

Overall Plan Hearing

Volume 1 - Part 2

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2.1 Introduction

This decision of the Regional Council is made by the Overall Plan Hearing Panel. The decision deals with those submissions that were made on matters arising across the POP, and comprises:

- Part 1 (Introduction, Comments Forming Part of All Decisions and Conclusion) of this Volume;
- this Part, where, among other things, we set out our evaluation of the submissions and our reasons for accepting or rejecting them;
- Part 2 of Volume 2, which sets out the summary of submissions and further submissions and our decision in respect of each; and
- the relevant provisions shown in the marked-up version of the POP in Volume 3 (clean version in Volume 4).

The Overall Plan Hearing Panel comprised:

- Joan Allin (Chairperson);
- Jill White; and
- Rob van Voorthuysen.

The hearing was held on 1, 2, 3 and 4 July 2008.

The first part of the Overall Plan hearing provided an opportunity for submitters who wished to present all, or part, of their submission or further submission (which we refer to either as separate terms or as submission) on different topics at one time. For those submissions, all relevant Hearing Panels sat together. Those appearances and the submissions are dealt with in the Parts of this Volume that deal with the topic(s) addressed.

This Part is restricted to the submissions that raised issues across the POP.

2.2 Submissions and Further Submissions Received

The submitters and further submitters on the Overall Plan are listed below. Further submission numbers are those above number 473.

Submission No.	Submitter
50	Affco New Zealand Ltd - Manawatu
51	Affco New Zealand Ltd - Wanganui Imlay
296	Alan William Cooper
401	Alison Margaret Mildon
327	Alistair William Parsons
521	Allco Wind Energy NZ Ltd
259	Andrew Todd Blatchford
297	Anthony David Rogers
147	Antonie Hendrik Eggink
391	Arbor Management Limited
344	Brian Leslie Doughty
237	Bruce & Marilyn Bulloch
436	Bruce & Pamela Hodges
93	Bruce Cave
368	Bruce Noel Rhodes

252	Byford's Quarries Ltd
287	CPG New Zealand (formerly known as Duffill Watts Consulting Group)
126	Cammock Farms Ltd
209	Charles Rudd
101	Charlie Pedersen
470	Colin Bond
114	David Matthew Collis
262	Dermot Miller
443	Diana Baird
456	Ecologic Foundation
118	Emergency Management Academy of New Zealand
356 and 529	Environment Network Manawatu
385	Environment Waikato
501	Ernslaw One Ltd
431	Euan Hodges
426 and 533	Federated Farmers of New Zealand Inc (Federated Farmers)
398 and 487	Fonterra Co-operative Group Limited (Fonterra)
299	G 4 B Trust
224	G M & S M Deadman Partnership
268 and 525	Genesis Power Ltd (Genesis)
466	George McNie
369	Grant John Stephens
314	Griffin Ag-Air Ltd
139	Hainsworth - Kelfer Partnership
236	Hamlin Family Trust
331	Hancock Forest Management (NZ) Ltd
49	Hans Brink
160	Harvey James Falloon
144	Heather Oliver
153	Higgins Group (Higgins)
266	Himatangi Station Ltd
2	Hoane Titari John Wi
182	Horizons Regional Council
280 and 515	Horowhenua District Council
381	Horowhenua District Council, Manawatu District Council, Rangitikei District Council, Ruapehu District Council, Taranaki District Council and Wanganui District Council jointly
357 and 531	Horticulture New Zealand (Horticulture NZ)
142	Ian Edward Roke
434	Ian Grant
59	ICHYTHUS Consulting
512	Inghams Enterprises (NZ) Pty Limited
371	J M & L C Whitelock & B J & C J Whitelock
298	James Arthur Chesswas
400	James Bull Holdings Limited
109	James Edmund Fahey
203	Jamieson Agriculture Ltd
432	Jennifer Hodges
366	Jill Strugnell
293	Jim Stewart
355	John Batley

112	John Francis Fahey
211	Julie Campbell
425	L M Terry
47	Lakeview Farm Ltd, Ohurangi Farm Ltd and Everton Farm Ltd
235	Landcorp Farming Ltd
440	Landlink Ltd
388	Laura M Sivyer
221	Lionel West
220	Lionel West In Association With Property Rights in NZ
77	Lyn Neeson
433 and 506	Manawatu Branch of NZ Green Party
340 and 507	Manawatu District Council
389	Manunui No 2 Trust, Kiwitahi Trust, Taurewa 5 West Trust
437	Margaret Millard
46	Marion Gillard
110	Mary Gabrielle Fahey
394	Mason Stewart
256	Matt Bell
522	Meridian Energy Limited
141	Mervyn H George
444	Middle Districts Farm Forestry Association
359 and 519	Mighty River Power Limited
418	Milton Charles Pedley
372 and 492	Minister of Conservation
243	Ministry of Economic Development
190	Model Dairy Trust
1	Muaupoko Co-operative Society
423	Murray Charles Lowe
102	Neil Alan Filer
35	Neville Pearson
530	New Zealand Contractors Federation
330 and 502	New Zealand Defence Force (NZDF)
149	New Zealand Fire Service Commission
353	New Zealand Historic Places Trust - Central Region
419	New Zealand Institute of Forestry
274	New Zealand Pharmaceuticals Limited
180	Ngati Kahungunu Iwi Incorporated (NKII)
228	Ngāti Pareraukawa
520	NZ Forest Managers Ltd
306	NZ Recreational Canoeing Association
8	NZ Transport Agency (formerly known as Land Transport New Zealand)
498	NZ Transport Agency (formerly known as Transit New Zealand)
97	Olwen Burbery
161	ONTRACK (New Zealand Railways Corporation) (ONTRACK)
24	Pahiatua on Track Inc
241 and 481	Palmerston North City Council (PNCC)
295	Pat Kelly
452	Paul & Monica Stichbury
457	Paul Barber

111	Peter Graham Fahey
143	Philipa Ann Roke
303	Pirie Consultants Ltd, Pacific Farms Ltd, Hoult Contractors Ltd, Keegan Contractors Ltd, Parauui Contractors Ltd, Ryman Healthcare Ltd, M & M Earthmovers Ltd, Titan1 Ltd and O'Hagan Contracting Ltd
278	Poplar Partnership Ltd
251 and 526	Poultry Industry of NZ; Tegel Foods Ltd; Turks Poultry & Mainland Poultry Group
272	Powerco Limited
393	Property Rights in New Zealand Inc
174	Public Health Services - MidCentral Health
494	Rangitikei Aggregates Ltd
346 and 517	Rangitikei District Council
54	Richard Craig Neale
403	Richard Forgie
162	Riverside Agricultural Ltd
117	Robert John Castles
442	Robert Leendert Schraders
103	Rod Southgate
535	Royal Forest & Bird Protection Society of New Zealand Inc
151 and 495	Ruapehu District Council
380	Rural Women New Zealand
206	Sandra Rogers
116	Sharn Hainsworth
64	Shaun Graham Forlong
267	Shell NZ Ltd, BP Oil NZ Ltd, Mobil NZ Ltd & Chevron NZ (oil companies)
467	Shona Paewai
198	Stuart McNie
396	Sue Stewart
213	Tahamata Incorporation
410	Tamahaki Incorporated Society
238	Tanenuiarangi Manawatu Inc
374 and 490	Taranaki / Whanganui Conservation Board
172 and 500	Tararua District Council
395 and 527	Tararua-Aokautere Guardians Inc (TAG)
230	The Aggregate & Quarry Association of New Zealand Ltd (AQA)
468	Tony Paewai
265	Transpower New Zealand Ltd (Transpower)
511	TrustPower Limited
471	Tullochgorum Partnership
115	Vector Gas Limited
407	Vision Manawatu
152	Visit Ruapehu
12	Waikato District Health Board - Public Health Unit
260	Walter Edward Blatchford
351 and 509	Wanganui Branch of the National Council of Women of New Zealand
291 and 532	Wanganui District Council
61	White Heron (DVKE) Ltd (White Heron)
294	William Pehi Snr

2.3 Reports, Evidence and Other Material

In terms of the Council, we received reports and evidence and heard in person from:

- Helen Marr, a planner and the Council's One Plan Manager;
- Phillip Percy, a consultant planner;
- Andrea Bell, an environmental consultant; and
- Bettina Anderson, a freelance science communications consultant and Managing Director of Pukekoblue Science Communication Ltd.

We received reports and heard from John Maassen, resource management lawyer. We also received written reports from Richard Thompson, meeting facilitator, on relevant pre-hearing meetings.

In terms of submitters, we heard in person from:

- Dr Terry Kelly (Chairperson of Environment Network Manawatu) and Sally Pearce for Environment Network Manawatu;
- Amber Brown (Planner with Harrison Grierson Consultants Ltd) and Cobus van Vuuren (Member) for AQA;
- Charlotte Crack (Planner with Beca Carter Hollings & Ferner Ltd), Kerry Stewart (Risk Management Coordinator) and Mitchell Brown (Assistant Fire Region Commander) for NZ Fire Service Commission;
- Margaret Millard;
- Karen Frew (Technical Regulation Manager) and Catherine Ross (Advisor Environmental Matters) for Powerco;
- Maurice Black (Resource Management Consultant) for NKII;
- Paul Majurey (Legal Counsel), Robert Weir (General Manager - Production), Jarrod Bowler (Environmental Manager - Renewable Energy) and Richard Matthews (Resource Management Adviser and Partner in Mitchell Partnerships) for Genesis;
- Barclay Rogers (Legal Counsel), John Hutchings (General Manager - Sustainable Production), Murray Holdaway (dairy farmer), Dr Brent Layton (Chief Executive and Chief Economist of New Zealand Institute of Economic Research Inc) and Nathan Baker (Senior Resource Management Consultant with Tonkin & Taylor Ltd) for Fonterra;
- Sarah Ongley (Legal Counsel), Robert Hunter (Manager - Environmental Strategy and Policy) and Richard Peterson (an Associate and the Wellington Planning Manager of Harrison Grierson Consultants Ltd) for Mighty River Power;
- Kerry Watson (Manager - Environment) and Robert Schofield (Senior Principal of Boffa Miskell Ltd) for TrustPower;
- James Hardy (Legal Counsel) and Julian Watts (Resource Management Planner) for the Minister of Conservation;
- Antonie Eggink;
- Andrew Green (Legal Counsel) and David Forrest (Principal Planner, Good Earth Consulting Limited) for Horowhenua District Council, Wanganui District Council, Rangitikei District Council, Ruapehu District Council, Manawatu District Council and Tararua District Council (TA Collective);

- Pauline Love (Team Leader for Strategic Development), David Hammond (Chief Executive) and Sue Morris (Mayor) for Ruapehu District Council;
- Shane McGhie (Planner) for Wanganui District Council;
- Jill Strugnell;
- Peter Wood (Senior Health Protection Officer) for Public Health Services - MidCentral Health;
- Chris Keenan (Manager - Resource Management and Environment) and Lynette Wharfe (Consultant with The Agribusiness Group) for Horticulture NZ;
- Julie Ireland (Contractor Policy Analyst), Brian Doughty (President Wanganui Federated Farmers), Gordon McKellar (President Manawatu Rangitikei Federated Farmers), Lyn Neeson (President Ruapehu Federated Farmers) and Andrew Day (President Tararua Federated Farmers) for Federated Farmers;
- Jonathan Procter and Ian Bell for Taranaki / Whanganui Conservation Board;
- Rob Owen (Environmental Manager) for NZDF;
- Winston Oliver;
- Brian Smith for White Heron;
- Bruce Hodges;
- Euan Hodges;
- Ian Moore for Byford's Quarries;
- Kahikatea Dickinson for Manunui No 2 Trust, Kiwitahi Trust and Taurewa 5 West Trust;
- Matt Bell;
- Shaun Forlong;
- John Whitelock for JM & LC Whitelock & BJ & CJ Whitelock;
- Shannon Johnston (Legal Counsel) and David Murphy (Senior Policy Planner) for PNCC;
- Pat Kelly; and
- Cliff Wilson (Group Finance Manager) for Higgins.

We also received written evidence, legal submissions or material that was not presented orally at the hearing from:

- Peter Everton (Director) for Lakeview Farm, Ohurangi Farm and Everton Farm;
- Gemma Moleta (Planner, Harrison Grierson Consultants Ltd) for Poultry Industry of NZ, Tegel Foods, and Turks Poultry and Mainland Poultry Group;
- David le Marquand (Director with Burton Planning Consultants Ltd) for the oil companies;
- David le Marquand (Director with Burton Consultants Ltd) for Transpower; and
- Rob Robson (Manager, Petroleum and Minerals Policy) for the Ministry of Economic Development.

In response to matters raised by the Panel, we also received additional material from Paul Majurey, Barclay Rogers and Sarah Ongley.

2.4 Evaluation and Reasons

The following sections of this Part set out our evaluation of the submissions and our reasons for accepting or rejecting them. The evidence and submissions are not summarised in any detail in this decision. However, specific matters are referred to as appropriate. Issues about versatile soils are dealt with in Part 7 (General Hearing) of this Volume in the reasons relating to Chapter 3 of the POP.

We deal first with legal matters and then the principal issues of contention. We then deal with remaining issues of contention, generally using the same headings as in Volume 2, which are based on those used by Ms Marr in her Planning Evidence and Recommendations Report.

Where we have dealt with a topic in principal issues of contention, we do not repeat the reasons in the remaining issues.

Many of the matters raised in the submissions that have been coded to the Overall Plan topic are also raised in the substantive provisions of the POP dealt with in other Parts of this Volume (Te Ao Māori Hearing, Land Hearing, Biodiversity and Heritage Hearing, Coast Hearing, General Hearing and Water Hearing). The reasoning is more appropriately dealt with in the context of the substantive matters in those Parts of this Volume than here.

Submitters should therefore carefully read all components of the decision including this Part, Part 1 of this Volume, the relevant substantive Parts of this Volume, the relevant Parts of Volume 2 and the relevant POP provisions in Volume 3 (clean version in Volume 4) to see how their concerns have been dealt with.

2.5 Legal Matters

Relevant legal matters are set out in Part 1 of this Volume. Legal matters of particular relevance here are addressed in the context of the principal issues of contention.

Questions arose over incorporating documents by reference in the Regional Policy Statement (RPS) part of the POP (Part I). Clause 30 of Part 3 of Schedule 1 to the RMA refers to incorporating documents by reference into a plan or proposed plan. Schedule 1AA refers to incorporating documents by reference into national environmental standards, national policy statements and New Zealand coastal policy statements. There is no reference in either Schedule to incorporating documents by reference into an RPS.

The Panel asked questions of some lawyers about the legal authority for incorporating documents by reference in the RPS part of the POP.

We agree with Mr Maassen and Ms Ongley that simply referring to schedules of the POP in the RPS is cross-referencing within one document, not incorporating a document by reference. The key is to ensure that it is clear for each schedule whether it is a component of Part I or Part II of the POP (and relevant Hearing Panels have done that).

In the event that we did not accept that, Ms Ongley submitted that the absence of reference in Part 3 of Schedule 1 or Schedule 1AA to incorporating documents by reference into the RPS was not an impediment to their being incorporated.¹

In contrast, Mr Maassen advised that there is no authority in the RMA to incorporate documents by reference in an RPS and we understood him to conclude that, therefore, documents may not be incorporated by reference into the RPS.² It seems to us that this is the correct legal situation based on the wording of Schedules 1 and 1AA.

Some Panels concluded that, if the document was simply being referred to as an example of how something could be achieved, the document was not being incorporated by reference. That approach was based on the evidence of Mr le Marquand, a planning witness for Transpower, to the General hearing. In relation to Policy 3-2, Mr le Marquand advised "... I suggest that the provisions could be reworded to indicate how the desired outcomes could be achieved. In other words, to clarify that the reference to the specific document is an example of a means of achieving a policy outcome rather than being an effective default standard."³

Part 8 (Water Hearing) of this Volume deals with the issue of documents to be incorporated by reference changing during the process of the hearing in response to submissions.

2.6 Principal Issues of Contention

The principal issues of contention are:

- (a) Should the POP be withdrawn?
- (b) Can one document incorporate the RPS, Regional Plan and Regional Coastal Plan?
- (c) Was the consultation appropriate?
- (d) Has there been compliance with s 32 of the RMA?
- (e) What wording of the POP needs to be addressed?
- (f) What should be done about the evidence presented in this hearing that relates to all hearings?
- (g) Are the maps adequate?
- (h) Should the schedules be part of the RPS or the Plan part of the POP?
- (i) What are the various Government energy-related policies and their relevance?
- (j) What should the definition of "property" be?

2.6.1 Should the POP be withdrawn?

Many submitters sought that the POP be withdrawn.⁴ Others wanted the POP to be adopted⁵ but most, if not all, of those submitters sought changes to various provisions of the POP.

¹ Ongley, Supplementary Legal Submissions, 18 July 2008, pages 4 - 8.

² Maassen, Supplementary Section 42A Report, 3 July 2008, pages 4 - 5 paras 5 - 9.

³ le Marquand, Statement of Supplementary Evidence, 20 August 2009, page 6 para 4.6.

⁴ For example Ruapehu District Council, Palmerston North City Council, Tararua District Council, Wanganui District Council, Rangitikei District Council, Pirie Consultants and others, NZ Contractors Federation, Parsons.

⁵ For example Land Transport NZ, NZ Fire Service, Poultry Industry of NZ and others.

Before the hearings began, Mr Green lodged a memorandum⁶ on behalf of what we are referring to as the TA Collective by letter dated 13 May 2008. The memorandum referred to two “fundamental issues” that had been raised by the submissions of the territorial authorities that comprise the TA Collective:

- (a) non-compliance with s 67 of the RMA - an absence of guiding policies within the Regional Plan and a “disconnect” between the RPS and that Plan; and
- (b) a challenge to the adequacy of the s 32 evaluation and consultation.

In relation to the first issue, the memorandum stated that the issue “raises a fundamental legal and planning issue which, if correct, has potentially far reaching implications for this hearings process. It may necessitate a finding that the plan itself is ultra vires in its present form. We cannot readily see how this can be remedied without a substantial re-draft of the document which may necessitate re-notification of it. Further, there is an issue concerning how any changes to the RPS as a result of submissions received can be carried into the Plan, particularly given its structure-ie inadequate policy framework.”⁷

The memorandum sought, among other things, that these issues be the subject of a hearing, and preferably a decision, prior to the Panels embarking on consideration of other specific issues.

In response, we received a memorandum of counsel for the Regional Council⁸ submitting, among other things, that the TA Collective was trying “to derail the hearing process already established” and that the Overall Plan hearing was the place for the concerns to be addressed, not some entirely new process in the nature of a *voire dire*.⁹

The issues were addressed when the TA Collective appeared at this hearing.

Mr Green’s submissions raised two key points:

- (a) that no substantive objectives were included in Part II of the POP (there was only one objective in Chapter 11), despite their inclusion being a mandatory requirement under s 67(1) of the RMA; and
- (b) if the objectives contained in Part I of the POP are to apply to both Parts, such reliance upon Part I is inappropriate in that it fails to acknowledge that the two documents serve different statutory purposes.¹⁰

He submitted that the absence of objectives is significant as they are necessary in order to empower any rules in Part II. In the drafting process, policies, and in turn rules, cascade down from the POP’s objectives. There cannot be rules where there are no objectives. He submitted that “in the absence of any objectives in Part II, the rules contained in Part II are ultra vires the RMA and cannot be enforced”.¹¹

In relation to the objectives in Part I, Mr Green submitted that “it is inappropriate and inexact for objectives that have been drafted for the Regional Policy Statement context to be applied without amendment to the Regional Plan. The two documents have different purposes ... and hold

⁶ Cameron and Green, Memorandum of Counsel for Territorial Local Authorities, undated.

⁷ Ibid, para 4.

⁸ Maassen, Memorandum of Counsel for HRC, 15 May 2008.

⁹ Ibid, para 6.

¹⁰ Green, Legal Submissions, 3 July 2008, page 3 para 5.

¹¹ Ibid, page 3 para 8.

different positions in the hierarchy of planning documents. Accordingly the objectives of each must have a different focus.”¹² The TA Collective was also concerned that “the objectives proposed in Part I, are insufficiently linked, in subject and by cross-referencing, to the rules of Part II”.¹³

In conclusion, the TA Collective sought, among other things, that the whole POP be withdrawn and that the Overall Plan Hearing Panel “consider and form a view on the substantive matters raised by them, at this early stage in the proceedings. These matters are, it is submitted, fundamental, and affect the Plan in its entirety. It is, therefore, desirable ... for the [Panel] to determine and advise whether it accepts that there are fundamental structural errors or omissions going to the heart of the Plan, so that the costs of further hearings over the next 9 months can be avoided”.¹⁴

Mr Maassen discerned two discrete issues:

- (a) whether or not mandatory statutory requirements are met; and
- (b) whether they are met in a way which best enables the Regional Council to meet its statutory obligations.

In relation to the first issue, Mr Maassen noted that Chapter 11 has an objective (Objective 11-1) and the Regional Plan has its own set of policies. He submitted that a suggestion that there are no objectives and policies in the Regional Plan (and therefore that the Regional Plan does not meet the requirements of the RMA) is not valid.¹⁵

We concluded that, as there is an objective in the Regional Plan part of the POP, the TA Collective could not succeed in a “king hit” based on there being no objectives in Part II of the POP.

After the hearing, we issued a minute dated 10 July 2008 with the topic “Section 32 Report”. In relation to the issues raised by Mr Green, we said:

In terms of Mr Green’s submissions, we are of the view that it would be premature to conclude now that there are fundamental structural errors or omissions going to the heart of the Proposed One Plan that would require it to be withdrawn immediately. While we accept that there are issues relating to the structure and formatting of the Proposed One Plan, our current view is that these are matters to be addressed during the upcoming substantive topic-based hearings. Only then will it be possible to determine the extent to which any issues are fatal to the Proposed One Plan or can be remedied either by decisions of the hearing panel or by variation(s).

As is apparent from other Parts of this Volume, in response to submissions (including those of the TA Collective), various Panels have amended, removed or added objectives and policies and moved some from Part I to Part II of the POP. We have concluded that there is no need for the POP to be withdrawn.

2.6.2 Can one document incorporate the RPS, Regional Plan and Regional Coastal Plan?

While there were a number of submissions in support of the POP being a composite planning instrument¹⁶, there were other submissions saying that

¹² Ibid, page 4 para 12.

¹³ Ibid, page 6 para 21.

¹⁴ Ibid, page 10.

¹⁵ Maassen, Section 42A Report, 20 May 2008, paras 48 - 49.

¹⁶ For example ONTRACK, Strugnell.

there needed to be separate RPS and Regional Plan documents.¹⁷ The short answer to this is that s 78A of the RMA provides for composite planning instruments combining the RPS, Regional Plan and Regional Coastal Plan into one document.

2.6.3 Was the consultation appropriate?

Some submitters said that the Council had not met its RMA obligations in terms of consultation¹⁸, some said that consultation had not been done properly¹⁹, some said that if all the territorial authorities have a common concern, they may have a point²⁰, and others commended the Regional Council for the quality of the process.²¹

We received extensive legal submissions and evidence about the consultation process adopted by the Council.

Mr Wood stated “the opportunities provided by the council for consultation with the public health service on the One Plan were sufficient for us to provide the input we believed necessary.”²² Mr Watts confirmed in his evidence that, in relation to the consultation required by the RMA with the Minister of Conservation regarding the Regional Coastal Plan, “the level and quality of consultation has been easily sufficient”.²³

Mr Maassen said that, as a general proposition, it is for the Regional Council to decide how to observe statutory requirements for consultation.²⁴ He drew our attention to the consultation requirements in clauses 2 and 3 in Schedule 1 to the RMA. He explained the various provisions to us in detail and provided case law to explain the consultation requirements.²⁵

Ms Anderson’s Section 42A Report provided detailed evidence about the consultation process, with an entire volume of supporting documentation. We do not summarise what were told, but we were impressed with the various steps that had been taken in relation to consultation.

While the consultation process began as early as 2004, Ms Anderson said that early in 2005 three key consultation audiences were identified - general public, stakeholder and iwi.²⁶

In terms of consultation with Māori, we note that Ms Anderson said that extensive reference was made to the Guidance Notes on *Consultation Process and Consultation with Tangata Whenua* on the Quality Planning website²⁷ and that one of four key elements of the consultation process was developing a consultation strategy for involving tangata whenua in the consultation process.²⁸

¹⁷ For example Bell.

¹⁸ For example Muaupoko Co-operative Society.

¹⁹ For example Hainsworth, Rudd, Mananui No 2 Trust and others, Hodges.

²⁰ For example Wanganui District Council.

²¹ For example Landlink.

²² Wood, Horizons One Plan Oral Submission, undated.

²³ Watts, Statement in Support of Submissions (evidence), undated, para 17.

²⁴ Maassen, Section 42A Report, 20 May 2008, page 4 para 12.

²⁵ Ibid, pages 4 - 7.

²⁶ Anderson, Section 42A Report, undated, page 11 para 48.

²⁷ Ibid, page 5 para 19.

²⁸ Ibid, page 11 and see also pages 13 - 14 and 16 - 17.

We also note her remarks about consultation with key stakeholder groups, including the Minister for the Environment, Minister of Conservation, territorial authorities, farmers, industry groups, rural consultants, forestry interests, and Fish and Game.²⁹

Finally, we note that one of the core values that guided the entire consultation process was to “extend the invitation far and wide to consult with anyone, anywhere, anytime!”³⁰

We accept Mr Maassen’s conclusion³¹ that, on the basis of Ms Anderson’s evidence about consultation, the requirements of the RMA have been met or exceeded.

We also note that caucusing and discussions were ongoing throughout the entire POP hearing process and that the Council appointed a meeting facilitator to assist with that process.

2.6.4 Has there been compliance with s 32 of the RMA?

Many submissions summarised in Volume 2 under the heading “Compliance with s 32 and Cost-benefit Analysis” challenged the validity of the section 32 analysis. Where submitters referred to specific topics, they included dairy farming and agricultural activities³², water quality³³ and tackling the worst areas first and only after a full cost analysis.³⁴

As noted above, after the hearing, we issued a minute dated 10 July 2008 entitled “Section 32 report”. The relevant contents are:

3. We accept the general merit of the submissions made by Mr Rogers (paragraph 73 of his legal submissions) about the need for a robust cost/benefit analysis to be prepared by Horizons in relation to water quality and water quantity matters. We note the discussion at the hearing about rule 13-1 in particular. Mr Maassen, in his supplementary section 42A report, stated that he saw some utility in having an economic analysis of the alternatives before the water quality hearing on rule 13-1 and we accept that.
4. We agree with the evidence of Mr Hammond (his bullet points on pages 2 and 3 of his evidence) about the need for a robust cost/benefit analysis to be prepared by Horizons in relation to the regulation of highly erodible land (HEL) under rules 12-1 to 12-8.
5. We also agreed with the point made by Mr Peterson that care needs to be taken that the analysis does not focus on just one sector of the economy.
6. We have concluded that further section 32 analysis is needed to enable the panels to perform their statutory functions properly, particularly in relation to water quality, water quantity and HEL issues.
7. Our current concern with water quality relates to the proposed regulatory regime for achieving reductions in nitrogen leached from rural land uses compared to other potentially-available regulatory and non-regulatory regimes.

²⁹ Ibid, pages 9 - 10, 11, 14 - 15, 15 - 17, 18, 19 - 20 and 20 - 21.

³⁰ Ibid, page 6.

³¹ Maassen, Section 42A Report, 20 May 2008, page 7 para 19.

³² For example Pearson and more than 25 others, Fonterra, Millard.

³³ For example Batley.

³⁴ George.

8. Our concern with water quantity (or water allocation) matters is set out in paragraph 12 below.
9. Our concern with HEL relates to the regulatory component of the Proposed One Plan (regulatory compliance costs for landowners) compared to the regulatory regime in the operative plans, rather than the implementation of the voluntary SLUI. However, the situation with regard to the resource consents required with and without a Whole Farm Business Plan forms part of that regulatory component.
10. We anticipate proceeding with the land hearing as scheduled and reconvening the hearing at a later time, if necessary, to deal with the further section 32 analysis about HEL.
11. We ask that the parties consult among themselves (perhaps with relevant lawyers taking the lead, if that is suitable to them) with a view to agreeing on appropriate matters to be dealt with in the further section 32 analysis, the manner in which that analysis should be undertaken and the type of expertise required by those who will undertake it. The parties may want to consider if it is possible to agree on an independent expert who could conduct the analysis to the satisfaction of all the parties. We invite the parties to agree on draft wording for an appropriate Direction for me to issue. If there is a need for any further input from the hearing panel or myself to enable agreed draft wording, please let the Hearings Administrator know.
12. Subject to the analysis being wide enough so that it is not focussed on one sector of the economy, attached are preliminary thoughts from one panel member about matters that might be addressed in relation to water quality (rule 13-1) and HEL (rules 12-1 to 12-8) matters. While we do not provide similar detailed thoughts on water quantity, the panel is of the view that the section 32 analysis on water allocation should be wide enough to address matters such as the preferential treatment of some uses or sectors, the allocation of water when demand exceeds supply, and the appropriateness of allocation regimes when there is inadequate information.

In the end, it was for the relevant Hearing Panels dealing with the topics to progress s 32 matters. Chairperson's Minute #3, setting out the Land Hearing Panel's preliminary views, addressed the issue of the s 32 analysis. Paragraph 54 of that minute stated that, on the basis of the preliminary views in the minute, both the Overall Plan Hearing Panel and the Land Hearing Panel considered that, in relation to land management provisions, further s 32 analysis was no longer required. Reasons for that are also explained in Part 4 (Land Hearing) of this Volume.

In relation to water matters, Chairperson's Minute #6 addressed questions about the approach to non-point source pollution in relation to water quality and set out a number of questions that the Water Hearing Panel wanted addressed. Those matters were relevant to the s 32 analysis. The Water hearing received economic reports from Messrs Neild and Rhodes and issues relevant to s 32 are addressed in Part 8 (Water Hearing) of this Volume.

Finally, there are also issues about s 32 dealt with in Part 5 (Biodiversity and Heritage Hearing) of this Volume dealing with Schedule E habitats.

2.6.5 What wording of the POP needs to be addressed?

A number of submitters raised issues about drafting of the provisions.³⁵

³⁵ For example Tararua District Council, NZ Pharmaceuticals.

As noted in Part 1 of this Volume, in response to submissions, requests were made by members of various Hearing Panels for there to be a planning and legal audit of the provisions of the POP. The Council helpfully agreed to do this.

Mr Forrest said that throughout the Regional Plan part of the POP “there are many ‘conditions/standards/terms’ qualifying the rules of permitted activities which are uncertain or ambiguous in their interpretation and/or application”.³⁶ There was no dispute that ambiguity should be avoided. These matters are addressed by the relevant Parts of this Volume dealing with the rules in the relevant chapters.

The Minister of Conservation³⁷ sought that, for various cross-referencing between the Regional Plan and the RPS sections or between either of these and the NZ Coastal Policy Statement “terms such as recognise, will give particular consideration to, have particular regard for or provide for should be replaced by give effect to when referring to the relevant plan or NZCPS provision.”

As noted in Part 1 of this Volume, during the course of the hearings, it became increasingly complicated and confusing as to when “recognise and provide for”, “have particular regard to”, “have regard to” as well as various other forms of wording should be used. Various Panels received various different wording suggestions from officers and submitters and also legal input about using consistent language.

So, the general approach that has been adopted is that “recognise and provide for” should be restricted to matters expressly referred to in s 6 RMA and “have particular regard to” should be restricted to those in s 7. Otherwise, Panels have adopted either specific wording suitable to the provision or used “have regard to” consistently across the POP.

Mr Forrest raised concerns about the use of standards in the POP that appear to be arbitrary and referred to the water quality standards.³⁸ This is dealt with in Part 8 (Water Hearing) of this Volume.

2.6.6 What should be done about the evidence presented in this hearing that relates to all hearings?

A number of submitters at the Overall Plan hearing provided evidence about the organisation and its activities, the importance of the activities, general legal submissions, other matters of general relevance, and general comments or concerns about the POP.³⁹ Therefore, much of the information in the submissions, reports and evidence from the Overall Plan hearing is also relevant to all the other hearings. Consequently, a decision was made to make all the Overall Plan hearing materials available to all Hearing Panels.

³⁶ Forrest, Statement of Evidence, 17 June 2008, page 7 para 26.

³⁷ Minister of Conservation, submission 372-6.

³⁸ Forrest, Statement of Evidence, 17 June 2008, pages 10 - 11.

³⁹ For example Genesis, Fonterra, Mighty River Power, TrustPower, Watts for the Minister of Conservation, TA Collective, Ruapehu District Council, Horticulture NZ, Federated Farmers, Taranaki / Whanganui Conservation Board, NZDF, PNCC, Higgins.

From a wider perspective, there was also a direction made by the Chairperson on 11 July 2008 setting out a process for officers and submitters to minimise the need to repeat previous material that had already been presented.

2.6.7 Are the maps adequate?

A number of submitters expressed concerns about the scale of various maps in the POP.⁴⁰ Mr Forrest also referred to this in his evidence.

New Zealand Institute of Forestry sought mapping that would be “available to industry for incorporation into company GIS systems at little or no cost and that spatial data is linked to schedule codes; Create a web portal or disk for use by small scale players where the classifications and associated data can be easily scaled and matched against cadastral boundaries.”⁴¹ Ruapehu District Council also referred to either new maps or “access to the GIS tool to view data at a farm and community level”.⁴²

Relevant Hearing Panels have dealt with these matters in different ways and the relevant Parts of this Volume should be read to find the outcomes relating to the various maps. By way of example, the Land Hearing Panel has deleted Schedule A. In the Water hearing, Ms Clark demonstrated an electronic “Point Click” version of maps to identify various items referred to in the POP. We understand that this tool will be available to users of the POP. Also, the Water Panel has decided that the maps of Water Management Zones that were A4 sized in Schedule D should be amended to be A3 sized maps in Schedule AA. That Panel also noted that the actual boundaries of the various Water Management Zones and Sub-zones and the Schedule AB Values are specified in various tables by way of map references.

2.6.8 Should the schedules be part of the RPS or the Plan part of the POP?

Mighty River Power wanted any references in the RPS to any of the schedules to be removed and for a statement to be included that the schedules form part of the Regional Plan (Part II), not the RPS (Part I). Ms Ongley pointed out that having the schedules in Part II would enable individuals to seek a change through the private Plan change process.⁴³

Each Hearing Panel has made its own decision about the appropriate location for the relevant schedule(s) dealt with by it. Each schedule now specifies whether it is a component of Part I (the RPS) or Part II (the Regional Plan or, in the case of Schedule H, the Regional Coastal Plan). Most of the schedules are a component of Part II, rather than Part I, of the POP. The ones of most concern to Mighty River Power (Schedules B and E)⁴⁴ are a component of Part II. Schedule F remains a component of Part I.

2.6.9 What are the various Government energy-related policies and their relevance?

Section 7(j) of the RMA requires decision-makers to have regard to “the benefits to be derived from the use and development of renewable energy”.

⁴⁰ For example Pirie Consultants and others.

⁴¹ New Zealand Institute of Forestry, submission 419-24.

⁴² Ruapehu District Council, submission 151-9.

⁴³ Ongley, Supplementary Legal Submissions, 18 July 2008, para 1.2.

⁴⁴ Ibid, para 2.1.

Various lawyers and witnesses⁴⁵ drew our attention to various Government energy-related policies:

- (a) the National Policy Statement on Electricity Transmission 2008 (Transmission NPS);
- (b) the New Zealand Energy Efficiency and Conservation Strategy (NZECS);
- (c) the New Zealand Emissions Trading Scheme Framework (NZ ETS Framework)⁴⁶; and
- (d) the New Zealand Energy Strategy (NZES).⁴⁷

We asked Mr Majurey about the legal relevance of the documents and he helpfully provided a memorandum⁴⁸ explaining that. After we had heard from Mr Majurey, Ms Ongley also addressed these matters in her legal submissions. There seems to be no disagreement about the following.

Under ss 62(3) and 67(3)(a) of the RMA, an RPS and regional plan respectively must give effect to the Transmission NPS.

Under ss 61(2)(a) and 66(2)(c)(i) of the RMA, for an RPS and a regional plan respectively, the Council must have regard to management plans and strategies prepared under other Acts to the extent that their content has a bearing on the resource management issues of the Region. The NZECS was prepared under the Energy Efficiency and Conservation Act 2000 and, as Ms Ongley said, it does have a bearing on the resource management issues of the Region.

The NZECS has, as a target, "To have 90 per cent of electricity generated from renewable sources by 2025."⁴⁹

Mr Majurey's memorandum pointed out that there is no provision in the RMA which expressly includes non-statutory documents (NZ ETS Framework or NZES) as a mandatory or relevant consideration on a proposed RPS or regional plan. However, he said there is no statutory bar on what matters the Council may or may not have regard to in preparing the POP. He referred to an Environment Court case where a strategy that had not been prepared under legislation was considered and said the issue is relevance. He also said that the NZECS (a statutory document) is expressly supportive of the NZ ETS Framework and NZES. Therefore, he concluded that they should be considered in relation to the NZECS.

We record that, following the dates of the Overall Plan hearing, but during the course of the POP hearing process, the following occurred:

- (a) pursuant to s 12(3)(a) of the Energy Efficiency and Conservation Act 2000, the Minister of Energy and Resources gave notice of his decision (dated 3 August 2009) to replace NZECS. Nevertheless, the existing document remains relevant for the reasons explained above;
- (b) a proposed National Policy Statement for Renewable Electricity Generation was publicly notified on 6 September 2008.

⁴⁵ For example Majurey, Ongley, Peterson, Schofield.

⁴⁶ The Framework for a New Zealand Emissions Trading Scheme, September 2007.

⁴⁷ New Zealand Energy Strategy to 2050 - Powering Our Future, October 2007.

⁴⁸ Majurey, Memorandum of Counsel, 8 July 2008.

⁴⁹ NZECS, October 2007, page 12.

2.6.10 What should the definition of “property” be?

There were a few submissions about the definition of property.

Horizons Regional Council sought that a statement be added “Land is considered to be adjacent if it is only separated by a legal road.”⁵⁰ It seems to us that this is already addressed in part in the definition of allotment in the RMA. In addition, in the context of the POP, it is important for odour purposes, for example, that the property should stop at the road, so we do not accept the submission. We note that this is consistent with Ms Marr’s oral recommendation at the Water hearing.

Horticulture NZ sought that the definition refer to all land managed by the same business entity⁵¹ but we find that is not a suitable definition of property as it could include land in many different locations.

Murray Lowe sought that the definition should accommodate Maori land blocks.⁵² For the reasons explained in Ms Marr’s Planning and Recommendations Report dated May 2008, we do not accept his submission.

NZDF submitted⁵³ that reference to certificate of title should be omitted as some of its land is not in certificates of title and we accept that.

The definition of property has been revised to:

Property means one or more adjacent *allotments*[^] that are in the same ownership. A legal *road*[^] is considered a property for the purposes of this Plan.

2.7 Other Issues

2.7.1 Structure of the Proposed One Plan and Compliance with the RMA

The respective Regional Council and territorial authority functions are dealt with in the context of the Parts of this Volume dealing with various substantive topics. The LTCCP is a separate process from the POP.

The issue of incorporating documents by reference is dealt with in Part 8 (Water Hearing) of this Volume.

It is not legally possible to “future proof” the One Plan by referring to amendments to documents such as NZ Standards. Amendments to documents incorporated by reference into the POP can only be made through a Plan variation or change process.

The relevant Hearing Panel dealing with each topic has considered the links between Part I and Part II of the POP, the appropriate wording of objectives, policies and rules, and provided links that the Panel considered to be appropriate.

⁵⁰ Horizons Regional Council, submission 182-108.

⁵¹ Horticulture NZ, submission 357-25.

⁵² Lowe, submission 423-3.

⁵³ NZDF, submission 330-60.

Ecologic Foundation did not provide evidence that solving all the Region's environmental problems within one generation is realistically achievable.

2.7.2 Compliance with s 32 and Cost-benefit Analysis

We have already dealt with this in section 2.6.4.

2.7.3 Consultation

We have already dealt with this in section 2.6.3.

2.7.4 Terms Used Throughout the POP

The Water Hearing Panel has dealt with references to Water Management Zones and Sub-zones and any references throughout the POP have been changed consequentially. That Hearing Panel has also dealt with the issue of the term water body and also how to describe areas with a Value of Natural State.

The beginning of the Glossary explains that terms defined in the Glossary are shown with an asterisk.

RMA-defined terms are not included in the Glossary, as the RMA definition may change over time. In addition, with computer access, the RMA definitions are readily available. RMA-defined terms are, however, shown by using italics and a caret in the objectives, policies, rules, Glossary and most of the schedules. It became too complicated to identify them elsewhere so they are restricted to those places where it counts most from a legal perspective. There is an explanation at the beginning of the Glossary.

2.7.5 Other Matters to be Included

Relevant Hearing Panels have dealt with the substantive matters that have been raised here. The relevant Hearing Panels have addressed the wording for objectives and policies in the RPS and Regional Plan. They have also decided the matters raised here that relate to the substantive provisions.

For other matters, we adopt the reasons on page 83 of Ms Marr's Planning Evidence and Recommendations Report dated May 2008.

2.8 Conclusion

See Part 1 of this Volume.