

BEFORE THE ENVIRONMENT COURT

Under the Resource Management Act 1991 ("Act")

In the matter of appeals under clause 14 of the First Schedule to the Act concerning the Proposed One Plan for the Manawatu-Wanganui Region and the topic of Biological Diversity

between **FEDERATED FARMERS OF NEW ZEALAND**
ENV-2010-WLG-000148

and **MERIDIAN ENERGY LTD**
ENV-2010-WLG-000149

and **MINISTER OF CONSERVATION**
ENV-2010-WLG-000151

and **PROPERTY RIGHTS IN NEW ZEALAND**
ENV-2010-WLG-000152

and **HORTICULTURE NEW ZEALAND**
ENV-2010-WLG-000155

and **WELLINGTON FISH & GAME COUNCIL**
ENV-2010-WLG-000157

and **MANAWATU-WANGANUI REGIONAL COUNCIL**
Respondent

Statement of Rebuttal Evidence of **HELEN MARIE MARR** on behalf of the Minister of Conservation and Wellington Fish & Game Council

Dated: 14 March 2012

Minister of Conservation
c/-P O Box 462 Tel +64 6 759 0205
55 a Rimu Street Fax +64 6 759 0351
New Plymouth
Solicitors acting: Sarah Ongley / Alice Camaivuna

REBUTTAL EVIDENCE OF HELEN MARIE MARR

1. Introduction

1. My full name is Helen Marie Marr. I have prepared evidence on behalf of the Minister of Conservation and the Wellington Fish and Game Council in this matter. In this rebuttal evidence I rebut matters raised in the evidence of Mr Robert Schofield, Mr David Le Marquand, Ms Lynette Wharf and Ms Tessa Mills.

1.1 Approach to Rebuttal evidence

2. Following expert conferencing by planners, the following issues remain in contention:
 - 1.2 Whether rare and threatened habitats should be presumed to be significant under section 6(c) of the Act without further site-specific assessment;
 - 1.3 The appropriate activity status for activities within rare and threatened habitats – non-complying or discretionary;
 - 1.4 Offset provisions in Policies 7-2A and 12-5(d);
 - 1.5 The mitigation hierarchy reflected in Policy 12-5;
 - 1.6 The reference to existing use of productive land in Policy 7-2A; and
 - 1.7 Restrictions upon the use of riparian margins around Sites of Significance – Aquatic (and whether the rules restricting activities in such habitats should exclude the activity of cultivation).
3. I deal with each of these points in turn.

1.2 Significance

4. The issue of whether rare and threatened habitats should be presumed to be significant under section 6(c) of the Act is associated with the issue of the appropriate status for activities within those habitats. Mr Schofield states (paragraph 2.6(e) of his evidence) that:

“discretionary status ... would also recognise that the rare, threatened and at-risk habitat type classification process is based on the less precise determination of a habitat type being consistent with Schedule E alone – and that this may capture some habitats as rare or threatened when they have only moderate or low ecological values (i.e. activity status is determined by Schedule E habitat types alone and does not relate to habitat types deemed ecologically significant using the ecological significance assessment criteria in Policy 12-6).”

5. In this paragraph, and in other parts of Mr Schofield’s evidence in chief¹, Mr Schofield draws on Mr Park’s evidence that not all rare, threatened and at-risk habitat types identified or described in Schedule E are significant under the criteria for assessing significance in Policy 12-6. However my understanding is that:
- a. At-risk habitats *do* require further analysis against the criteria in Policy 12-6 to determine whether they are significant because, although many at-risk habitat types will be found to meet significance criteria under Policy 12-6², this is not a ‘given’. This will require site-specific assessment against the criteria in Policy 12-6 (this is reflected in Policy 7-2A(b) as agreed during planning conferencing).
 - b. The provisions of the One Plan should reflect that all rare and threatened habitat types as identified in Schedule E are significant, because such habitat-types are currently understood to meet the significance criteria in Policy 12-6 by definition.³
 - c. Although a site specific assessment for rare and threatened habitat-types will be required to determine whether a Schedule E habitat-type actually exists ‘on the ground’, site specific assessments for rare and threatened habitats will not be required to determine their significance. Once that habitat-type is found to exist at a site, it should be

¹ E.g. Schofield EIC paragraph 2.7(a).

² Hawcroft EIC paragraphs 91-92 and 109; Part 9 of “*Section 42A Report of Fleur Maseyk on behalf of Horizons Regional Council*”.

³ Hawcroft EIC paragraph 102 and Hawcroft rebuttal evidence paragraph 12.

presumed that such a habitat is significant for the purposes of section 6(c) of the Act.⁴

- d. The criteria for significance in Policy 12-6 should not include a separate criterion related to sustainability, condition or “*functioning ecosystem processes*” which qualifies all the other criteria in the Policy and which would require further site-specific analysis. This type of ‘filtering’ criterion is contrary the evidence of Dr Gerbeaux, Ms Hawcroft and Ms Maseyk, and is contrary to the criteria agreed by those experts at ecological conferencing.⁵

6. I understand from Ms Hawcroft’s rebuttal evidence that there may be very limited circumstances in which a rare or threatened habitat as described in Schedule E could be found not to be significant according to the significance criteria agreed by the majority of ecologists (as above). Ms Hawcroft states that it is possible a site visit could re-determine the significance of a rare or threatened habitat if it corrected some error in the underlying information used to create Schedule E (and which determined habitats with 20% or less of known/likely former cover remaining in the Region⁶ or habitat types that originally covered less than 0.5% of New Zealand’s landscape⁷). However this would not occur in practice because site-specific assessments are usually confined to the analysis of the site in question, and correcting underlying modelling would generally involve a regional or national-wide analysis. Therefore Ms Hawcroft’s opinion is that there is no benefit to be gained from a site-specific assessment in determining whether that rare or threatened habitat-type is “significant” (presuming that the habitat actually exists in the location examined).⁸

⁴ Hawcroft rebuttal evidence part 1.2.

⁵ Hawcroft EIC paragraphs 96 – 98, Hawcroft rebuttal evidence part 1.1, “*Evidence and Supplementary Recommendations of Fleur Maseyk for Biodiversity Hearing*” paragraphs 61-67, Gerbeaux EIC paragraph 39 and rebuttal paragraph 5-16; Memorandum Regarding Record of Technical Conferencing on Monday 30 January 2012 on Biodiversity.

⁶ Policy 12-6 (a)(i)(A).

⁷ Policy 12-6(a)(ii)(E).

⁸ Refer Hawcroft rebuttal evidence Part 1.3.

7. The above issue is relevant to my evidence because it directly affects the wording in Policy 7-2A(a)⁹ and the introductory wording to Policy 12-6 relating to the recognition of rare habitats and threatened habitats as being significant¹⁰. Mr Schofield has agreed to these wording changes during expert conferencing, which in my view would correctly reflect the presumption that all rare and threatened habitats meet the criteria for significance under Policy 12-6. However the criteria for significance under Policy 12-6 have not been agreed (Meridian and TrustPower still appear to be seeking that “functioning ecosystem processes” be addressed as a ‘filter’ on other significance criteria), and Mr Schofield has stated in the record of planning conferencing in relation to Policy 7-2A:

“The Planner for TrustPower considered that, while a habitat could be prima facie classified as rare or threatened habitat, it is essential it be ground-truthed by a site visit to assess the actual ecological attributes. Schedule E may need to be amended to clarify that habitats need to be assessed by site visits.”

8. Other than in relation to ground-truthing for the purpose of ascertaining whether a habitat-type is actually present at the relevant location (a matter that is already clarified in Schedule E¹¹), I do not agree with Mr Schofield on this point for the reasons stated above.

⁹ Policy 7-2A(a) agreed during Planning Conferencing (Record dated 6 March 2012) as: *“Habitats assessed as rare habitats* and threatened habitats* must be recognised as areas of significance indigenous vegetation and significant habitats of indigenous fauna”.*

¹⁰ Agreed during Planning Conferencing (Record dated 6 March 2012) as: *“One of more of the criteria below will contribute to the significance of an area of rare habitat*, or threatened habitat*. An area of at-risk habitat* may be recognised as being an area of significant indigenous vegetation or a significant habitat of indigenous fauna if...”.*

¹¹ Schedule E states: *“It is recommended that a suitably qualified expert is engaged for assistance with interpreting and applying Schedule E. This could be:*

- (a) a consultant ecologist; or*
- (b) the Regional Council staff, who currently provide this service free of charge, including advice and a site visit where required in the first instance. It may be that following this initial provision of information, the proposal will require an Assessment of Ecological Effects to be provided as a component of the consent application. In such instances it is recommended that a consultant ecologist be engaged to conduct the assessment...”*

1.3 Activity status

9. The appropriate activity status for activities in rare habitats and threatened habitats remains an issue in contention. I have identified 4 main points relating to activity status raised in the evidence of others that I would like to respond to.

1.3.1 Mapping

10. Mr Schofield quotes¹² from the Council-level decision which altered the activity-status for activities in rare and threatened habitats from non-complying to discretionary for reasons including the following:

“In light of the innovative approach to identifying Schedule E habitats and their mainly being determined by predictive methods rather than by on-site identification, we agree with Ms Clarke (for Meridian) that relevant activities in Schedule E habitats should be discretionary activities, apart from aspects of forestry which we have already discussed with clear policy direction for resource consent decision-making.”

11. Any uncertainties associated with the habitat description approach of the One Plan, by virtue of using predictive modelling, is not in my view a reason that discretionary activity status should be preferred over non-complying activity status.
12. The classification of habitats as rare, threatened or at risk is based on predictive modelling. However, as Ms Hawcroft sets out in her evidence, a site visit is a necessary part of the process to determine if a habitat exists at a particular location, and to determine if it meets the objective criteria in Schedule E (including the criteria in Tables E.2(a) and E.2(b)). Ms Hawcroft also sets out in her evidence that even if the plan took an approach of mapping the habitats, the habitats (where they exist) would take on the same classification (rare, threatened or at-risk) as that in Schedule E, as the assessments would be based on the same predictive modelling in each case.

¹² Schofield EIC Paragraph 2.5 and Council Hearing Panel decision paragraph 5-26.

13. In other words, even if the Schedule E habitats were mapped, the same level of error would occur which is the error associated with the use of any predictive modelling approach. For example, Ms Hawcroft states in relation to mapping of rare habitats “*An ecologist might visit a site, identify that it is a limestone tor, review the literature... and conclude it is an originally rare habitat type and therefore significant*”. If there is an error in our understanding as to whether limestone tors were originally rare (which has come about through modelling the *original extent* of such habitats), then that error would be reflected in a mapping approach, just as it would be in the habitat description approach of the One Plan.¹³
14. As stated by Ms Hawcroft,¹⁴ the use of modelling to determine both the historic and the current extent of habitats reflects best practice and is increasingly being utilised by ecologists as a robust method to reflect the threat status of habitats. It has advantages over traditional mapping approaches.¹⁵ Mapping can generate errors where there are dynamic habitats involved. Examples are ephemeral wetlands associated with dunes that may gradually in-fill with sediment,¹⁶ or coastal cliff systems that may migrate inland as the cliff is eroded¹⁷. If mapping was undertaken some time ago, then it will not reflect accurately the boundaries of such habitats. The habitat description approach of the One Plan has an additional advantage over mapping in that it corrects errors that can be associated with traditional mapping approaches.
15. I do not agree with Mr Schofield (or the Council hearing panel) that the method of identification of habitats (descriptions as in Schedule E based on predictive modelling) is relevant to the classification of activities in that habitat.
16. Mr Le Marquand does raise a valid point that, as distinct from mapping approaches, there are additional uncertainties associated with the habitat-description approach for infrastructure planners undertaking route selection

¹³ Hawcroft rebuttal evidence paragraph 21.

¹⁴ Hawcroft EIC paragraphs 49 and 55. Refer also *Statement of National Priorities for Protecting Rare and Threatened Native Biodiversity on Private Land* (MfE, 2007).

¹⁵ Hawcroft EIC paragraph 49.

¹⁶ Hawcroft rebuttal evidence paragraph 6(c).

¹⁷ Hawcroft rebuttal evidence footnote 16.

processes. Because rare and threatened areas are not defined on maps in the plan this high level route selection process may be made more difficult.¹⁸ However, as stated in Ms Hawcroft's rebuttal evidence¹⁹, mapping information is available to infrastructure-providers and private companies for such purposes. The national Threatened Ecosystems Classification provides information as to threatened habitats and is available, as is information on the location of wetland habitats. Broad-scale mapping information can be obtained from Horizons Regional Council regarding general locations of 'threatened' habitats within the Region. Schedule E itself states: "*The Regional Council can, in all cases, provide any spatial data and existing information where available as relevant to the habitat and the proposed activity.*" Some information is also available as to the distribution of originally rare habitats from literature and from work that the Department of Conservation is undertaking²⁰. This information is still likely to require ground-truthing, however I would expect that with any large infrastructure project, ground-truthing would always be undertaken prior to finally selecting a preferred route or location.

17. Therefore, in relation to Mr Le Marquand's comments (in his paragraph 66) that "substantial work" is required to identify the location of rare, threatened and at-risk habitats:

- a. Desk-top analysis can identify those locations where rare, threatened or at-risk habitats are likely to exist; and
- b. For new projects, once a route is selected as preferred, substantial work would be required in any case to meet the requirements of an Assessment of Environmental Effects (including 'ground-truthing').

18. If a route could not reasonably be altered in such a way as to avoid a rare or threatened habitat-type, in my view it would be appropriate for at least that part of the route to be considered as a non-complying activity. Non-complying activity status does not equate to prohibited activity status. Mr Le Marquand's evidence refers to the policies associated with the non-complying activity status

¹⁸ Le Marquand EIC paragraph 44 and Appendix 3.

¹⁹ Hawcroft rebuttal evidence paragraph 31.

²⁰ Hawcroft rebuttal paragraphs 31-32.

being “absolute”²¹, however in my evidence in chief I outline suggested amendments to Policy 12-5(b) which would enable a deserving project within a rare or threatened habitat to pass through the second ‘gateway’ test for a non-complying activity. The wording is not absolute, but would require an applicant who could not ‘avoid’ affecting a rare or threatened habitat to take measures to remedy or mitigate effects on-site, and for any remaining effects, to undertake offsetting. This is appropriate. Mr Le Marquand’s difficulty in terms of the need to avoid rare and threatened habitats ‘at all costs’ may lie with the possible implications of the bundling principle. I discuss this issue further below.

1.3.2 Minor effects

19. Mr Schofield notes as an argument for discretionary status over non-complying that “*discretionary status would recognise that effects of some activities within such habitats could be minor*”.²² In my view non-complying activity status can recognise this also. In fact the first of the s104D ‘gateway’ tests specifically contemplates that effects of non-complying activities may be minor, and allows for them to go on to be considered under section 104.

20. Mr Schofield also notes²³ that “[t]he default assumption, underscored by policies of the One Plan, is that non-complying activities are inappropriate and will most likely be declined, particularly given the clear direction of Objectives 7-1 and 12-2 and Policy 11A3(e) which infer that any modification, disturbance or loss of these habitats is, *prima facie*, contrary to these objectives – yet many activities may have quite minor effects on these habitats...”. I disagree with this interpretation of the plan provisions. I believe Mr Schofield intended to quote Policy 11A-1(e) (not Policy 11A3(e)) as evidence of this assumption. I discussed Policy 11A-1 in my evidence in chief²⁴. To clarify my evidence in chief, I consider this is primarily a policy which directs the type of rules to be

²¹ Le Marquand EIC paragraph 54 “*Policy 12-5(b)(i) as worded requires any effects that are more than minor to be avoided. With the deletion of the ‘or’ there is no clear cascade in the effect that such effects are unavoidable. As a consequence the provision is an absolute and runs the risk of such areas being deemed to be inviolable.*”

²² Schofield EIC paragraph 2.6(e).

²³ Schofield EIC paragraph 2.7(b).

²⁴ Paragraphs 66, 106 and 149.

adopted in the Regional Plan. The policies that guide decision makers on applications made under the biodiversity rules are 12-5 and 12-6. These policies provide for instances where adverse effects may be minor and provide for consents to be granted in those instances.

21. I do not agree with Mr Schofield that there may be *many* activities requiring consent as a non-complying activity which may have minor effects. As stated in my evidence in chief, based on ecological evidence, activities in rare and threatened habitats have a high likelihood of causing significant adverse effects, even activities which disturb a relatively small area. The ecological evidence is that even very small losses of such habitat may have negative effects disproportionate to the area actually disturbed.²⁵

1.3.3 Bundling

22. Both Mr Schofield²⁶ and Mr Le Marquand²⁷ raise the issue of bundling of resource consents for large electricity or transmission projects.²⁸ They both state that if even a minor part of those proposals touches on a rare habitat or threatened habitat this will result in the entire project being considered as non-complying. In my view it is not possible to be so definitive about the application of the bundling principle – whether or not it is applied will depend on matters such as the whether activities have consequential effects on, or overlap with, other activities that are part of the proposal. Mr Schofield goes further and states *“[t]his would raise considerable consenting issues if an application is found contrary to a specific policy of avoidance”*²⁹. As I discuss in my evidence in chief (paragraphs 76 and 77), the application of the s104D(1)(b) test requires a consideration of *all* the policies and objectives of the plan. A failure to satisfy one policy does not make the application ‘contrary’ to the plan as a whole.

23. Neither Mr Le Marquand nor Mr Schofield have given actual examples of where the bundling principle has been applied to large infrastructure projects in a way

²⁵ Refer paragraph 100 of my EIC.

²⁶ EIC para 2.7(d)

²⁷ EIC para 67

²⁸ I also discuss this issue at part 2.4.2.7 of my EIC.

²⁹ Paragraph 2.7(d) Schofield EIC.

that has created unfairness. Having said that, I do acknowledge comments made by Mr Le Marquand that³⁰:

“Traversing or locating within such areas could be unavoidable, notwithstanding any rigorous route and site selection process which would seek to avoid such areas as far as practicable.

For a transmission line project that cannot avoid such a habitat even after a robust route and site selection process, a non-complying activity category will, under the bundling principle, result in the whole line being considered as non-complying. This in turn means that it will have to pass the gateway tests in s104D and either have effects no more than minor or not be contrary to the whole suite of POP objectives and policies. I have not assessed the complete suite of POP objectives and policies to ascertain whether that would pose any critical impediment, and it is very difficult to do so in the absence of a specific project. However the nature and scale of such lines means that some effects (e.g. amenity, landscape or the need to disturb land for tower foundations) are very difficult to avoid.”

24. Having considered this matter further, it may be helpful for the plan to provide more guidance to those applying the bundling principle to ensure that the inappropriate bundling situations identified by Mr Schofield and Le Marquand do not occur. In Mediation Memorandum *“Memorandum Regarding Record of Progress on Mediation Agreement”* 17 June 2011, Horizons Regional Council proposed such guidance on the basis that activities within rare and threatened habitats should be treated as a non-complying activity. A copy of that Memorandum is attached as Appendix 1 to my evidence (I understand this Memorandum was also provided to the Court during the mediations process). The relevant part of the Memorandum states, in relation to a proposed non-complying activity classification:

“Some appellants have raised a concern about that change in classification. Specifically, but not by way of limitation interests connected with electricity transmission and electricity generation where large projects may involve impacts on rare and threatened habitats. That in [sic] change would mean,

³⁰ Le Marquand EIC paragraph 66-67.

applying the bundling principle, would make an entire infrastructure proposal non-complying. It is that specific concern that this memorandum addresses.

To address that concern, Horizons proposes a more specific addition to policy 11A-7 in yellow attached.”

...

[Policy 11A-7 yellow section:] “... Where there is a proposal involving electricity generation, electricity transmission or other infrastructure of regional and national importance, and the proposal involves, as a component of it, an activity that triggers a non-complying classification because of its effect on rare habitats or threatened habitats then that activity will be assessed separately and the classification of the other elements of the proposal and its constituent activities must not take on the non-complying activity classification by virtue of the bundling principle.”

25. Although the Regional Council has changed its position regarding adoption of the non-complying activity status for rare and threatened habitats since the date of the Memorandum, I would be comfortable with the concept of an amendment to Policy 11A-7 as suggested in this Memorandum. I believe the case for some kind of ‘exclusion’ from bundling is more compelling for transmission networks, given the linear nature of such networks, and given that such systems are often extensive covering numerous different areas. However I acknowledge that renewable energy generation does have similar considerations, and that for both transmission and renewable energy generation activities there is a requirement to “recognise and provide for” the benefits of those activities.³¹ In the context of the One Plan, the implications of bundling may not facilitate consideration of transmission and renewable electricity generation activities in a way that is consistent with those NPS policies.³² As stated above, neither Mr Le Marquand or Mr Schofield have provided evidence that bundling in similar circumstances for other projects has caused an ‘unfair’ result. However I acknowledge that this may be a possibility in the future application of the One Plan, depending on how

³¹ Policy A of the NPS on Renewable Electricity Generation (NPSREG) and Policy 1 of the NPS on Electricity Transmission (NPSET).

³² Although, similarly to Mr Le Marquand, I have not assessed the complete suite of POP objectives and policies to ascertain whether they would pose any critical impediment if applications were ‘bundled’.

the caselaw on bundling is interpreted in any particular case, and that this possibility creates uncertainties for the relevant energy and transmission companies. For completeness, I don't believe that such a policy should also apply to "*other infrastructure of regional and national importance*" as was suggested in the Memorandum regarding record of progress on mediation agreement (above), because this may cover a wide range of activities for which the same considerations do not apply. That is, any modification or re-statement of the 'bundling principle' in the Regional Plan should only apply to renewable electricity generation and transmission activities.

26. In expert conferencing I suggested this as a solution to the problems identified by Mr Schofield and Mr Le Marquand (as recorded in the Record of Planner Conferencing dated 6 March 2012). I understand that there is concern from some parties that a policy along these lines would be 'unenforceable' or illegal, because it may be contrary to the caselaw on bundling. If this is the concern, I would suggest that the same or similar wording could be contained in a *rule* in the Regional Plan. Under section 68(2) of the Act, regional rules have the force of a regulation. I am advised that existing caselaw on bundling would, with a rule or a policy, be able to be distinguished when resource consent applications are made, on the basis that the One Plan takes a special approach to renewable energy generation and transmission activities. This is proposed as a 'solution' in response to the concerns raised by Mr Schofield and Mr Le Marquand in relation to bundling because I do not consider that the concerns associated with bundling should be a reason to determine activity status in rare and threatened habitats.

1.3.4 Precedent in plan

27. I agree with Mr Le Marquand's statement that "*...the POP has otherwise used the non-complying activity status sparingly*".³³ Mr Le Marquand identifies seven instances of non-complying activity status. He has omitted one other non-complying rule from his list, which is reclamation of of regionally significant lakes (Rule 16-3). I agree that in all but the case of Rule 13-22, the application of the non-complying activity rule is geographically identified in the POP either by maps or reference to discreet area. However I disagree that this means that in all cases activity status can be ascertained simply from reference to the POP. For

³³ Le Marquand EIC para 63.

water takes that exceed the cumulative core allocation limit or are below the minimum flow (Rule 15 -6), an applicant must first ascertain, from the Regional Council, how much water is allocated from a particular water management subzone, before being able to ascertain activity status. Further this status may change over time (as more water is allocated from a catchment). In my view this is appropriate. Similarly, for activities within rare habitats, threatened habitats and at risk habitats, it is also appropriate for work to be done to ascertain habitat type before making an application for consent.

28. In my view the addition of activities in rare habitats and threatened habitats would be consistent with the current activities which attract a non-complying activity status. All the non-complying rules currently in the plan relate to sensitive areas or resources that have reached capacity. As I set out in my evidence in chief, this is an appropriate application of the non-complying status. Rare habitats and threatened habitats are sensitive to change and are resources which have reached capacity for further degradation. Non-complying activity status is the most appropriate in this circumstance.

1.4 Offset provisions in Policies 7-2A and 12-5(d)

29. In my evidence in chief I recommended that reference to offsets be removed from Policy 7-2A³⁴ and that the principles of offsetting from the BBOP (and as set out in the evidence of Mr Spencer Clubb) be reflected in Policy 12-5(d)³⁵. I have since agreed in planning conferencing that Policy 7-2A contain a reference to biodiversity offsets, provided that there is a cross-reference to Policy 12-5 which defines the circumstances in which such offsets may be considered appropriate.
30. The record of planning conferencing states that all planners have now agreed to the wording changes suggested by the Minister of Conservation and Fish and Game for Policy 12-5(d), however that "*[t]he Planner for TrustPower considered that it would be inappropriate to cement the current cascade approach to offsetting into the One Plan*". I understand however that this comment relates to the 'mitigation hierarchy' set out in my version of Policy 12-5(b) and (c)³⁶, and

³⁴ Paragraph 138 of my Evidence in Chief.

³⁵ Part 2.5.6.2 of my Evidence in Chief.

³⁶ Marr EIC Appendix 1.

which I discuss separately below. Other than the mitigation hierarchy, the only items in relation to 'offsetting' that I understand are still in issue are:

- Whether Policy 12-5(d) should include the following wording (refer underlining):
"An offset assessed in accordance with (b)(iii) or (c)(iv) must ... [sic] the appropriateness of establishing infrastructure^ and other physical resources of regional or national importance as identified in Policy 3-1";
- Whether Policy 7-2A should include the following wording:
"consider indigenous biological diversity^ mitigation offsets in appropriate circumstances as defined in Policy 12-5 which may include establishment of infrastructure^ and other physical resources of regional or national importance as identified in Policy 3-1".

31. On reflection, the underlined words (above) for Policy 7-2A are acceptable, as those words are simply stating the circumstances where offsetting *may* be considered appropriate (i.e. where physical resources of regional or national importance are involved), and there is the reference to Policy 12-5 which must be considered in any event. However, I do not consider that reference to infrastructure and other regional or nationally important physical resources should be included in Policy 12-5(d), which sets out the essential requirements for offsets. As stated in Appendix 3 of my evidence in chief:

"The principles of offsetting do not discriminate between particular types of activities as such. However I believe it is appropriate to recognise the benefits of electricity transmission and renewable energy, and I believe recommended wording in (a)(v) and (e)(i) does this. The inclusion of clause (a)(v) will enable the benefits of electricity transmission and renewable energy generation activities to be considered even if an offset is not involved."

32. The outcome of planning conferencing was that my suggested clause in Policy 12-5(e)(i) was not accepted. This is disappointing because this would have placed reference to electricity transmission and renewable energy in the Policy as one of the circumstances where offsetting *may* be considered appropriate, but not within the list of requirements for offsets. Such an item is not appropriate

within Policy 12-5(d).³⁷ It was agreed in conferencing that the wording in (a)(v) would be included if the activity-status becomes non-complying, except that Ms Barton did not consider that this clause was necessary. This clause combined with the provision I have agreed to for Policy 7-2A (above) should allay the concerns of the transmission and energy companies as it would read:

*“... the Regional Council must make decisions on consent applications and set consent conditions^ on a case-by-case basis, having regard to:
(v) for electricity transmission and renewable energy generation activities, any national, regional or local benefits arising from the proposed activity.”*

1.5 Mitigation hierarchy

33. It has been agreed in planning conferencing that an avoidance response should come first, both in relation to significant habitats, and in other areas of at-risk habitat where adverse effects are significant.³⁸ That is, everything that can practically be done to avoid an adverse effect should be carried out before the lower level responses of mitigation and remediation can be considered. This is what I proposed in my evidence in chief. However there is not agreement on whether an applicant should then look to mitigate adverse effects within the area of habitat affected by the activity, prior to having the option of offsetting outside the area of habitat affected.

34. In relation to Policy 12-5(b) and (c), the conferencing record states:

“The Planners for TrustPower/Meridian, Transpower/Powerco, and Federated Farmers agreed that offset mitigation outside the affected area should be an option (not a last resort) for an applicant to propose and a decision-maker to consider, if it achieves a net indigenous biodiversity gain. The planners for MWRC and MoC/WFCG consider that wording that requires the consideration of onsite mitigation before offsite mitigation or offsetting is more appropriate.”

35. Allowing offsets to be considered before mitigation on site has been fully considered is not consistent with the BBOP principles.

³⁷ Clubb Rebuttal evidence paragraphs 14 and 15.

³⁸ Policies 12-5(b)(i) and (c)(i) as agreed in the Record of Planner Conferencing on the Topic of Biodiversity dated 6 March 2012.

36. Mr Schofield notes his concern about altering the 'avoid, remedy, mitigate' requirements of section 5 of the Act in his evidence³⁹. In my view it is acceptable and appropriate for the regional plan to state a preference for the way effects should be dealt with, including by instituting a hierarchy as I have proposed. Mr Clubb's evidence explains the reason for the mitigation hierarchy where offsets are a 'last resort' as follows:⁴⁰

"Offsets differ from minimisation (or on-site mitigation) in that they do not reduce a negative, or adverse effect, at the location where the adverse effect is occurring. Rather, they balance this adverse effect with a positive effect elsewhere. Biodiversity offsetting therefore represents an exchange of biodiversity, even where it is like-for-like."

37. Mr Clubb's evidence explains the difficulties that can arise in order to properly 'calculate' such an exchange and states:⁴¹ *"[i]t is perhaps for this reason that offsetting is clearly distinguished by the BBOP as being lower down the mitigation hierarchy than minimisation (on-site mitigation)."* Similarly, he states *"[i]n my opinion, uncertainty associated with achieving biodiversity gains through offsetting is one reason why it is considered to be further down the mitigation hierarchy than avoidance and minimisation, which have more certain outcomes for biodiversity"*⁴². Ms Hawcroft's evidence in chief also explains difficulties that can arise with 'exchanging' biodiversity in referring to the need for robust monitoring.⁴³

38. In relation to the record of planning conferencing, the planners for TrustPower/Meridian, TransPower/Powerco and Federated Farmers consider that if a net indigenous biodiversity gain can be made *outside* the area of habitat affected by an activity, then this 'net indigenous biodiversity gain' should be compared with net indigenous biodiversity gains that can be made *inside* of the area of habitat to be affected. If the net biodiversity gain that can be made *outside* that area is greater than could be made *inside* the area affected, then it

³⁹ Schofield EIC paragraphs 2.19, 2.33 and again at 2.37.

⁴⁰ Clubb EIC paragraph 43.

⁴¹ Clubb EIC paragraph 45.

⁴² Clubb rebuttal evidence paragraph 10.

⁴³ Hawcroft EIC paragraphs 114 – 124.

is proposed that an applicant could proceed straight to 'offsetting' without needing to carry out mitigation inside the area affected (Policy 12.5(b)(iii) would contain the word "or" to achieve this outcome, and Policy 12.5(b)(ii) and 12.5(c)(iii) would contain the words "*remedied or mitigated within the area of habitat affected by the activity to result in a net indigenous biodiversity gain*").

39. I do not agree with these wording suggestions. However I believe that the conceptual difference between myself and the planners for TrustPower/Meridian, Transpower/Powerco and Federated Farmers is not great. To explain further, I consider that mitigation within an area of habitat affected should be a requirement prior to proceeding to offsetting proposals. However 'mitigation' within the area of habitat affected is not an absolute. Rather, all reasonable measures must be undertaken to achieve mitigation within the area of habitat affected by the proposal (if avoidance is not reasonably achievable) and I agree that the addition of the word 'reasonably' prior to the words 'be avoided, remedied or mitigated' is appropriate.⁴⁴ So although all feasible efforts must be undertaken to mitigate within the site before considering offsetting, this not an absolute requirement, and some effects may remain unmitigated within the site. I believe that this is reasonable and is consistent with the Act.

40. The wording suggested at planning conferencing that remediation or mitigation within the area of habitat affected by the activity needs to result in a net indigenous biodiversity gain is not required. The requirement for a net indigenous biodiversity gain only applies to residual adverse effects ('left over' after avoiding, remedying or mitigating within the area affected) that are required to be 'offset'. If my evidence is accepted then this wording (in Policy 12-5(b)(ii) and (c)(iii)) would be deleted as there is no need for this sort of comparison between gains that can be made on-site versus gains that can be made off-site - applicants should not be enabled to proceed directly to off-site mitigation without considering on-site mitigation first.

⁴⁴ As in Policy 12-5(b)(iii) and (c)(iv) recorded as discussed in planning conferencing: "*cannot reasonably be avoided, remedied or mitigated within the area of habitat affected by the activity... they are offset outside of the area of habitat affected, provided there is a net indigenous biological diversity gain*" (emphasis added).

42. This is consistent with the decision in *Royal Forest & Bird Protection Society v Gisborne District Council* (W26/209) where the Court said:

“Biodiversity offsets should only be used as part of a hierarchy of actions in which a development project must first seek to avoid impacts and then minimise the impacts that do occur.”⁴⁵

43. This does not mean that biodiversity offsets cannot be developed as part of a package of ‘mitigation measures’ (using the terminology in Mr Schofield’s evidence paragraph 2.33) but simply that minimisation or mitigation within the area of habitat affected must be fully considered and addressed first, as far as is reasonably practicable.

1.6 Productive land (Federated Farmers)

44. The evidence of Ms Tessa Mills refers to concerns that Federated Farmers have in relation to continuation of existing use rights. In paragraph 143 of my evidence in chief I said that I consider the wording in Policy 7-2A(e)(iv) is vague and may be capable of numerous different interpretations. That wording currently states that when regulating activities the Regional Council and territorial authorities must *“not unreasonably restrict the existing use of production land”*. I invited Federated Farmers to identify specific concerns so that this provision could be made clearer.⁴⁶ Although this matter was not resolved during planning conferencing, the Minister of Conservation, Fish and Game, Federated Farmers and Horizons Regional Council have since reached an agreement on appropriate wording for this part of Policy 7-2A(e)(iv). The wording agreed is as follows:

“not restrict the existing use of production land^ where the effects of such land use on rare habitat, threatened habitat* or at risk habitat* remain the same or similar in character, intensity and scale.”*

⁴⁵ Paragraph 72.

⁴⁶ Refer paragraphs 144 and 145 of my EIC .

45. This wording only covers *land* uses, because activities such as discharges and diversions do not attract existing use rights. This wording has been proposed to Property Rights of New Zealand (Mr Coles), however as at the date of submitting this evidence a response from Mr Coles as to whether this wording is also acceptable to Property Rights of New Zealand has not been received.

1.7 Riparian Margins around Sites of Significance – Aquatic

46. Ms Lynnette Wharfe raises a number of issues in relation to activities adjacent to Sites of Significance – Aquatic (SOS-A), particularly as they relate to horticulture activities, and cultivation specifically.
47. Ms Wharfe has incorrectly set out the way that the plan identifies habitats near SOS-A in her evidence, so I will begin by clarifying this.
48. SOS-A are identified in Schedule AB of the POP. They are identified by a map reference and extent in Table AB.3 and these are further depicted on a regional scale map, Figure AB.3. I understand that GIS map layers for these sites at a property scale are available freely from the Regional Council. This map and table define a relative small amount of waterway, most being contained in the Conservation Estate. I understand from Horizons Regional Council that the area of SOS-aquatic that runs through horticultural cultivated areas in the Horizons Region is approximately between 2 and 4km.⁴⁷
49. Schedule E contains a habitat type (on page E-8) called ‘Riparian Margin’ which is defined as “*Any indigenous or exotic woody vegetation that is forest, treeland scrub, or shrubland, that is not classified elsewhere in Schedule E as rare or threatend, within 20m landwards from the top of the river bank adjacent to a site identified in Schedule AB as being a Site of Significance –Aquatic*”. This habitat type is classified as at-risk, which means an application for a consent for a discretionary activity must be made to disturb it. The exclusions contained in Table E.3 apply.

⁴⁷ Email from Andrew Steffert, Horizons Regional Council, to Rosemary Miller, Department of Conservation 20 January 2012, utilising satellite and aerial imagery to determine areas of SOS-A in horticulture.

50. Treeland, shrubland and forest are all defined in the Glossary, and must contain a cover of shrub or trees in the canopy (as appropriate) of at least 20%.
51. This further narrows the area of land to which the Riparian habitat type applies. The Riparian habitat is woody vegetation, with a canopy cover of at least 20%, adjacent to an SOS-A, which (if indigenous) is not planted for timber harvest, landscaping, horticultural, shelter belts, gardening or amenity purposes. The extent regulated is a maximum of 20 metres from the SOS-A.
52. In her evidence, Ms Wharfe wrongly assumes that *all* land within 20 metres of an SOS-A is defined as an at-risk habitat. As I set out above this is incorrect. This has led Ms Wharfe to incorrectly state in her paragraph 12, that “[a]ll activities within that 20 metres are subject to resource consent requirements”.
53. Ms Wharfe goes on to state at paragraph 13 that the “*structure of Schedule E makes it difficult to identify where the sites are located*”⁴⁸. Unlike other Schedule E sites which haven't been mapped in the POP, SOS-A have been, and so ascertaining if a horticultural activity (or any activity) is located on land adjacent to an SOS-A would be very straightforward.
54. Ms Wharfe's specific concern, as set out in her evidence, is allowing cultivation within the riparian habitat area. As I set out above, this habitat will only meet the definition set out in schedule E if there is woody vegetation with a canopy cover of at least 20%. It seems reasonably unlikely that cultivation for horticultural activities of any scale will have been ongoing (as she sets out in paragraph 22) in this type of relatively wooded area.
55. For these reasons, and because of the need to assess the effects of activities, including cultivation, on this riparian habitat, I do not believe that cultivation in the riparian habitat as defined by Schedule E should be excluded from the biodiversity rules.

⁴⁸ At paragraph 21 Wharfe EIC she also states “... *the current format in Schedule E will mean that most growers will be unaware of the location of sites and continue activities unaware of the implications.*”

56. I set out in Appendix 2 the planning provisions that the Minister of Conservation and Wellington Fish and Game Council are now seeking, following agreements made during planning conferencing, and on the basis of my above evidence.

Appendices

Appendix 1 – Memorandum Regarding Record of Progress on Mediation Agreement dated 17 June 2011.

BEFORE THE ENVIRONMENT COURT

In the matter of appeals under clause 14 of the First Schedule to the
Resource Management Act 1991 concerning proposed One
Plan for the Manawatu-Wanganui region.

between **CHIEF OF THE NEW ZEALAND DEFENCE
FORCE**
ENV-2010-WLG-000144

and **ERNSLAW ONE LTD**
ENV-2010-WLG-000146

and **NEW ZEALAND HISTORIC PLACES TRUST**
ENV-2010-WLG-000147

and **FEDERATED FARMERS OF NEW ZEALAND**
ENV-2010-WLG-000148

and **MERIDIAN ENERGY LTD**
ENV-2010-WLG-000149

and **PROPERTY RIGHTS IN NEW ZEALAND**
ENV-2010-WLG-000152

and **NEW ZEALAND TRANSPORT AGENCY**
ENV-2010-WLG-000153

and **WELLINGTON FISH & GAME COUNCIL**
ENV-2010-WLG-000157

and **GENESIS POWER LTD**
ENV-2010-WLG-000159

and **HORTICULTURE NEW ZEALAND**
ENV-2010-WLG-000155

and **DEPARTMENT OF CONSERVATION**
ENV-2010-WLG-000150

and **MIGHTY RIVER POWER LTD**
ENV-2010-WLG-000139

and **P F OLSEN LTD**
ENV-2010-WLG-000165

and **RAYONIER NEW ZEALAND LTD**
ENV-2010-WLG-000162

and **NEW ZEALAND FOREST MANAGERS LTD**
ENV-2010-WLG-000164
Appellants

and **MANAWATU-WANGANUI REGIONAL COUNCIL**
Respondent

**MEMORANDUM REGARDING RECORD OF PROGRESS ON MEDIATION
AGREEMENT**

Dated: *June* 2011



Solicitor: John W Maassen

Administrator: Robyn Harrison

Address: 11-15 Victoria Avenue
Private Bag 11025
Palmerston North 4442

Telephone: (06) 952 2800

Facsimile: (06) 952 2929

Email: robyn.harrison@horizons.govt.nz

MEMORANDUM OF REGARDING MEDIATION AGREEMENT

1. The signatories participated in Court assisted mediation concerning those appeals that touch or concern the Proposed One Plan on the topic of Terrestrial Biodiversity.
2. The Respondent has indicated that it is amenable to dividing the rule stream for Biodiversity into two parts dealing with rare and threatened habitats on the one hand and at-risk habitats on the other hand. In relation to activities that affect rare and threatened habitats the Respondent considers that a non-complying activity status is appropriate and to that extent agrees with the relief sought by Wellington Fish & Game.
3. Some appellants have raised concern about that change in classification. Specifically, but not by way of limitation interests connected with electricity transmission and electricity generation where large projects may involve impacts on rare and threatened habitats. That in change would mean, applying the bundling principle, would make an entire infrastructure proposal non-complying. It is that specific concern that this memorandum addresses.
4. To address that concern, Horizons proposes a more specific addition to policy 11A-7 in yellow attached.
5. Meridian Energy Limited and Mighty River Power Limited have stated that they will consider that proposal and together with consideration of the changes in the rule stream confirm whether or not that solution is acceptable to them. These matters will be addressed in a resumed mediation.

on behalf of Ernslaw One Limited


on behalf of Hancock Forest Management NZ Limited

on behalf of Rayonier New Zealand Limited

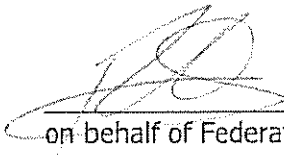


on behalf of New Zealand Forest Managers Limited

on behalf of P F Olsen Limited



on behalf of Wellington Fish and Game Council



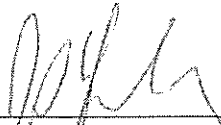
on behalf of Federated Farmers of New Zealand Inc



on behalf of Minister of Conservation




on behalf of Chief of the New Zealand Defence Force



on behalf of Meridian Energy Limited

on behalf of Property Rights in New Zealand

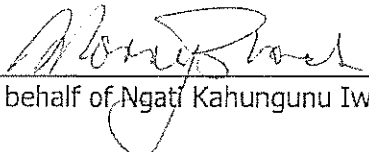
on behalf of Horticulture New Zealand



on behalf of Mighty River Power Limited



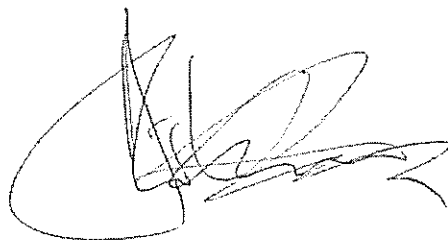
on behalf of Royal Forest & Bird Protection Society of New Zealand



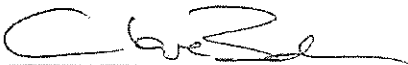
on behalf of Ngati Kahungunu Iwi Incorporated

on behalf of Trust Power Limited

on behalf of PowerCo Limited


TOMASZ SKONIER

on behalf of Transpower New Zealand



on behalf of Manawatu-Wanganui Regional Council

Policy 11A-6: Consent review

In addition to the reasons specified in s128(1)(a)(i) and (ii) RMA, the Regional Council will, under s128(1)(a)(iii) RMA, generally impose consent *conditions*^ that specify a review of consent *conditions*^ during the term of the consent for:

- (a) reviewing the appropriateness of any *condition*^ requiring the consent holder to supply the *consent authority*^ with information relating to the exercise of the *resource consent*^,
- (b) reviewing any unknown or uncertain adverse *effects*^ caused as a result of planned or required changes or *upgrades*^ to the activity,
- (c) reviewing the *conditions*^ of a consent at the same time as review of other consents within the same *Water Management Sub-zone*^ - for example, at a *common catchment expiry or review date*^, and
- (d) reviewing the effectiveness of consent *conditions*^ to avoid, remedy or mitigate any adverse *effects*^ of the activity on the environment.

The Regional Council will generally initiate reviews of *conditions*^ when monitoring results or other evidence demonstrate a review is required.

Policy 11A-7: Sites^ with multiple activities, and activities covering multiple sites^

For applications made to the Regional Council for either:

- (a) a site with a number of different activities requiring consent, or
- (b) a particular type of activity that will be undertaken by the consent holder at a number of sites

consent applicants may combine some or all activities or *sites*^ under umbrella consents. If the Council considers that such an approach is appropriate then it must establish consent *conditions*^, durations and review provisions which enable an integrated approach to be taken for managing environmental *effects*^ from the *site*^ or activity as a whole. There may be circumstances where individual activities are considered at their given classification rather than the most stringent activity classification. There may also be circumstances where specific *conditions*^ are required to address *site*^-specific circumstances and *effects*^. Where there is a proposal involving electricity generation, electricity transmission or other infrastructure of regional and national importance, and the proposal involves as a component of it, an activity that triggers a non-complying classification because of its effect on rare habitats or threatened habitats, then that activity will be assessed separately and the classification of the other elements of the proposal and its constituent activities must not take on the non-complying activity classification by virtue of the bundling principle.

Policy 11A-8: Enforcement procedures

- (a) The Regional Council will generally use *abatement notices*^, infringement notices, *enforcement orders*^ or prosecution in response to non-compliance with this Plan or the RMA, unless an alternative approach will achieve a better outcome.
- (b) In determining the type of enforcement tool to be used, the following factors will be taken into account:

Appendix 2 – Recommended Track Changes versions of provisions

Policy 7-2A: Regulation Management of activities affecting indigenous biological diversity[^]

For the purpose of managing indigenous biological diversity[^] in the Region:

- (a) ~~Habitats assessed as rare habitats*~~ and threatened habitats* must be recognised as areas of significant indigenous vegetation and significant habitats of indigenous fauna. ~~unless site*-specific assessments determine otherwise.~~
- (b) At-risk habitats* that are assessed to be significant under Policy 12-6 must be recognized as areas of significant indigenous vegetation and significant habitats of indigenous fauna. ~~require site*-specific assessments to determine their ecological significance.~~
- (c) The Regional Council shall protect Rare habitats* and threatened habitats* and at risk* habitats identified in (b) and maintain and enhance other at-Risk Habitats* by regulating the activities through its regional plan and through decisions on resource consents.
~~Vegetation clearance*, land disturbance, cultivation and certain other resource use activities within rare habitats, threatened habitats and at risk habitats must obtain a resource consent.~~
- (d) Potential adverse effects[^] on any rare habitat*, threatened habitat* or at risk habitat* located within or adjacent to an area of forestry* must be minimised.
- (e) When regulating the activities described in (c) and (d), the Regional Council must, and when exercising functions and powers described in Policy 7-1, Territorial Authorities[^] must:
 - (i) allow activities undertaken for the purpose of pest plant and pest animal control or habitat maintenance or enhancement,
 - (ii) ~~allow~~ consider indigenous biological diversity[^] mitigation offsets in appropriate circumstances as defined in Policy 12-5, which may include the establishment of infrastructure[^] and other physical resources of regional or national importance as identified in Policy 3-1,
 - (iii) allow the maintenance*, operation* and upgrade* of existing structures[^], including infrastructure[^] and other physical resources of regional or national importance as identified in Policy 3-1, and
 - (iv) ~~not unreasonably restrict the existing use of production land[^].~~ not restrict the existing use of production land[^] where the effects of such land use on rare habitat*, threatened habitat* or at risk habitat* remain the same or similar in character, intensity and scale.

Objective 12-2: Regulation of activities affecting indigenous biological diversity[^]

The regulation of vegetation clearance*, land disturbance*, forestry* and cultivation* and certain other resource use activities to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna or to maintain indigenous *biological diversity*[^], including enhancement where appropriate.

Policy 12-5A: Regional rules[^] for activities affecting indigenous biological diversity[^]

The Regional Council must require *resource consents*[^] to be obtained for vegetation clearance*, land disturbance*, and cultivation*, bores, discharges of contaminants into or onto land or water, taking, use, damming or diversion of water and activities in the beds of rivers or lakes within rare habitats*, threatened habitats* and at-risk habitats*, and for *forestry** that does not minimise potential adverse effects[^] on those habitats, through *regional rules*[^] in accordance with Objectives 11A-1, 11A-2 and 12-2 and Policies 11A-1 to 11A-8.

Policy 12-5: Consent decision-making for activities in rare habitats*, threatened habitats* and at-risk habitats*

- (a) For activities regulated under Rule 12-6 and Rule 12-7, the Regional Council must make decisions on consent applications and set consent *conditions*[^] on a case-by-case basis, having regard to:
- (i) the Regional Policy Statement, particularly Objective 7-1 and Policy 7-2A,
 - (ii) the significance of the area of habitat, in terms of its representativeness, rarity and distinctiveness, and ecological context, as assessed under Policy 12-6,
 - (iii) the potential adverse effects[^] of the proposed activity on that significance, and
 - (iv) for activities regulated under ss13, 14 and 15 RMA, the matters set out in Policy 12-1(h) and relevant objectives and policies in Chapters 6, 13, 15 and 16, and
 - (v) for electricity transmission and renewable energy generation activities, any national, regional or local benefits arising from the proposed activity.

- (b) Consent must generally not be granted for *vegetation clearance**, *land disturbance**, *forestry** or *cultivation** and certain other resource use activities in a *rare habitat**, *threatened habitat**, or *at-risk habitat** assessed to be an area of significant indigenous vegetation or a significant habitat of indigenous fauna, unless:
- (i) Any more than minor adverse effects[^] on that habitat's representativeness, rarity and distinctiveness, or ecological context assessed under Policy 12-6 are avoided, as far as reasonably practicable, or otherwise remedied or mitigated, or
 - (ii) Where any more than minor adverse effects[^] which cannot reasonably be avoided, they are remedied or mitigated within the area of habitat affected by the activity, are offset to result in a net indigenous biological diversity[^] gain.
 - (iii) Where any more than minor adverse effects cannot reasonably be avoided, remedied or mitigated within the area of habitat affected by the activity, they are offset outside of the area of habitat affected, resulting in a net indigenous biological diversity gain.
- (c) Consent must generally may be granted for *vegetation clearance**, *land disturbance**, *forestry** or *cultivation** and certain other resource use activities in an *at-risk habitat** assessed not to be an area of significant indigenous vegetation or a significant habitat of indigenous fauna when:
- (i) there will be no significant adverse effects[^] on that habitat's representativeness, rarity and distinctiveness, or ecological context as assessed in accordance with Policy 12-6, or
 - (ii) any significant adverse effects[^] are avoided, as far as reasonably practicable, or otherwise remedied or mitigated, or
 - (iii) Where any significant adverse effects[^] which cannot reasonably be avoided, they are remedied or mitigated within the area of habitat affected by the activity, are offset to result in a net indigenous biological diversity[^] gain.
 - (iv) Where significant adverse effects cannot reasonably be avoided, remedied or mitigated within the area of habitat affected by the activity, they are offset outside of the area of habitat affected, resulting in a net indigenous biological diversity gain.
- (d) When assessing An offset assessed in accordance with (b)(i-iii) or (c)(ii-iv), decision-makers must have regard to:
- (i) the desirability of providing for a net indigenous biological diversity gain within the same habitat type, or where that habitat is not significant, provide for that gain in a rare habitat or threatened habitat type, and
 - (ii) the desirability of providing for a net gain generally be in the same ecologically relevant locality as the affected habitat, and
 - (iii) the appropriateness of establishing *infrastructure[^]* and other physical resources of regional or national importance as identified in Policy 3-1.
 - (iv) not be allowed where inappropriate for the ecosystem or habitat type by reason of its rarity, vulnerability or irreplaceability, and

- (v) have a significant likelihood of being achieved and maintained in the long term and preferably in perpetuity, and
- (vi) achieve conservation outcomes above and beyond that which would have been achieved if the offset had not taken place.

Policy 12-6: Criteria for assessing the significance of, and the effects^ of activities on, an area of habitat

- (a) One or more of the criteria below will contribute to the significance of an area of rare habitat*, or threatened habitat*. An area of or-at-risk habitat* may be recognised as being an area of significant indigenous vegetation or a significant habitat of indigenous fauna if:
 - (i) in terms of representativeness, that habitat:
 - (A) comprises indigenous habitat type that is under-represented (20% or less of known or likely former cover), or
 - (B) is an area of indigenous vegetation typical of the habitat type in terms of species composition, structure and diversity, or that is large relative to other areas of the same habitat in the Ecological District or Ecological Region, with indigenous-species-composition, structure and diversity typical of the habitat-type, and-or has functioning ecosystem processes.
 - (C) ~~has functioning ecosystem processes.~~
 - or
 - (ii) in terms of rarity and distinctiveness, that habitat supports an indigenous species or community that:
 - (A) is classified as threatened (as determined by the *New Zealand Threat Classification System and Lists**), or
 - (B) is distinctive to the Region, or
 - (C) is at a natural distributional limit, or
 - (D) has a naturally disjunct distribution that defines a floristic gap, or
 - (E) was originally (ie., prehuman) uncommon within New Zealand, and supports an indigenous species or community of indigenous species.
 - or
 - (iii) in terms of ecological context, that habitat provides:

- (A) connectivity (physical or process connections) between two or more areas of indigenous habitat, or
 - (B) an ecological buffer (provides protection) to an adjacent area of indigenous habitat (terrestrial or aquatic) that is ecologically significant, or
 - (C) part of an indigenous ecological sequence or connectivity between different habitat types across a gradient (eg., altitudinal or hydrological), or
 - (D) important breeding areas, seasonal food sources, or an important component of a migration path for indigenous species, or
 - (E) habitat for indigenous species that are dependent on large and contiguous habitats.
- (b) The potential adverse effects[^] of ~~vegetation clearance*~~, ~~land-disturbance*~~, ~~forestry*~~ or ~~cultivation*~~ an activity on a rare habitat*, threatened habitat* or at-risk habitat* must be determined by the degree to which the proposed activity will diminish any of the above characteristics of the habitat that make it significant, while also having regard to the ecological sustainability of that habitat.

Rule	Activity	Classification	Conditions/Standards/Terms	Control/Discretion
<p>12-6</p> <p>Some activities within <i>rare habitats*</i>, <i>threatened-habitats*</i> and <i>at-risk habitats*</i></p>	<p>Except as regulated by Rules 13-2, 13-10, 13-22, 15-5B, 15-9, 16-3, 16-5, 16-6, 16-8 in relation to any existing small dam structure[^], 16-13 and 16-14, any of the following activities within a <i>rare-habitat*</i>, <i>threatened-habitat*</i> or <i>at-risk habitat*</i>:</p> <ul style="list-style-type: none"> (a) <i>vegetation clearance*</i>, <i>land disturbance*</i> or <i>cultivation*</i> pursuant to s9(2) RMA (b) <i>forestry*</i> pursuant to s9(2) RMA that does not meet <i>condition*</i>, standard or term of Rule 12-2 (b)(iii) or (c) (c) the drilling, construction or alteration of any <i>bore*</i> pursuant to s9(2) RMA (d) activities restricted by s13(1) or s13(2) RMA in the <i>beds*</i> of <i>river*</i>[^] or <i>lakes*</i>[^] (e) the taking, using, damming or diverting of <i>water*</i> pursuant to s14(2) RMA (f) <i>discharge*</i> of <i>water*</i> or <i>contaminants*</i>[^] into <i>water*</i> or onto or into <i>land*</i>[^] pursuant to s15(1) or s15(2A) RMA. 	Discretionary		Control/Discretion Non-Notification

Rule	Activity	Classification	Conditions/Standards/Terms	Control/Discretion Non-Notification
<p>12-7 <u>Some activities within rare habitats* and threatened habitats*</u></p>	<p>This rule does not apply to the activities described in paragraphs (a) to (f) where they are carried out for the purposes of protecting or enhancing the habitat, including the control of pest animals and pest plants.</p>			
<p>12-7 <u>Some activities within rare habitats* and threatened habitats*</u></p>	<p>Except as regulated by Rules 13-2, 13-10, 13-22, 15-5B, 15-9, 16-3, 16-5, 16-6, 16-8 in relation to any existing small dam structure[^], 16-13 and 16-14, any of the following activities within a rare habitat* or threatened habitat*:</p> <p>(a) <u>vegetation clearance*, land disturbance* or cultivation* pursuant to s9(2) RMA</u></p> <p>(b) <u>forestry* pursuant to s9(2) RMA that does not meet condition[^], standard or term of Rule 12-2 (b)(iii) or (c)</u></p> <p>(c) <u>the drilling, construction or alteration of any bore* pursuant to s9(2) RMA</u></p> <p>(d) <u>activities restricted by s13(1) or s13(2) RMA in the beds[^] of rivers[^] or lakes[^]</u></p> <p>(e) <u>the taking, using, damming or diverting of water[^] pursuant to s14(2) RMA</u></p>	<p>Non-complying</p>		

Rule	Activity	Classification	Conditions/Standards/Terms	Control/Discretion Non-Notification
	<p>(f) <u>discharge[^] of water[^] or contaminants[^] into water[^] or onto or into land[^] pursuant to s15(1) or s15(2A) RMA.</u></p> <p><u>This rule does not apply to the activities described in paragraphs (a) to (f) where they are carried out for the purposes of protecting or enhancing the habitat, including the control of pest animals and pest plants.</u></p>			

Glossary

Operation means the use of any structure, system, facility or installation, including ancillary resource use. For the purposes of Chapters 3 and 7 only, 'ancillary resource use' in this definition excludes the discharge of contaminants and the abstraction of water. This exclusion does not apply to ancillary resource use for the purposes of renewable electricity generation or which is permitted by a rule.