitats, would be to enable certain types of activities of regional or national significance to more clearly meet the Section 104D 'gateway' test, whilst still retaining the non-complying activity status under Rule 12-8. It would limit the potential use of offsets to cases where adverse effects were relatively small scale and there were net conservation or biodiversity gains. In my evidence I sought stricter limits on the activities and circumstances under which this should apply, as set out on paragraph 88 of my evidence.

15. The topic was discussed at some length during the pre-hearing process and I note that Ms Marr is now recommending that its application be widened (Recommendation BIO 7 p.48) to include significant adverse effects rather than more than minor (but less than significant) adverse effects and a preference for 'net gain within the same habitat type' or 'in the same ecologically relevant locality' as the affected habitat.
16. The use of biodiversity offsets is a potentially complex and controversial matter. This is particularly the case where the values being lost are not abundant, the renewal potential of offsets may be uncertain or require decades or longer to be achieved, and the offsets being offered may not be directly comparable or substitutable with the values being degraded or lost. These circumstances are likely to apply to rare and threatened habitats.
17. There is also the question of where the boundary should lie between 'tradeability' of biodiversity values and maintenance of minimum environmental standards, particularly in relation to the second 'leg' of Section 5 and the national priority given to protection of significant areas and habitats in Section 6(c) of the Act. I would consider that the reference to 'areas' in Section 6(c) relates to specific sites, and not biodiversity in general or even, arguably, the specific habitat type as a whole. Therefore in my view a restrictive approach would be justified, particularly for habitat types which are identified as having always been rare or are considered to be already threatened.
18. In my opinion Policy 7-2 as notified in the Proposed One Plan is consistent with this approach and is clearly intended to afford a high degree of protection to rare and threatened habitats by "generally not allowing" a range of activities with potentially more than minor adverse effects. In my understanding this presents a strong test, but it does not rule out the granting of consents in specific circumstances. The test is in my opinion appropriate given the requirements of Section 6(c) and the selective application of Rule 12-8 which, as I understand it, would apply to only a very small percentage area of private land in the region.
19. On this basis I do not regard the amendments to Policy 7-2 being contemplated as being necessary in order for regulatory authorities to be able to contemplate granting consent for renewable energy developments or other activities deemed to be of national importance. Furthermore, Policy 18-1 (e) of the Proposed One Plan provides for offsets to be considered "for any type of activity".

20. The main issue is whether Policy 7-2 should be made more explicit in relation to trade-offs between significant adverse effects on one site and potential enhancement elsewhere, and if so, what the flexibility or substitutability should be and whether guidance should be explicitly stated in this policy.
21. If this is considered necessary, then I would regard the initial amendment proposed by Ms Marr (BIO 7, p. 48), which allows for offsets for 'less than significant' adverse effects, to be appropriate providing that the range of activities did not include development of new infrastructure of regional rather than national importance, and the activity could be demonstrated as being essential for development of national importance, which would include large scale renewable energy projects. Otherwise I would not consider that adequate weight would be given to Section 6(c).
22. Further proposed amendments were tabled at the pre-hearing meeting on October 22nd and a new version of Policy 7-2 has subsequently been incorporated into Ms Marr's supplementary 'tracked changes' report (New Policy 12-6 Chapter 12, p.12-2).
23. As was stated by Ms Hawcroft at the prehearing meeting and in her evidence, in addition to practical difficulties in assessing relative value and 'net gain' in biodiversity, the values of different rare and threatened habitat types are not interchangeable or substitutable. Furthermore, even within particular 'habitat types' there can be wide variation in ecological characteristics and values, particularly when sites are geographically remote from one another. Even Ecological Districts (such as Manawatu Plains or Foxton Ecological Districts) can cover large areas with considerable genetic variation between habitat types within them.
24. On the above basis I do not support the revised version because it does not in my view provide adequate certainty that the purpose of the Act will be achieved with respect to rare and threatened habitats. Whilst offsets within habitat types and 'ecological locality' may be acceptable, trade-offs between habitat types or sites which are ecologically remote from one another would not be. For this reason a policy indicating similarity of habitat types as a 'preference' rather than a general policy requirement is opposed.

Recommendations

Policy 7-2

i) *Either* retain as notified in the Proposed One Plan subject to changes to paragraphs (a) to (d) as recommended elsewhere in Ms Marr's supplementary report and re-location to the Regional Plan part of the document.

Or alternatively amend and renumber Policy 7-2 as recommended in Ms Marr's supplementary report but, with the following (further) amendments, to read as follows:

“Policy 12-6: Consent decision-making for activities in Rare and Threatened Habitats

(a) Rare and threatened habitats shall be protected by generally not granting consent for any of the following activities regulated by Rule 12-8 (Activities within Rare and Threatened Habitats) unless the provisions of subsection (b) or (c) or (d) or (e) apply.*

(b) The activities described in subsection (b) regulated by Rule 12-8 may be allowed where the activity is essential for the purpose of providing infrastructure of ~~regional~~ or national importance as identified in Policy 3-1 and

(i) Any more than minor adverse effects as assessed in accordance with Policy 12-7 are avoided as far as practicable, or

(ii) Any more than minor adverse effects as assessed in accordance with Policy 12-7 are remedied or mitigated, as far as practicable, or offset to result in a net biodiversity gain within the same habitat type and ecologically relevant locality as the affected habitat.

~~*(c) When assessing the appropriateness of providing for an offset in accordance with subsection (b)(ii), preference shall be given for an offset which:*~~

~~*(i) Provides for net gain within the same habitat type ; or*~~

~~*(ii) Is provided for in the same ecologically relevant locality as the affected habitat,*~~

(d) The activities regulated by Rule 12-8 may be allowed for other purposes where there are no more than minor adverse effects on the representativeness, rarity and distinctiveness or ecological context of the rare and threatened habitat, as assessed in accordance with Policy 12-7.”*

ii) As a consequential amendment amend Policy 3-1 to distinguish between infrastructure projects of national as opposed to regional importance, or otherwise indicate the projects to which Policy 12-6 applies.

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

25. A revised wording with additional sub-clause (c) was tabled at the pre-hearing meeting on October 22nd. However I would consider that the recommended version in Ms Marr’s supplementary report provides more clarity and would therefore support it in preference.

Recommendation

That Policy 7-1 be amended as recommended in Ms Marr’s supplementary ‘tracked changes’ report.

CONCLUSION

26. My initial statement of evidence indicated agreement with most of the recommendations in the Planning Report. This supplementary evidence refers to some of the outstanding matters which have arisen since the Planning Report was prepared.

I would be happy to answer any questions on these or other matters at the hearing where competent to do so within my area of expertise.

Julian Watts

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