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**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.

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

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

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

*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**

*Appellants*

*and* **MANAWATU-WANGANUI REGIONAL COUNCIL**  
*Respondent*

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**STATEMENT OF PLANNING EVIDENCE BY CLARE BARTON ON THE TOPIC  
OF BIOLOGICAL DIVERSITY ON BEHALF OF MANAWATU-WANGANUI  
REGIONAL COUNCIL**

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Dated: 31 January 2012



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**Introduction**

**Qualifications and experience**

1. My name is Julie Clare Barton and I am a Senior Consents Planner at Manawatu-Wanganui Regional Council (MWRC). The Regional Council's trading name is Horizons Regional Council. I have been employed by MWRC in this capacity since May 2010. I hold a Bachelor of Regional Planning degree (Honours) from Massey University, Palmerston North.
2. I have 22 years experience in New Zealand in the profession of planning. I have worked both as employee and consultant to local government authorities, the Ministry for the Environment and private consultancy firms. I was, until November 2010, a Director of the consulting firm Environments by Design Limited (EBD). EBD consulted predominantly in Palmerston North, Horowhenua, Taranaki and Wellington in relation to a range of resource management matters. I worked in the Resource Management Directorate of the Ministry for the Environment from 1991 to 1994 and worked on preparing recommendations to select committees on both the Resource Management Act and its first amendment. I have been involved in the development of District Plans and in various Private Plan Change applications. I have assessed and reported on many applications for Resource Consents, including matters that have been decided in Hearings and in the Environment Court.
3. I have worked for the Regional Council firstly on a consultancy basis within the Consents Section since December 2006 and in the Policy Section since 2009. I became involved in the preparation of the Proposed One Plan during the hearings phase.
4. I became an employee of MWRC in May 2010 and was seconded to work full-time in the Policy Section in 2011 to focus on the Proposed One Plan appeals process. During that time I have attended many meetings with

appellants and represented MWRC at all of the Court assisted mediation on this topic.

5. I am therefore familiar with the issues and process involved in the development of the Proposed One Plan and I have a good understanding of the issues that have arisen in the implementation of the provisions of the Proposed One Plan.
6. I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Notes. I agree to comply with that code of conduct.

### **Terms and Reference Material**

TEB	=	technical evidence bundle
NV	=	notified version of POP
DV	=	decisions version of POP
MV	=	mediated version of POP
MCB	=	mediation compilation bundle
MWRC	=	Manawatu-Wanganui Regional Council
PNPS BIO	=	Proposed National Policy Statement on Indigenous Biodiversity

### **Reference material supplied to the Court**

7. In my evidence I refer to two bundles of documents previously lodged with the Court by MWRC. These are the Technical Evidence Bundle (TEB) and Mediation Compilation Bundle (MCB). The specific parts of those bundles related to the topic of biological diversity are:
  - a. TEB, Volume 6, pages 2764 to 3002.
  - b. MCB, Memoranda TB1 to TB10.
8. I also refer to two additional documents previously filed with the Court. These are:
  - a. Record of Expert Conferencing on Schedule E, dated 8 June 2011.
  - b. Affidavit of Fleur Maseyk dated 6 December 2011 concerning jurisdictional question on biodiversity.

## Issues

9. My evidence is based on MWRC's understanding of appeal points that remain unresolved on the topic of biological diversity following Court assisted mediation.
10. I am not aware of any technical (non-planning) issues remaining unresolved from appeals to Schedule E *Indigenous Biological Diversity*. I consider Meridian Energy Limited was the only appellant to raise specific technical matters in relation to Schedule E. These appeal points were discussed and resolved at conferencing of ecologists on 8 June 2011. Amendments agreed at conferencing were discussed and agreed during Court assisted mediation on 17 June 2011<sup>1</sup> and the appellant confirms that it resolved its appeal points in the Memorandum of Counsel on behalf of Meridian Energy Limited Dated 9 December 2011.
11. For clarity I note here that apart from the amendments agreed for Schedule E, no amendments were agreed for the indigenous biological diversity provisions of Chapters 7 and 12 as a result of Court assisted mediation agreements.
12. I consider there are four significant areas in contention for indigenous biological diversity and these are:
  - a. **Key Issue 1:** Should indigenous biological diversity be managed on a region-wide or district scale? This issue arises from clarification of appeal points made by Federated Farmers of New Zealand and Property Rights in New Zealand which agreed to progress its appeal by amending its relief to be the same as that sought by Federated Farmers.<sup>2</sup>
  - b. **Key Issue 2:** The appropriate activity classification in rules for rare habitats, threatened habitats and at-risk habitats.

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<sup>1</sup> Memorandum dated 17 June 2011, MCB, TB 4.

<sup>2</sup> Memorandum dated 19 October 2011, MCB, TB 10.

- c. **Key Issue 3:** That the DV POP does not provide sufficient guidance to decision-makers on the use of offsets in making decisions on resource consents.
  - d. **Key Issue 4:** Should sites of rare habitat, threatened habitat and at-risk habitat be identified on maps in the POP?
13. Comment on other unresolved appeal points is made in tabular form in **Attachment 1.**

## Executive Summary

14. The POP is MWRC's full-scale review of the first set of resource management plans for the Manawatu-Wanganui Region. It consolidates the Regional Policy Statement, Regional Plans and Regional Coastal Plan for the Region into one document.
15. The POP focuses on four keystone environmental issues identified as a result of public consultation and confirmed by research of the MWRC's science team. The focus on four keystone environmental issues does not mean however that the remaining issues are unimportant.
16. Indigenous biological diversity is one of the keystone issues and the POP addresses this in the policy provisions of Chapters 7 (RPS), Chapter 12 (Regional Plan) and Schedule E. One key aspect of the provisions is that MWRC has taken responsibility for maintaining indigenous biological diversity in the Region.
17. There are to be four key issues of contention remaining from appeal points to the indigenous biological diversity provisions in the DV POP. I address these in the body of this evidence and come to the following conclusions.
- Key Issue 1:** Should indigenous biological diversity be managed on a region-wide or district scale?
18. I conclude that the regional scale approach to assessment of rare habitat, threatened habitat and at-risk habitat is appropriate and changing to a district scale assessment risks a deviation away from and a hindrance to

meeting the DV POP's regional objective for indigenous biological diversity due to the fragmentation of policy response.

**Key Issue 2:** The appropriate activity classification in rules for rare habitats, threatened habitats and at-risk habitats.

19. I conclude that the discretionary activity classification is sufficient to achieve the RMA's purpose with the support of the policies. In particular, policy 12-5 sends a clear signal that consent must generally not be granted unless specific criteria are met (Refer to **Attachment 3** for the wording of Policy 12-5). I am particularly encouraged by the results of recent implementation of the indigenous biological diversity provisions in Chapter 12 which are confirming they are achieving workable outcomes for consent holders, while ensuring protection of important areas of indigenous biodiversity.

**Key Issue 3:** That the DV POP does not provide sufficient guidance to decision-makers on the use of offsets in making decisions on resource consents.

20. I conclude that Policy 12-5 can benefit from amendments to clarify the avoid, remedy, mitigate hierarchy and assessment of offsets. I have provided my recommended amendments as track changes in **Attachment 3**.

**Key Issue 4:** Should sites of rare habitat, threatened habitat and at-risk habitat be identified on maps in the POP?

21. I conclude that the "real-time, as required" site assessment has considerable practical advantages for both landowners and MWRC in managing activities in rare, threatened and at-risk habitats. It allows an integrated approach to assessing the effects of an activity that in most cases avoids both disturbance of the habitat and the need for a resource consent. I therefore propose that no changes be made to the current approach in the DV POP and that these sites not be included in maps in the POP.

22. I address other unresolved appeal points in **Attachment 1** and conclude:
  - a. Operation of existing structures should be included in Policy 7-1 along with the existing references to maintenance and upgrade.

- b. Clarify the wording of Policy 7-2A to make the consideration of indigenous biological diversity mitigation offsets not obligatory.
- c. It is appropriate that Policy 7-2A require a consideration of the existing use of production land.
- d. Definition of net indigenous biological diversity gain is not considered necessary.
- e. Changes to Policies 12-5A and 12-5 and Rule 12-6 seeking the deletion of cultivation are not supported as the effects of cultivation in rare, threatened and at-risk habitats need to be assessed.
- f. Alter Policy 12-6(a)(i) to provide that all three sub-clauses stand on their own and that if any of the provisions apply then the habitat is considered representative and make changes to provide greater linkages.
- g. Provision should be made for allowing pest control for the purpose of protecting or enhancing the habitat. Changes to Rule 12-6 are proposed.

## **History of POP and key environmental issues**

### **Identification of keystone environmental issues**

- 23. MWRC considered that progress under its first generation of resource management plans was slow because it tried to spread its finite resources over all of the many issues identified during development of the plans. In developing the POP a deliberate decision was made to identify the keystone environmental issues for the Region and direct resources to make significant progress on these.
- 24. I have previously provided evidence to the Court summarising the development of the POP<sup>3</sup>. In that evidence I outline the process used by MWRC during development of the POP and how this led to identification of four keystone environmental issues: surface water quality degradation,

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<sup>3</sup> Barton C, 15 December 2011: OVERVIEW STATEMENT, AS DIRECTED BY JUDGE BP DWYER (18 MAY 2011).

increasing water demand, unsustainable hill country land use and threatened indigenous biological diversity.

25. These environmental issues were identified from the results of public consultation and confirmed by research done by the Regional Council's science team.

### **Biological diversity as a keystone environmental issue**

26. The evidence of Fleur Maseyk<sup>4</sup> describes the loss of indigenous vegetation cover in the Region, the impacts of this loss and the continued pressures on and vulnerability of indigenous biological diversity. This evidence contains a helpful summary of the issue and I repeat it below for ease of reference:

#### **Key Messages**

1. Much of the remaining indigenous vegetation cover across the Region is of high ecological value.
2. Without protection, indigenous biodiversity will continue to decline and ultimately disappear from our Region.
3. Decline in indigenous biodiversity translates to a loss of ecosystem functions and processes on which we rely. Loss of indigenous biodiversity is a loss of an invaluable resource.
4. Small, modified and fragmented patches of indigenous biodiversity are worthy of protection as they continue to contribute to the landscape by way of provision of 'stepping-stones' and food sources. Protection of these areas now is providing indigenous biodiversity insurance for the future by ensuring the persistence of these species through time and retaining the potential for recovery.
5. Although reduced from the intensive activities of the 19<sup>th</sup> and 20<sup>th</sup> centuries, direct human pressures (e.g. vegetation clearance and wetland drainage) still exist. These pressures require a policy response.
6. Non-human impacts (namely those of invasive pest species) represent the greatest threat to the long-term viability of our indigenous biodiversity. This ubiquitous threat also requires a policy response to ensure effective protection of indigenous biodiversity.

27. Biological diversity management fits well with MWRC's other functions, including plant and animal pest management and its provision of advice and grants for improving the state of significant habitat areas. District Councils in this Region do not have the in-house expertise to implement biological diversity rules in the same way that MWRC can. Taking the lead role in

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<sup>4</sup> Maseyk, F, undated: Section 42A Report, TEB, pages 2783 – 2797.

managing indigenous biological diversity complements the other work of the Regional Council.

### **Broad Planning framework in the DV POP for biological diversity**

28. The key elements of the planning framework within the DV POP for biological diversity are:
  - a. Objective 7-1 addresses the indigenous biological diversity issue by seeking to *protect areas of significant indigenous vegetation and significant habitats of indigenous fauna and maintain indigenous biological diversity, including enhancement where appropriate.*
  - b. MWRC takes responsibility for establishing objectives, policies and methods (including rules) for maintaining indigenous biological diversity using a region-wide approach. The provisions in the DV POP provide for both regulatory and non-regulatory methods.
  - c. A framework is established for identifying what is significant vegetation or habitat by classifying remaining habitat into rare habitat, threatened habitat, or at-risk habitat categories. These habitat categories are captured by rules in the DV POP. Habitat not falling into these categories is not regulated in the DV POP. This habitat classification is how MWRC intends to give effect to its responsibility to maintain biological diversity in the Region.
  - d. The means of classifying habitats is provided in Schedule E in which the characteristics of the habitat types are described. This provides the basis for identifying the types of habitats and the sizes of those habitats that are considered significant.
  - e. The DV POP also contains consideration of biodiversity in other rules which are not the subject of this hearing. For example a separation distance of 50m is required between farm animal effluent discharges and areas identified as rare, threatened or at risk habitats [DV POP, Rule 13-6, page 13-17].
  - f. The rules in the DV POP allow the Regional Council to manage the effects on the habitats that currently exist within the Region from human activities. The rules do not prevent the loss of habitat due to

pests, grazing by animals or decline over time. Protecting biodiversity from this type of loss, and improving the condition of habitats, is achieved by the other functions of the Regional Council which are set out in the non-regulatory policies and methods of the DV POP and cover pest control and fencing and provision of economic incentives such as grants and rates relief.

### **Location of biological diversity provisions in the DV POP**

29. Provisions relating to indigenous biological diversity are found in several different locations in the DV POP. I have detailed these below both for information and to provide an overview of how the policy provisions fit together. The specific provisions relevant to indigenous biological diversity in the DV POP are:

#### **Chapter 7 (DV POP Part I - the Regional Policy Statement)**

##### Section 7.1.2 (Scope and Background)

##### Issue 7-1 Indigenous biological diversity

##### Objective 7-1 Indigenous biological diversity

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

##### Policy 7-2A Regulation of activities affecting indigenous biological diversity

##### Policy 7-4 Proactive management of indigenous biological diversity

##### Policy 7-5 Fostering an ethic of stewardship

##### Policy 7-6 Pest Plants and pest animals

##### Method 7-1 Wetlands - Biodiversity

##### Method 7-2 Forest Remnants - Biodiversity

##### Method 7-3 Sites of Significance - Aquatic

##### Method 7-4 Inanga Spawning and Native Fishery Sites - Biodiversity

##### Method 7-5 Biodiversity (Terrestrial and Aquatic) Research, Monitoring and Reporting

##### Method 7-6 Education in Schools - Biodiversity

##### Part Section 7.6 Anticipated Environmental Results

##### Part Section 7.7 Explanations and Principal Reasons

## **Chapter 12 (POP Part II - the Regional Plan)**

Objective 12-2 Regulation of activities affecting indigenous biological diversity

Policy 12-5A Regional rules for activities affecting indigenous biological diversity

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

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

Rule 12-6 Some activities within rare habitats, threatened habitats and at risk habitats

### **Schedule E (a component of Part II - the Regional Plan)**

Table E.1 (describes characteristics of habitat types as they are expressed at the regional scale)

Table E.2(a) (criteria that habitat type in Table E.1 must meet before it qualifies as a rare habitat, threatened habitat or at-risk habitat for the purposes of the POP)

Table E.2(b) (criteria that disqualifies habitat in Table E.1 from being rare habitat, threatened habitat or at-risk habitat for the purposes of the POP)

### **Relevant planning instruments and statutory tests**

30. I have included a summary of what I consider to be the relevant planning instruments under the RMA, a summary of each instrument and how it is relevant to resolution of the key issues is included in Attachment 2.
31. In summary, in relation to relevant planning instruments, I consider that:
  - a. Section 6 of the RMA identifies the protection of areas of significant habitats of indigenous fauna as a matter of national importance under s6(c) and therefore is particularly relevant to the resolution of the Key Issues. Objective 7-1, Policies 7-1, 7-2A, 7-3, 7-4, 7-5 and 7-6, and Methods 7-1, 7-2, 7-3, 7-4, 7-5 and 7-6 all recognise and provide for s6(c) matters.
  - b. Section 7 of the Act matters include s7(b) the efficient use and development of natural resources and s7(j) the benefits to be derived from the use and development of renewable energy. Chapter 3

*Infrastructure, Energy, Waste, Hazardous Substances and Contaminated Land* in the DV POP must also be considered either in a resource consent application process or the development of a plan. The provisions of Chapter 3 explicitly set out that particular regard must be given to the benefits of the use and development of renewable energy. The emphasis in the wording of both Policy 3-4 and s7 RMA are the same i.e. "*must have particular regard to... the benefits of renewable energy*".

- c. The New Zealand Coastal Policy Statement 2010 is given effect to in Chapter 9 Coast of the DV POP. The DV POP seeks integrated management of the coastal environment and the provisions for indigenous biological diversity where rare, threatened or at-risk habitats are within that area.
  - d. The provisions of the National Policy Statement on Electricity Transmission 2008 and National Policy Statement for Renewable Electricity Generation 2011 are relevant. The relevance is confined to instances where the indigenous biological diversity policies in POP come into play where there is the potential for or there is existing renewable electricity generation. The DV POP gives effect to these National Policy Statements in Chapter 3 Infrastructure, Energy, Waste, Hazardous Substances and Contaminated Land.
  - e. A final decision is yet to be made on the Proposed National Policy Statement on Indigenous Biodiversity, but its provisions provide a helpful indication of likely future direction and flavour of national policy.
32. An assessment against the statutory tests for an RPS and Regional Plan relevant to the indigenous biological diversity provisions is provided in **Attachment 4**.

**Key Issue 1 - Should indigenous biological diversity be managed on a region-wide or district scale?**

33. Federated Farmers of New Zealand and MWRC clarified the specific matters under appeal in a memorandum dated 19 October 2011 [refer MCB, TB 10].
34. Three arguments were identified by Federated Farmers. The original text can be found in MCB, TB 10, but I have summarised them here as:
- a. That the Regional Council does not have the power in a regional plan to make rules controlling the effects of use, development and protection of land for the purpose of the maintenance of indigenous biological diversity.
  - b. Whether or not the Council does have the power to make rules, it does not have the power to allocate responsibilities between the territorial authorities and the Regional Council in Part 1 DV POP without negotiating and reaching agreement on those matters with the territorial authority.
  - c. Despite a and b, the Regional Council should not have allocated primary responsibility for managing the control for use, development and protection of land to maintain indigenous biological diversity in Part 1 DV POP in those parts of the Region where there remains a high level of indigenous biological diversity and which Federated Farmers of New Zealand says includes both the Ruapehu and Wanganui districts and may also include other areas within the MWRC's Region.
35. The Court heard evidence on the preliminary issue relating to the power of MWRC to make rules for the control of the use of land for biodiversity purposes on 20 December 2011. The Decision<sup>5</sup> confirms that regional councils can make rules for maintaining indigenous biological diversity. Paragraph 8 of the Decision also states:

*"So there is a requirement (again mandatory – not optional) for an RPS to specify which local authority (and a regional council is a local authority – see*

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<sup>5</sup> DECISION ON PRELIMINARY ISSUE – POWER OF THE RESPONDENT TO MAKE RULES FOR THE CONTROL OF BIODIVERSITY PURPOSES, 21 December 2011, Decision No [2011] NZEnvC 403. It is noted that this decision was appealed to the High Court on 27 January 2012 by Don Coles of Property Rights in New Zealand Inc.

*definitions in s2) is to have responsibility for specifying objectives policies and methods (i.e. including rules) to control the use of land for the purpose of maintaining indigenous biological diversity. There is nothing that says that a regional council cannot, in its RPS, specify itself as such a local authority."*

36. I consider that the first two arguments included in paragraph 34 a. and b. are resolved by the Environment Court Decision and that leaves argument c to consider.

37. In its reasons for appeal, Federated Farmers argues that:

*"By treating the whole of the MWRC area as one region with regards to indigenous biological diversity the council unfairly penalises the land owners in some districts within the region where most of the remaining indigenous biodiversity occurs."*

The relief sought is *"That the areas of indigenous biodiversity are assessed on a district rather than a regional basis in the interests of equity between districts."*

### **Evaluation**

38. I acknowledge that indigenous vegetation loss has not been random throughout the Region. The greatest loss has occurred in lowland areas, while the greatest extent of remaining cover is found in the hill country. Given this scenario I can understand the perception amongst some appellants and s274 parties that this distribution of habitat means the obligation of protection falls most heavily on landowners within districts with a greater remaining proportion of indigenous vegetation such as Ruapehu and Wanganui. However, in my opinion it is not logical to assert (as Federated Farmers appears to do) that this means the statutory mandated approach to biodiversity across New Zealand should be 'rebalanced' in favour of less protection where it presently exists. Whether the 'cost' of a general protection response on private interests is appropriate is a matter for Parliament to address in the framework of the RMA. It must have done so when it amended the RMA to emphasise the protection of biodiversity. I do not consider it appropriate to revisit that issue here.

39. Fleur Maseyk states in her affidavit to the Court dated 6 December 2011<sup>6</sup>:

*"From an ecological perspective, it makes considerably more sense to consider matters pertaining to the protection and enhancement of indigenous biodiversity at a catchment scale. Biodiversity underpins all ecological services, spanning both terrestrial and aquatic environments. Therefore, in the context of managing ecosystems and natural capital it is not only pragmatic to consider issues pertaining to land, water and indigenous biodiversity in an integrated manner, but is fundamental to a successful outcome.*

*The catchment scale relationships between land, water and indigenous biodiversity are best understood at the regional scale.*

*It is my opinion that of the potential scales that a framework could be based on (district, regional or national), the regional scale seems best fit to encompass catchments, landform and environmental diversity whilst not enforcing too great a compromise on consideration of indigenous biodiversity within a local landscape. I am of the view that a framework that is focussed at a regional scale will retain representation of indigenous biodiversity throughout the landscape. This is especially important for habitat types that might be regionally uncommon but nationally more common."*

40. I support that view by noting that it also makes sense from a resource management planning perspective because the objectives, policies and methods in the DV POP, RPS are focussed on no net loss of remaining rare, threatened and at-risk habitat at a regional level and are supported by a regionally based habitat classification system. A district-by-district approach risks a deviation away from and a hindrance to meeting the DV POP's regional objective for indigenous biodiversity due to the fragmentation of policy response. This kind of fragmented approach as seen between territorial authorities in the Region was a key motivator for the development of a region-wide framework in the first instance.
41. The threat status classifications provided within Schedule E are tied to habitat type, not to the district and therefore they apply uniformly across the Region. The alternative, to apply a threat status classification driven by

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<sup>6</sup> AFFIDAVIT OF FLEUR JENNIFER FOSTER MASEYK REGARDING ECOLOGICAL AND REGIONAL CONTEXT RELEVANT TO JURISDICTIONAL QUESTION ON BIODIVERSITY, dated 6 December 2011.

district would add a considerable degree of complexity to the framework. This is because some habitat types would require several threat status classifications across the Region depending on what territorial authority they were found in.

42. The parties seeking this change hold the view that that by using a district scale approach this will somehow reduce the frequency that resource consents might be required for activities affecting indigenous biological diversity in districts such as Ruapehu and Wanganui.
43. I do not agree with this view. Assessment of threat classification on a district scale for Schedule E does not provide a more lenient requirement for those districts with greater indigenous biological diversity. For example, if a district scale assessment is done for Ruapehu District there would be two changes in threat category. One habitat type (Rimu/tawa-kamahi forest) would move from a *threatened* classification to an *at-risk* classification and another habitat type (Mountain beech forest) would move from an *at risk* classification to a *threatened* classification. Both these habitat types would be classified as threatened at a national scale. The requirement for resource consent would remain in both cases and the question of degree of vegetation cover in the landscape and local patterns of loss (or protection) would be taken into account at the resource consent application assessment stage.
44. The ecologists agree with the appropriateness of the DV-POP regime. There is no evidence a different regime is appropriate based on the artificial construct of territorial boundaries. Territorial authorities have not proposed to adopt and implement this regime in their District Plan and most have not provided for this in their second generation plans. The alternative Federated Farmers proposes to the DV-POP on biodiversity will provide no or inadequate protection in some districts unless the districts undertake a Plan Change which could have significant cost implications. That is not in my opinion consistent with the requirements of the RMA on indigenous biodiversity.

## **Conclusion on Issue 1**

45. I consider the regional scale approach to assessment of rare habitat, threatened habitat and at-risk habitat is appropriate and changing to a district scale assessment would not achieve the outcome that is perceived by the appellants and other parties, i.e., that there would be a reduced frequency in times a resource consent would be required. The alternative being proposed will result in no or inadequate protection of biological diversity. I therefore recommend the DV POP remains unchanged.

## **Key Issue 2 – The appropriate activity classification in rules for rare habitats, threatened habitats and at-risk habitats**

46. The issue focuses on the most appropriate way to achieve the objectives for indigenous biological diversity using rules in the Regional Plan (DV POP, Part 2, Chapter 12). The specific provisions in the DV POP related to this issue are Policy 12-5 and Rule 12-6.
47. Put simply, two appellants (the Minister of Conservation and Wellington Fish and Game) seek reclassification of activities in rare habitats and threatened habitats from Discretionary to Non-Complying status.
48. I note that the NV POP contained two rules relating to indigenous biological diversity. Activities within at-risk habitats were classified as Discretionary activities in Rule 12-7 and activities within rare and threatened habitats including wetlands were classified as Non-Complying activities. Matters to be considered in consent decision-making were specified in Policy 12-5 which stated that the Regional Council will make decisions on resource consent applications involving rare and threatened habitats, and at-risk habitats in accordance with the objectives and policies in Chapter 7 (the RPS).
49. The Hearing Panel made significant changes to Chapter 12 in the DV POP as a result of hearing submissions. Activities within rare habitats, threatened habitats and at-risk habitats were combined into a single Rule 12-6 and classified as Discretionary activities. At the same time significant amendments to Policy 12-5 were made to strengthen the guidance given for

consent decision-making. The Hearing Panel summarised its reasons for making the changes as<sup>7</sup>:

*"...The rules as recommended to us during the hearing became increasingly complicated, in part to deal with the inappropriateness of non-complying activity status for some activities. We decided that such complexity was not needed if we treat all activities as discretionary activities and provide policy guidance to decision makers. Mr Schofield noted that, for an activity in a habitat to be classified as a non-complying activity, there should be a high degree of certainty that the habitat is indeed significant under s 6(c) of the Act..."*

50. Appellants oppose the decision to amalgamate Rules 12-7 and 12-8 (NV POP) into the new rule 12-6 (DV POP) as a Discretionary activity, because they contend the original distinction between the level of control was appropriate, and consistent with the issues for the Region, and the objectives and policies within the RPS and Regional Plan.

### **Evaluation**

51. Objective 7-1<sup>8</sup> seeks to:

*"Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna and maintain indigenous biological diversity, including enhancement where appropriate."*

52. I note that MWRC has consistently sought a policy framework that provides greater protection for rare habitats and threatened habitats than at-risk habitats in both the DV POP and NV POP. For example section 7.7 Explanations and Principal Reasons in NV POP states that:

*"The objectives, policies and methods adopted aim to prevent the further loss of rare habitats and threatened habitats and to control activities which may have an adverse effect on the unique characteristics of at-risk habitats."*

53. The debate centres on the most appropriate way of achieving this is. Rare and threatened habitats are significant in terms of s.6(c) in the framework as established under the DV POP, but the condition and particular value of

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<sup>7</sup> Decisions on Submissions to the Proposed One Plan, Volume 1, Part 5, page 5-26.

<sup>8</sup> Chapter 7, page 7-4 of the DV POP.

these habitats need to be addressed on a case by case basis. It is accepted that the best policy to achieve the RMA's purpose is to protect these habitats. That is what the policies in DV-POP achieve.

54. There are two options to consider in terms of the policy approach and rule classification and I address these two options in paragraphs 55 to 56 below:

a. **Activities in rare, threatened and at-risk habitats classified as Discretionary in Rule 12-6 and clear policy guidance provided for consent decision-making in Policy 12-5.** This is the approach taken in the DV POP. I note that Policy 12-5 makes the presumption of:

(i) Consents not being granted for activities in rare, threatened and at-risk habitats assessed as being areas of significant indigenous vegetation or a significant habitat of indigenous fauna, except under specific circumstances; and

(ii) Consents being generally granted in at-risk habitats assessed as not being areas of significant indigenous vegetation or a significant habitat of indigenous fauna, when they meet certain requirements.

b. **Activities in rare habitat and threatened habitat are classified as Non-Complying in a new rule and those in an at-risk habitat continue to be classified as Discretionary in Rule 12-6.** This was the approach taken in NV POP albeit that the NV POP did not have a strong supporting policy framework in Chapter 12 that is now present in DV-POP. The Appellants seek Non-Complying status.

55. In relation to **option a.** (retention of Discretionary and a supporting policy framework) I make the following statements. I start by making comment on the practical application of the provisions and then the planning reasons for retaining such an approach. I consider that both planning rationale and on the ground practical application are important components to any planning framework dealing with indigenous biological diversity particularly given the Regional Council's new role in this arena.

## Practical Application Matters

- (a) The workability of the biodiversity policies, rules and Schedule E in the DV POP has now been tested. In my opinion, this has resulted in both workable outcomes for consent holders and ensured protection of important areas of indigenous biodiversity.

Resource consents have been granted that have enabled proposed activities to go ahead. Such activities have included selective logging, and the upgrade or construction of infrastructure resulting in vegetation clearance or land disturbance within an area of listed habitat type. Examples include small-scale projects (e.g. road upgrades) to large-scale projects (e.g. wind farm construction). Schedule E habitat types were readily identified on the ground, and guided by the biodiversity policies, ecological values associated with the respective sites were determined. The scale, duration and impact of any detrimental effects of the activities were identified and thus able to be avoided, remedied or mitigated through mechanisms tailored to address the adverse effects specific to each application. The experience of the Council's consents team of which I am a part, is that important areas or components of the Region's biodiversity were in large measure protected while allowing for various activities to occur.

- (b) In several cases, the biodiversity provisions within the DV POP have provided a trigger for an on-site discussion with landowners regarding their proposed activity. Such conversations invariably result in an elective avoidance of Schedule E listed habitat, thus avoiding the requirement for resource consent while providing for the desired activity. As site visits are undertaken by Horizons environmental management officers (soils) and/or ecologists and at times also a consent planner, the biodiversity provisions of the DV POP can be discussed alongside water quality provisions and rules regarding land to determine the best outcome. By enabling such site-specific, on-site conversations to be held, the biodiversity provisions are working to guide sound land management decisions at the property scale.
- (c) A further example of the workability of the biodiversity policy is illustrated by the ease in which consents for scrub clearance are

granted. The property-specific assessment required for this process clearly identifies and maps areas of habitat that are not listed in Schedule E and those areas of habitat that are. While consenting for scrub clearance is driven by a different policy and rule stream, Schedule E and the biodiversity policies have an important role in guiding both the process and the area of vegetation the consent applies to.

#### Planning Rationale

- (a) The Discretionary activity classification is sufficient to provide for the application to be approved or declined. This is supported by the policies within Chapter 12. In addition, section 11.1.2 *Activity Classifications*<sup>9</sup> of the DV POP states:

*"(d) If an activity is described as a discretionary activity, a resource consent is required and the Regional Council will decide whether or not to grant the consent. This decision will depend upon how consistent the proposed activity is with the provisions of the RMA and the objectives and policies set out in this Plan."*

The Non-Complying activity classification is only different to a Discretionary activity classification in relation to the 'gateway tests.'

- (b) The Discretionary activity classification achieves the RMA's purpose and in particular s6(c) matters which requires the Council to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

56. In relation to **option b.** (Non-Complying activity status for rare and threatened habitats and Discretionary for at-risk habitats) I make the following statements.

#### Planning Rationale

- (a) If a cascade approach is taken to link the objectives, policies and rules then do the policies signal the need for Non-Complying activity status? The policies do to some extent differentiate between rare/threatened

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<sup>9</sup> Chapter 11 Introduction to Regional Plan, section 11.1.2 Activity Classifications page 11-2 of the DV POP.

habitats and at-risk habitats. The Hearing Panel concluded in relation to the difference that<sup>10</sup>:

*"We have concluded that it cannot be assumed that all rare habitats, threatened habitats and at-risk habitats are automatically s6(c) RMA areas. Based on all the evidence of the ecological experts, we have decided that we should distinguish between rare habitats and threatened habitats on the one hand and at-risk habitats on the other, at least to some extent. We have concluded that:*

*(i) Rare habitats and threatened habitats should be recognised as s6(c) areas unless site-specific assessments determine otherwise; but*

*(ii) At-risk habitats need site specific assessments to determine their ecological significance."*

- (b) I do not consider the policies signal the need for a Non-Complying activity status. While 'protection' of indigenous biodiversity must be the objective, and it is, the absence of qualifying words in s.6 *from inappropriate use and development* does not lead to a conclusion a Non-Complying status is the appropriate classification for s.6(c) habitats. Protection in an absolute sense could only be achieved by a Prohibited activity status. That is not proposed. The gateways for Non-Complying activities recognise exceptions. Addressing exceptions in the context of indigenous biodiversity is in my opinion, best addressed in policy not jurisdictional tests.
- (c) The examination of whether s.6(c) and s.5 is met by examination of the overall regime proposed is to look at it in the round and what it achieves for the Region not by advancing tenuous links between s.6(c) and the need for gateway tests.
- (d) The addition of the gateway tests in RMA s.104D as a component of the planning regime for biodiversity may be justified if it materially helps achieve the objectives and policies of the DV POP and otherwise

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<sup>10</sup> Summary of reasons given in section 5.5.2.5 (page 5-19) of the Decisions on Submissions to the Proposed One Plan Volume 1 – Reasons for Decisions August 2010.

achieves the overall purpose of the RMA. I do not consider that it does.

- (e) The gateway tests that go to jurisdiction to grant consent in relation to biodiversity may be problematic because whether either of the tests is achieved is in the end a matter of judgment not verification (particularly in the context of biodiversity).
- (f) By way of elaboration, in the context of biodiversity what is a minor effect can be debatable as it requires a significance evaluation guided by the criteria in Policy 12-6 and supported by Schedule E. In relation to the second gateway test in RMA s.104D, assessment of whether or not, for example, a renewable energy project passes the second gateway test because it is *not contrary to the objectives and policies* in circumstances where:
  - (i) Avoidance is not possible;
  - (ii) Estimable remediation measures are proposed;

is likely to lead to less rather than more illumination of the real environmental issues. Particularly, if an assessment requires consideration of all objectives and policies in POP. In my view this is not good planning administration.

- (g) Finally, the activity that triggers the rule may be part of a much larger proposal and the entire proposal will receive by virtue of the bundling principle that restrictive classification. Given the regional application of the rule, the location and extent of the habitats are not mapped in POP and the range of proposals the rule may affect is very wide I consider there is an appreciable risk the application of the bundling principle will have unintended and undesirable consequences from a planning administration perspective and in achieving the RMA's overall purpose;

### **Conclusion on Key Issue 2**

- 57. In my opinion, the Discretionary activity classification is sufficient to achieve the RMA's purpose with the support of the policies. In particular, policy 12-5 which sends a clear signal that consent must generally not be granted unless specific criteria are met (Refer to **Attachment 3**). I am particularly

encouraged by the results of recent implementation of the indigenous biological diversity provisions in Chapter 12 which are confirming they are achieving workable outcomes for consent holders, while ensuring protection of important areas of indigenous biodiversity.

**Key Issue 3 - That the DV POP does not provide sufficient guidance to decision-makers on the use of offsets in making decisions on resource consents.**

58. This issue is related to the level of detail that is necessary to guide decision-makers when considering offsets where adverse effects cannot be avoided, remedied or otherwise adequately mitigated.
59. The Minister of Conservation and Wellington Fish & Game Council support significant strengthening of Policy 12-5 in terms of clarifying that offsetting is the least preferred option in the avoid, remedy and mitigate hierarchy and seek amendment to the matters to be considered when decision-makers are assessing offsets. The appellants have provided track changes of the amendments sought for Policy 12-5<sup>11</sup>.
60. The amended provisions are generally opposed by some of the other parties, such as Meridian Energy and TrustPower Limited.<sup>12</sup>

**Evaluation**

61. I note that Policy 5 of the Proposed National Policy Statement on Indigenous Biodiversity promotes a hierarchical approach to ensuring 'no net loss' of biodiversity by:
  - a. avoiding adverse effects
  - b. where adverse effects cannot be avoided, ensuring remediation
  - c. where adverse effects cannot be remedied, ensuring mitigation
  - d. where adverse effects cannot be adequately mitigated, ensuring any residual adverse effects that are more than minor, are offset in accordance with the principles set out in Schedule 2.

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<sup>11</sup> Minister of Conservation and Wellington Fish & Game Council, MEMORANDUM RELATING TO APPEALS ON THE TOPIC OF BIODIVERSITY, 9 December 2011.

<sup>12</sup> Joint Memorandum of Counsel on behalf of Meridian Energy Limited and TrustPower Limited relating to the biodiversity topic dated 15 December 2011.

62. I acknowledge that the Proposed NPS is a work in progress and may change prior to being finalised, but it seems clear that a hierarchical approach is intended and that principles to be applied when considering a biodiversity offset will be specified in Schedule 2.
63. Notwithstanding the guidance provided by the intent of the Proposed NPS, I consider a hierarchical approach is appropriate in this context and that the current wording of Policy 12-5(b) and (c) should be amended to clarify that such an approach is appropriate.
64. I also note that a similar hierarchy is contemplated in DV POP, Chapter 3, Policy 3-3(c)(iv) where "*whether any more than minor adverse effects that cannot be adequately avoided, remedied or mitigated by services or works can be appropriately offset, including through the use of financial contributions*" is a matter to be taken into account by the Regional Council and territorial authorities when managing adverse environmental effects from the establishment, operation, maintenance and upgrading of infrastructure.

### **Conclusion**

65. I consider that Policy 12-5 would benefit from amendments to clarify the avoid, remedy, mitigate hierarchy and assessment of offsets. I have provided my proposed amendments as track changes in **Attachment 3**.

### **Key Issue 4 - Should sites of rare habitat, threatened habitat and at-risk habitat be identified on maps in the POP?**

66. Federated Farmers of New Zealand and Horticulture New Zealand seek mapping of the locations of rare habitat, threatened habitat and at-risk habitat. They argue that the current framework using Schedule E descriptions makes it difficult for landowners to determine whether a site is captured by Rule 12-6 or not and that maps would provide certainty to landowners. Other parties both support and oppose the relief sought.

## Evaluation

67. Fleur Maseyk provides evidence on this matter.<sup>13</sup> In that evidence she states the two main reasons for MWRC moving away from lists of known sites as being:
- "a) the inherent errors found associated with site lists compiled from a desk-top exercise; and*
- b) the cost (in terms of time and money) required to conduct an in-field assessment for all patches of remaining indigenous vegetation within the Region."*
68. Ms Maseyk also provides evidence showing that the approach promoted by MWRC *"...is fair and consistent and importantly provides a mechanism for the implementation of a region-wide focus despite the present knowledge gaps."*
69. I acknowledge that provision of maps in planning documents can be more informative if it is practical. In my view the task of field surveying and mapping all areas of indigenous biodiversity within the Manawatu-Wanganui Region is not practical. It is not cost effective. Regional maps at an appropriate scale to achieve this would be an impossibly bulky document. In addition, a deficiency of lines on maps is the absence of flexibility to deal with the inevitable changes to habitat overtime due to natural disturbance or normal changes to vegetation over time (succession events).
70. I am unaware of the appellants or their members coming forward and inviting their Schedule E habitats to be specifically delineated on a map. As an additional method proposed by the appellants to achieve the purpose of the Act that would have helped facilitate implementation of the method if it was otherwise merited.
71. As I mentioned in paragraph 55 of my evidence, the workability of the biodiversity provisions in the DV POP has now been tested and in my opinion, is resulting in workable outcomes for consent holders, while ensuring protection of important areas of indigenous biodiversity.

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<sup>13</sup> Fleur Maseyk, Section 42A Report, TEB, paragraphs 113-123, pages 2805-2808.

72. In practice, the site assessments are providing an opportunity for MWRC and landowners to find ways of avoiding of Schedule E listed habitat and, as a consequence, avoiding the requirement for resource consent while providing for the desired activity. The service is currently provided free of charge. This is an appropriate way to achieve the indigenous biological diversity objective in the POP.

73. I note that this matter was a principal issue of contention at the Council Hearing<sup>14</sup> and after considering the evidence provided by the parties, the Hearing Panel concluded:

*"In light of the unanimous opinions of the ecological experts and the assistance currently provided by the Council, we have concluded that the general approach of Schedule E is better than all the alternatives and is the appropriate way to identify the relevant areas."*

#### **Conclusion on Issue 4**

74. In my opinion the "real-time, as required" site assessment has considerable practical advantages for both landowners and MWRC in managing activities in rare, threatened and at-risk habitats. It allows an integrated approach to assessing the effects of an activity that in most cases avoids both disturbance of the habitat and the need for a resource consent. I therefore propose that no changes be made to the current approach in the DV POP.

Clare Barton

**SENIOR CONSENTS PLANNER**

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<sup>14</sup> Decisions on Submissions to the Proposed One Plan, Volume I, Part 5, pages 5-9 to 5-13.

# Attachment 1

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**Response to unresolved appeal points on the  
topic of indigenous biological diversity not dealt  
with in Key Issues 1 to 4.**

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## Response to unresolved appeal points relating to Indigenous biological diversity in Chapter 7 and 12 not dealt with in Key Issues 1 – 4

Provision	Appellant	Pt #	Relief sought	Comment
Policy 7-2A Regulation of activities affecting indigenous biological diversity	Mighty River Power Ltd	2	<p>(i) The amendment of Policy 7-2, clause (e), subclause (iii) so that it reads (amendments sought shown in bold):</p> <p>"Policy 7-2A: Regulation of activities affecting indigenous <i>biological diversity</i>^</p> <p>For the purpose of managing indigenous <i>biological diversity</i>^ in the Region:</p> <p>...</p> <p>(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, <i>Territorial Authorities</i>^ must:</p> <p>...</p> <p>(iii) allow the <i>maintenance</i>*, <b><i>operation</i></b>* and <i>upgrade</i>* of existing <i>structures</i>^, including <i>infrastructure</i>^, and"</p> <p>or words to like effect. (ii)</p> <p>Such further or other relief as addresses the issues raised in this appeal point.</p>	<p>The inclusion of the word "operation" as sought by the appellant within the Policy makes sense because once a structure is there it needs to operate.</p> <p>Operation is defined in the POP as "means the use of any structure, system, facility or installation, including ancillary resource use."</p> <p>The policy is restricted only to existing structures within rare habitats, threatened habitats and at risk habitats.</p> <p>I propose that the appeal point be accepted and Policy 7-2A clause (iii) be amended as follows:</p> <p>(iii) allow the <i>maintenance</i>*, <u><i>operation</i></u>* and <i>upgrade</i>* of existing <i>structures</i>^ including <i>infrastructure</i>^, and...</p> <p>[Proposed amendments are shown in track changes attached as <b>Attachment 3</b>]</p>
Policy 7-2A Regulation of activities affecting indigenous biological diversity	Wellington Fish & Game Council	23	<p>(i) Reinstate Policies 7-2 and 7-3 as notified</p> <p>(ii) Delete Policy 7-2A</p> <p>(iii) Any such other or further relief as addresses the issues raised by this appeal point or consequential amendments arising from this appeal point</p>	<p>The appeal point forms part of the appellant's bundle of appeal points seeking a change in activity classification from discretionary to non-complying for some activities in rare habitats and threatened habitats.</p> <p>I evaluate this wider issue in Key Issue 2 and conclude that the discretionary activity classification is sufficient to achieve the RMA's purpose with the support of the policies. No change to the DV POP is proposed as a result of this appeal point.</p>

Provision	Appellant	Pt #	Relief sought	Comment
Policy 7-2A Regulation of activities affecting indigenous biological diversity	Minister of Conservation	63	<p>8.3.2 Policy 7-2A: Amend paragraph (e)(ii) to read as follows:</p> <p>"(ii) allow indigenous biological diversity mitigation offsets only in exceptional circumstances, and after it has been established that all options for avoidance or direct mitigation are impracticable"</p> <p>OR such alternative or consequential relief as may be considered appropriate by the Court and/or the parties in agreement to address the Appellant's concerns.</p>	<p>The appellant is concerned that Policy 7-2A (e)(ii) means offsets must be allowed in relation to regulating vegetation clearance, land disturbance, cultivation and forestry in rare habitats, threatened habitats or at risk habitats.</p> <p>The Hearing Panel's decision states the following with regard to including this sub-clause (page 5-31 of the decision on the Biodiversity and Heritage Hearing):</p> <p><i>"New Policy 7-2A provides policy guidance about: Allowing indigenous biological diversity mitigation offsets in appropriate circumstances which may include the establishment of infrastructure or other physical resources of regional or national importance as identified in Policy 3-1. This is included because offsets can be beneficial in appropriate circumstances and we decided that there should be a policy reference to that. The wording here also provides a link with Policy 3-1."</i></p> <p>In my opinion the Hearing Panel did not intend the clause to be obligatory. I do not consider it appropriate for the policy to be read as being obligatory. I therefore propose the level of obligation in the clause be clarified by the following amendment:</p> <p><i>(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></p> <p><i>(ii) <del>consider allow</del> indigenous biological diversity mitigation offsets in appropriate circumstances which may include the establishment of infrastructure and other physical resources of regional or national importance as identified in Policy 3-1."</i></p> <p>At technical conferencing on 30 January 2012<sup>1</sup> changes to Policy 7-2A(a) were agreed by technical (non-planning) expert witnesses. I have not had sufficient time to assess the implications of the change, but note that there may be a scope issue as there does not appear to be an appeal point</p>

Provision	Appellant	Pt #	Relief sought	Comment
				<p>that allows this change.</p> <p>[Proposed amendment is shown in track changes attached as <b>Attachment 3</b>]</p>
<p>Policy 7-2A Regulation of activities affecting indigenous biological diversity</p>	<p>Minister of Conservation</p>	<p>64</p>	<p>8.3.2 Policy 7-2A:</p> <p>Delete paragraph (e)(iv)</p> <p>OR such alternative or consequential relief as may be considered appropriate by the Court and/or the parties in agreement to address the Appellant's concerns.</p>	<p>Policy 7-2A (e)(iv) states: <i>(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></p> <p><i>(iv) not unreasonably restrict the existing use of production land."</i></p> <p>The appellant is concerned that this policy is vague and may undermine the ability to protect significant habitats.</p> <p>In my opinion the wording in the sub-clause means it is only the existing use of production land that must not be unreasonably restricted. Production land is defined in the RMA as: <i>"(a) means any land and auxiliary buildings used for the production (but not processing) of primary products (including agricultural, pastoral, horticultural and forestry products)..."</i></p> <p>I consider it is reasonable that consideration is given to the existing use of production land. No change is proposed</p>

Provision	Appellant	Pt #	Relief sought	Comment
<p>Policy 12-5 Consent decision-making for activities in rare habitats, threatened habitats and at-risk habitats</p>	<p>Federated Farmers of New Zealand Inc</p>	<p>16</p>	<p>We request an addition under (d) when assessing an offset in accordance with b(ii) or c (iii) decision-makers must have regard to :</p> <p>(iv) the amount of land that the land owner has already protected</p> <p>That the Term `Net Gain' is defined within the glossary with suggested wording as follows:</p> <p>“Net Gain: An area of indigenous biodiversity that is equivalent in `Value' to the area proposed to be taken under consent is protected with assistance from the Regional Council.</p> <p>Such further or alternative relief to address the matters raised in this appeal as the court deems appropriate and just. Any other consequential relief which may be required as a result of following this appeal.</p>	<p>The wider issue of offsets is evaluated as Key Issue 3 and an amended version of Policy 12-5 is proposed. I consider that the amendments clarify the policy in relation to offsets.</p> <p>Policy 12-5(d) sets out matters decision-makers must have regard to when assessing an offset, including the desirability of providing for a net gain. This includes providing a net gain within the same habitat type or the same ecologically relevant locality as the affected habitat.</p> <p>I do not consider it necessary to further define net gain.</p>
<p>Policy 12-5A Regional rules for activities affecting indigenous biological diversity</p> <p>and</p> <p>Policy 12-5 Consent decision-making for activities in rare habitats, threatened habitats and at-risk habitats</p>	<p>Horticulture New Zealand</p>	<p>46</p> <p>47</p>	<p>Delete "and cultivation" from Policy 12A-5 and Policy 12-5.</p> <p>That consequential amendments be made as a result of relief sought above.</p>	<p>The term “cultivation” is used in one clause in Policy 12-5A <i>Regional Rules</i>^ for activities affecting indigenous <i>biological diversity</i>* and two clauses in Policy 12-5 Consent decision-making for activities in <i>rare habitats</i>*, <i>threatened habitats</i>* and <i>at-risk habitats</i>*.</p> <p>Policy 12-5A states:</p> <p>“The Regional Council must require <i>resource consents</i>^ to be obtained for <i>vegetation clearance</i>*, <i>land disturbance</i>* and <i>cultivation</i>* and certain other resource use activities within <i>rare habitats</i>*, <i>threatened habitats</i>* and <i>at-risk habitats</i>*, and for <i>forestry</i>* that does not minimise potential adverse <i>effects</i>^ on those habitats, through <i>regional rules</i>^ in accordance with Objectives 11A-1, 11A-2 and 12-2 and Policies 11A-1 to 11A-8.”</p> <p>Policy 12-5 clause (b) states:</p>

Provision	Appellant	Pt #	Relief sought	Comment
				<p>(b) Consent must generally not be granted for <i>vegetation clearance*</i>, <i>land disturbance*</i>, <i>forestry*</i> or <i>cultivation*</i> and certain other resource use activities in a <i>rare habitat*</i>, <i>threatened habitat*</i> or <i>at-risk habitat*</i> assessed to be an area of significant indigenous vegetation or a significant habitat of indigenous fauna, unless:...</p> <p>Policy 12-5 clause (c) states:</p> <p>(c) Consent must generally be granted for <i>vegetation clearance*</i>, <i>land disturbance*</i>, <i>forestry*</i> or <i>cultivation*</i> and certain other resource use activities in an <i>at-risk habitat*</i> assessed not to be an area of significant indigenous vegetation or a significant habitat of indigenous fauna when:...</p> <p>Policy 12-5A and Policy 12-5 cascade down to Rule 12-6 in which the activities requiring resource consent are clearly identified. The activities are vegetation clearance, land disturbance, forestry, cultivation and certain other resource use activities in rare, threatened and at-risk habitats. As the policies support and inform the rules it is appropriate that they refer to those activities.</p> <p>No change is proposed.</p>
Rule 12-6 Some activities within rare habitats*, threatened habitats* and at-risk habitats*	Horticulture New Zealand	49	Delete cultivation from Rule 12-6 consistent with changes sought to Policy 12A-5 and Policy 12-5.  That consequential amendments be made as a result of relief sought above.	Rule 12-6 identifies activities that may have significant adverse effects on rare habitats, threatened habitats and at risk habitats that require consent as a Discretionary activity. Cultivation is one of those activities and in my opinion this is appropriate. The reasons why there needs to be careful consideration of the effects in these habitats is set out in paragraph 18 of my evidence.  No amendment to Rule 12-6 is proposed as a result of this appeal point.

<p>Policy 12-6 Criteria for assessing the significance of, and the effects of activities on, an area of habitat</p>	<p>Minister of Conservation</p>	<p>70</p>	<p>Policy 12.6: Delete subparagraph (a)(i)(C).  OR such alternative or consequential relief as may be considered appropriate by the Court and/or the parties in agreement to address the Appellant's concerns.</p>	<p>Clause (a)(i) of Policy 12-6 Criteria for assessing the significance of, and the effects of activities on, an area of habitat reads as follows:</p> <p>(a) An area of <i>rare habitat*</i>, <i>threatened habitat*</i> or <i>at-risk habitat*</i> may be recognised as being an area of significant indigenous vegetation or a significant habitat of indigenous fauna if:</p> <p>(i) in terms of representativeness, that habitat:</p> <p>(A) comprises indigenous habitat type that is under-represented (20% or less of known or likely former cover), or</p> <p>(B) is an area of indigenous vegetation that is large relative to other areas of habitat in the Ecological District or Ecological Region, with indigenous species composition, structure and diversity typical of the habitat type, and</p> <p>(C) has functioning ecosystem processes.</p> <p>In my opinion all three sub-clauses are important in determining representativeness of a habitat. Therefore I do not propose that sub clause (i)(C) be deleted.</p> <p>However, I do consider that the clause can be improved by amending the link between sub-clauses (i)(B) and (C). Currently these two sub clauses are linked together as the word "and" joins them. It appears appropriate that all three sub-clauses stand on their own and if any one of the provisions is found in a particular circumstance that the box is ticked and therefore the habitat is considered representative.</p> <p>I propose that an amendment be made to replace "and" with "or" between sub-clauses (B) and (C) to make it clear the three sub clauses stand alone and to add further refinement</p>
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Provision	Appellant	Pt #	Relief sought	Comment
				<p>to the wording of the Policy. The refinements were discussed and agreed at the technical conferencing<sup>1</sup> held on 30 January 2012. I agree that the wording assists the Policy.</p> <p>[Proposed amendments are shown in track changes attached as <b>Attachment 3</b>]</p>
<p>Rule 12-6 Some activities within rare habitats*, threatened habitats* and at-risk habitats*</p>	<p>Minister of Conservation</p>	<p>73</p>	<p>Rule 12.6: Delete from Rule 12.6 the two references to rare habitats and threatened habitats; and Insert a new rule (12.6A) assigning non-complying activity status to the activities listed in rule 12-6 (a) - (f) if undertaken within rare habitats or threatened habitats; and</p> <p>Insert in Rule 12.6 and new Rule 12.6A the following exception:</p> <p>"This rule does not apply to the activities described in paragraphs (a) - (f) in circumstances where:</p> <p>(a) they are carried out for the purposes of controlling pests pursuant to a pest management strategy prepared under the Biosecurity Act 1993; or</p> <p>(b) they are carried out for the purposes of protecting or enhancing the habitat."</p> <p>OR such alternative or consequential relief as may be considered appropriate by the Court and/or the parties in agreement to address the Appellant's concerns.</p> <p><b>[This appeal point refers to the insertion of an exception into Rule 12-6 only]</b></p>	<p>I note that this appeal point was discussed during Court assisted mediation and an agreement is recorded at clause 9 MEMORANDUM REGARDING MEDIATION AGREEMENT, 17 June 2011, MCB, TB 4.</p> <p>It states:</p> <p>"Parties agreed with the following two exemptions to apply in areas within rare, threatened and at-risk habitats.</p> <p>(i) Activities carried out for the purposes of controlling pests pursuant to a Pest Management Strategy prepared under the Biosecurity Act 1993; and</p> <p>(ii) Activities carried out for the purpose of protecting or enhancing the habitat."</p> <p>The memorandum does not provide tracked changes for this agreement and I have, therefore provided track changes to Rule 12-6. The proposed change is consistent with the wording agreed at Court assisted mediation for the Air Topic. [Refer MCB, A1]</p> <p>[Proposed amendments are shown in track changes attached as <b>Attachment 3</b>]</p>

<sup>1</sup> Record of Technical Conferencing on Biodiversity in Accordance with the Environment Court Practice Note 2006 and Minute of Environment Court Dated 18 May 2011, Dated 30 January 2012

Provision	Appellant	Pt #	Relief sought	Comment
Rule 12-6 Some activities within rare habitats*, threatened habitats* and at-risk habitats*	Minister of Conservation	74	<p>Rule 12.6: Delete from Rule 12.6 the two references to rare habitats and threatened habitats; and Insert a new rule (12.6A) assigning non-complying activity status to the activities listed in rule 12-6 (a) - (f) if undertaken within rare habitats or threatened habitats; and Insert in Rule 12.6 and new Rule 12.6A the following exception: "This rule does not apply to the activities described in paragraphs (a) - (f) in circumstances where: (a) they are carried out for the purposes of controlling pests pursuant to a pest management strategy prepared under the Biosecurity Act 1993; or (b) they are carried out for the purposes of protecting or enhancing the habitat." <b>[This appeal point refers to the insertion of an exception into new Rule 12-6A only.]</b></p> <p>OR such alternative or consequential relief as may be considered appropriate by the Court and/or the parties in agreement to address the Appellant's concerns.</p>	This relates to a new rule making activities rare habitats and threatened habitats non-complying activities. The matter is dealt with in Key Issue 2 and I do not support a new rule, therefore no amendment is recommended as a result of this appeal point

# **Attachment 2**

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## **Commentary on the Relevant Planning Instruments**

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## **Relevant Provisions of the Resource Management Act 1991**

1. Outlined below are the relevant provisions of the Resource Management Act 1991 (RMA) in relation to indigenous biological diversity and a brief commentary on each provision.

2. **Biological diversity** is defined in section 2 of the RMA as follows:

*"Biological diversity means the variability among living organisms, and the ecological complexes of which they are a part, including diversity within species, between species, and of ecosystems."*

3. **Section 6** of the RMA lists **matters of national importance** and section 6(c) reads:

*"The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna."*

Part Chapter 7 of the Regional Policy Statement, Chapter 12 of the Regional Plan and Schedule E (which is a component of Part II – the Regional Plan) all address indigenous biological diversity matters. These provisions as a whole recognise and provide for the protection of significant indigenous vegetation and habitats of indigenous fauna. The RPS "sets the scene" and establishes who is responsible for what in relation to indigenous biological diversity. Schedule E establishes the criteria for classifying habitats as rare, threatened or at-risk. These criteria are then applied through the Discretionary Activity Rule 12-6.

4. **Section 30(1)(ga)** of the RMA sets out as a **function of a regional council** that (emphasised text is underlined):

*(1) "Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:*

*(a) The establishment, implementation and review of objectives, policies and methods to achieve integrated management of the natural and physical resources of the region:*

- (b) *The preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:*
- (c) *The control of the use of land for the purpose of -*
  - (ii) *Soil conservation:*
  - (iii) *The maintenance and enhancement of the quality of water in water bodies and coastal water:*
  - (iv) *The maintenance of the quantity of water in water bodies and coastal water:*
  - (a) (iii) *The maintenance and enhancement of ecosystems in water bodies and coastal water:...*
- (ga) *The establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:...*

5. Section 30(1)(ga) provides that a regional council can control the use of land for maintaining indigenous biological diversity and can do so by establishing methods which include rules. Section 67(1) states a regional plan must include objectives, policies and rules. Section 67(2) provides that a regional plan may include methods other than rules. It is implicit therefore from the content of these two sections that a method can include a rule and this has been confirmed by the Environment Court<sup>1</sup>.
6. **Section 62** of the RMA deals with the **contents of regional policy statements** and states (emphasised text is underlined):

(1) *"A regional policy statement must state –*

- (a) *the significant resource management issues for the region; and...*
- (h) *the processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between regions; and*

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<sup>1</sup> Decision on Preliminary Issue – Power of the Respondent to Make Rules for the Control of the Use of Land for Biodiversity Purposes, 21 December 2011, Decision No [2011] NZEnvC 403.

(i) the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land –

(i) *to avoid or mitigate natural hazards or any group of hazards; and*

(ii) *to prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances; and*

(iii) to maintain indigenous biological diversity; and..."

7. The POP identifies in Chapter 1 (RPS section) that one of the four keystone environmental issues for the Region is threatened indigenous biological diversity. The issue statement within Chapter 1 states that the Regional Council will be the lead agency for indigenous biodiversity management for the Region by controlling activities in rare habitats, threatened habitats, and at-risk habitats, and working with landowners to protect and enhance these habitats.

8. Chapter 1 identifies that there are objectives, policies and methods addressing this keystone issue in Chapter 7 and rules in Chapter 12.

9. Part I of the POP (the RPS) sets out in Policy 7-1 who is responsible for maintaining indigenous biological diversity and specifies that:

The **Regional Council must be responsible for** [amongst other matters] **developing rules** controlling the use of land to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna and to maintain indigenous fauna and to maintain indigenous biological diversity including enhancement where appropriate.

Territorial authorities must be responsible for retaining schedules of notable trees and amenity trees but not for the purpose of protecting significant indigenous vegetation and significant habitats of indigenous fauna.

10. The approach taken in the POP is one that achieves effective integrated management (as required by section 59 RMA). Part I POP (RPS) states who is responsible for what and this is given effect to through the inclusion of rules in Part II POP - The Regional Plan.

11. **Section 65** of the RMA covers the **preparation and change of other regional plans** and states (emphasised text is underlined):

- (1) *A regional council may prepare a regional plan for the whole or part of its region for any function specified in section 30(1)(c), (ca), (e), (f), (fa), (fb), (g), or (ga)..*
- (2) *Without limiting the power of a regional council to prepare a regional plan at any time, a regional council shall consider the desirability of preparing a regional plan whenever any of the following circumstances or considerations arise or are likely to arise:*
  - (a) *Any significant conflict between the use, development, or protection of natural and physical resources or the avoidance or mitigations of such conflict:*
  - (b) *Any significant need or demand for the protection of natural or physical resources or of any site, feature, place, or area of regional significance:*
  - (c) *Any threat from natural hazards or any actual or potential effects of the storage, use, disposal, or transportation of hazardous substances which may be avoided or mitigated:*
  - (d) *Any foreseeable demand for or on natural and physical resources:*
  - (e) *Any significant concerns of tangata whenua for their cultural heritage in relation to natural and physical resources:*
  - (f) *The restoration or enhancement of any natural and physical resources in a deteriorated state or the avoidance or mitigation of any such deterioration:*
  - (g) *The implementation of a national policy statement or New Zealand coastal policy statement:*
  - (h) *Any use of land or water that has actual or potential adverse effects on soil conservation or air quality or water quality:*
  - (i) *Any other significant issue relating to any function of the regional council under the Act."*

12. Chapter 1 of the POP gives an example of vanishing wetland habitat in the Region and states that wetland habitat in the Manawatu Plains has been reduced to 3% of its former area. The Regional Council considered the need to deal with deterioration of indigenous biological diversity after much public input through the POP development phase and determined that the POP needed to address this issue.

### **New Zealand Coastal Policy Statement 2010**

13. The New Zealand Coastal Policy Statement (NZCPS) contains objectives and policies relating to biological diversity in the coastal environment. The NZCPS is relevant to the extent that some rare, threatened or at-risk habitats may be located or partly located in the coastal environment. The DV POP gives effect to the NZCPS in Chapter 9 Coast.

### **National Policy Statement on Electricity Transmission 2008**

14. The objective of the National Policy Statement on Electricity Transmission 2008 is:

*"To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:*

- (i) managing the adverse environmental effects of the network; and*
- (ii) managing the adverse effects of other activities on the network."*

15. The DV POP gives effect to this NPS in Part 1 RPS Chapter 3 – Infrastructure, Energy, Waste, Hazardous Substances and Contaminated Land.

### **National Policy Statement for Renewable Electricity Generation 2011**

16. There is a **National Policy Statement for Renewable Electricity Generation 2011**. Its objective is:

*"To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation."*

17. The DV POP gives effect to this NPS in Part 1 RPS Chapter 3 – Infrastructure, Energy, Waste, Hazardous Substances and Contaminated Land.

### **Proposed National Policy Statement on Indigenous Biodiversity (NPS).**

18. The proposed National Policy Statement on Indigenous Biodiversity (NPS) builds on the National Priorities for Protecting Rare and Threatened Native Biodiversity on Private Land released by the Department of Conservation and the Ministry for the Environment in 2007. Although there are wording differences, the National Priorities and the proposed NPS broadly identify the following components of indigenous biodiversity to be of significance:
  - (a) Naturally uncommon (rare) ecosystem types
  - (b) Indigenous vegetation and habitats associated with sand dunes
  - (c) Indigenous vegetation and habitats associated with wetlands
  - (d) Indigenous vegetation associated with land environments that have 20% or less remaining in indigenous cover
  - (e) Habitats of threatened species
19. The indigenous vegetation and habitats that the DV POP identifies to be significant is closely aligned to both these national documents. The first three components of indigenous biodiversity identified above are captured in Schedule E and classified as either *rare* or *threatened* habitat type. Habitat of threatened species is also provided for within the DV POP. Schedule E lists several specific habitat types that support threatened terrestrial species with critical habitat requirements, and the 'riparian margin' habitat type is directly related to the presence of threatened aquatic species.
20. Although the Schedule E framework is based on habitat types and not land environments<sup>2</sup>, the critical threshold of 20% is also relied on within the DV POP framework and used to classify habitat types as *threatened*. Therefore, the DV POP, in line with the direction of the proposed NPS, provides for indigenous vegetation in a critical state.
21. The proposed NPS does not intend to limit what local authorities can consider to be significant under s6(c) RMA, or to prevent local authorities from going further than the base-lines provided in the proposed NPS. In this regard the DV POP is not at odds with the proposed NPS.

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<sup>2</sup> Land environments are explained in Fleur Maseyk's section 42A report, TEB, pages 2776-2778.

22. The inclusion of policy regarding a hierarchical approach to biodiversity offsets is also reflected in the DV POP as proposed to be amended.
23. The proposed NPS includes voluntary methods for the maintenance of indigenous biodiversity on private land outside of identified areas of significance. The non-regulatory methods of the DV POP reflect this sentiment, as they can apply to areas of both Schedule E listed and non-listed habitat types.
24. Although a final decision is yet to be made on the proposed NPS, the document, combined with the National Priorities, provide a sound indication of likely future direction and flavour of a national policy. Comparing the DV POP provisions to the proposed NPS not only confirms the DV POP meets future base-line requirements, but also provides a check of the scale and intention of the biodiversity provisions within the DV POP against the national setting. The DV POP appears to be neither wanting or unduly protectionist.

### **Iwi Management Plans**

25. I am aware of two active iwi management plans. These are the Ngati Rangī Waterways document (2002), which is focused on the management of waterways and the environmental outcomes that Ngati Rangī seek, and the Ngati Tuwharetoa Environmental Iwi Management Plan (2003), which is focused on the management of the environment and the environmental outcomes that Ngati Tuwharetoa seek.
26. Both of these documents were taken into account during the development of the POP, and in particular during the development of Chapter 4 Te Ao Māori Chapter<sup>3</sup>. Chapter 4 Table 4.1 of the DV POP sets out the resource management issues of significance to hapū and iwi and identifies the provisions that address those issues in the DV POP. I note that there are a number of references in Table 4.1 to Chapter 7. Those that relate to indigenous biological diversity are Issues (ia), (k), (l) and (n).

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<sup>3</sup> Chapter 4, Table 4.1, page 4-14 to 4-22 of the DV POP.



# **Attachment 3**

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**Track changes proposed for the indigenous  
biological diversity provisions of Chapters 7 & 12**

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## 7 Indigenous biological diversity, landscape and historic heritage

### 7.1 Scope and Background

#### 7.1.1 Scope

This chapter addresses three matters:

- (1) **Indigenous biological diversity** - The maintenance of indigenous biological diversity, the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and the division of responsibilities between the Regional Council and Territorial Authorities for managing indigenous biological diversity
- (2) **Natural features, landscapes and natural character** - The preservation of the natural character of the coastal environment, wetlands, rivers, lakes and their margins and the protection of them and outstanding natural features and landscapes from inappropriate use and development
- (3) **Historic heritage** - The protection of historic heritage.

Chapter 4 - Te Ao Māori - also contributes to the management of historic heritage, in particular *sites*\* of significance to Māori, including *wāhi tapu*\*.

#### 7.1.2 Indigenous Biological Diversity

As discussed in Chapter 1, the decline of indigenous biological diversity (“indigenous biodiversity”) is one of the four most critical issues addressed in this Plan.

##### **Indigenous Biodiversity in the Region**

The Region now has only 23% of its original forest cover and 3% of its wetland habitat. The majority of the forest is found in the hill country and the ranges, with fragments scattered throughout the lower-lying and coastal areas of the Region, where typically less than 10% of original habitat remains. Remaining natural habitat is small, fragmented and under pressure from pests and disturbance. Aquatic indigenous biodiversity is in a similar state of degradation with native fish populations greatly reduced, poor habitat (loss of riparian margins in most areas and introduction of exotic fish and pest plants) and many barriers between coastal wetlands, streams and headwaters.

Much of the remaining indigenous biodiversity is in poor condition and health. Ecosystem processes are more often than not interrupted. The long-term viability of natural areas is further compromised by continued pressure from invasive species and surrounding land use. If such habitats and linkages between them are to survive they will require protection and ongoing management.

##### **Future Approach**

This Plan’s approach to indigenous biodiversity management focuses primarily on habitats, rather than on individual species or genetic diversity. The Regional Council believes that by managing habitats it will most effectively sustain regional indigenous biodiversity into the future.

The Regional Council proposes to take a more active role around the coordination of indigenous biodiversity management within the Region. The Regional Council's overall indigenous biodiversity strategy is two-tiered, involving:

- (a) **Halting the decline** - Those habitats that are *rare habitats\**, *threatened habitats\** or *at-risk habitats\** (as determined in accordance with Schedule E of this Plan) and that are recognised as being an area of significant indigenous vegetation or a significant habitat of indigenous fauna will be given a high level of protection, through rules, from activities likely to cause any further loss or modification.
- (b) **Active Management** - In addition, *rare habitats\**, *threatened habitats\** and *at-risk habitats\** will be proactively managed through collaboration with landowners for work such as pest control and fencing, and provision of economic incentives such as grants and rates relief.

The protection and active management of *sites\** on private land is crucial to maintaining indigenous biological diversity in the Region. Success in halting the indigenous biodiversity decline depends largely on the involvement and commitment of private landowners. This is a tall order for individuals, and the Regional Council recognises that the public good arising from maintaining indigenous biological diversity should not be solely at the expense of landowners. The Regional Council is therefore committed to seeking arrangements that adequately assist landowners and fairly apportion the costs of indigenous biodiversity management.

### 7.1.3 Natural features, Landscapes and Natural Character

Not dealt with in this Topic

### 7.1.4 Historic Heritage

Not dealt with in this Topic

## 7.2 Significant Resource Management Issues

### Issue 7-1: Indigenous biological diversity

Indigenous biological diversity is not being maintained in the Region. As a result of historical land development practices, only a small proportion of the original extent of indigenous habitats remains. The diversity within remaining areas is declining owing to their isolation or as a consequence of a range of activities, most notably:

- (a) pest plants and pest animals
- (b) stock access
- (c) land drainage, which impacts upon wetlands
- (d) perched culverts and other barriers to fish migration
- (e) run-off and discharges causing poor water quality
- (f) *vegetation clearance\**.



**Issue 7-2: Outstanding natural features, landscapes and natural character**

Not dealt with in this Topic

**Issue 7-3: Historic heritage**

Not dealt with in this Topic

**7.3**

**Objectives**

**Objective 7-1: Indigenous *biological diversity*<sup>^</sup>**

Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna and maintain indigenous *biological diversity*<sup>^</sup>, including enhancement where appropriate.

**Whāinga 7-1: *Te kanorau koiora taketake***

*Ka whakamarumarū i ngā wāhi kei reira ētahi tipu taketake tino motuhake, ngā nohonga motuhake kei reira a ngai kīrehe taketake hoki, me te tiaki tonu i te kanorau koiora taketake, ka whai wāhi hoki ngā whakarākaitanga i ngā wā e tika ana.*

**Objective 7-2: Outstanding natural features and landscapes, and natural character**

Not dealt with in this Topic

**Objective 7-3: *Historic heritage*<sup>^</sup>**

Not dealt with in this Topic

**7.4**

**Policies**

**7.4.1**

**Indigenous *Biological Diversity*<sup>^</sup>**

**Policy 7-1: Responsibilities for maintaining indigenous *biological diversity*<sup>^</sup>**

In accordance with s62(1)(i) RMA, local authority responsibilities for controlling *land*<sup>^</sup> use activities for the purpose of managing indigenous *biological diversity*<sup>^</sup> in the Region are apportioned as follows:

- (a) **The Regional Council must be responsible for:**
  - (i) developing objectives, policies and methods for the purpose of establishing a Region-wide approach for maintaining indigenous *biological diversity*<sup>^</sup>, including enhancement where appropriate
  - (ii) developing *rules*<sup>^</sup> controlling the use of *land*<sup>^</sup> to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna and to maintain indigenous *biological diversity*<sup>^</sup>, including enhancement where appropriate.
- (b) ***Territorial Authorities*<sup>^</sup> must be responsible for:**
  - (ii) retaining schedules of notable trees and amenity trees in their *district plans*<sup>^</sup> or such other measures as they see fit for the purpose of recognising amenity, intrinsic and cultural values associated with indigenous *biological diversity*<sup>^</sup>, but not for the purpose of protecting significant indigenous vegetation and

significant habitats of indigenous fauna as described in (a)(ii) above.

- (c) **Both the Regional Council and Territorial Authorities<sup>^</sup> must be responsible for:**
- (i) recognising and providing for matters described in s6(c) RMA and having particular regard to matters identified in s7(d) RMA when exercising functions and powers under the RMA, outside the specific responsibilities allocated above, including when making decisions on *resource consent<sup>^</sup>* applications.

#### **Policy 7-2A: Regulation of activities affecting indigenous *biological diversity<sup>^</sup>***

For the purpose of managing indigenous *biological diversity<sup>^</sup>* in the Region:

- (a) *Rare habitats<sup>\*</sup>* and *threatened habitats<sup>\*</sup>* must be recognised as areas of significant indigenous vegetation and significant habitats of indigenous fauna unless *site<sup>\*</sup>*-specific assessments determine otherwise.
- (b) *At-risk habitats<sup>\*</sup>* require *site<sup>\*</sup>*-specific assessments to determine their ecological significance.
- (c) *Vegetation clearance<sup>\*</sup>*, *land disturbance<sup>\*</sup>*, *cultivation<sup>\*</sup>* and certain other resource use activities within *rare habitats<sup>\*</sup>*, *threatened habitats<sup>\*</sup>* and *at-risk habitats<sup>\*</sup>* must obtain a *resource consent<sup>^</sup>*.
- (d) Potential adverse *effects<sup>^</sup>* on any *rare habitat<sup>\*</sup>*, *threatened habitat<sup>\*</sup>* or *at-risk habitat<sup>\*</sup>* within an area of *forestry<sup>\*</sup>* 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<sup>^</sup>* must:
  - (i) allow activities undertaken for the purpose of pest plant and pest animal control or habitat maintenance or enhancement,
  - (ii) **consider allow** indigenous *biological diversity<sup>^</sup>* mitigation offsets in appropriate circumstances, which may include the establishment of *infrastructure<sup>^</sup>* and other physical resources of regional or national importance as identified in Policy 3-1,
  - (iii) allow the *maintenance<sup>\*</sup>*, **operation<sup>\*</sup>** and *upgrade<sup>\*</sup>* of existing *structures<sup>^</sup>*, including *infrastructure<sup>^</sup>*, and
  - (iv) not unreasonably restrict the existing use of *production land<sup>^</sup>*.

#### **Policy 7-4: Proactive management of indigenous *biological diversity<sup>^</sup>***

- (a) The Regional Council will aim to maintain or enhance indigenous *biological diversity<sup>^</sup>* by working in partnership with relevant landowners, other parties with a legal interest in the *land<sup>^</sup>*, and relevant consent holders to establish a management plan and incentive programme for the voluntary proactive management of identified *sites<sup>\*</sup>* by 2016.
- (b) For the purposes of (a), separate programmes will be established for *wetlands<sup>^</sup>*, bush remnants, native fish communities and coastal ecosystems.
- (c) The management plans under (a) will generally address the following matters as a minimum:
  - (i) fencing and prevention of stock access
  - (ii) pest plant and pest animal control



- (iii) planting
- (iv) agreed *land*<sup>^</sup> uses
- (v) work and materials to be provided by the Regional Council or a third party
- (vi) financial assistance to be provided by the Regional Council or a third party
- (vii) monitoring
- (viii) legal options for ensuring longevity of the measures implemented.

**Policy 7-5: Fostering an ethic of stewardship**

The Regional Council will equip landowners and others with the information they need to act as good stewards for indigenous biodiversity, and to act responsibly and proactively. These initiatives will be additional to the Council-led programmes under Policy 7-4.

**Policy 7-6: Pest plants and pest animals**

- (a) To the extent that they relate to the maintenance of indigenous biodiversity, the pest plant and pest animal management functions of the Regional Council will primarily target pests threatening *rare habitats*<sup>\*</sup>, *threatened habitats*<sup>\*</sup> and *at-risk habitats*<sup>\*</sup>.
- (b) When exercising functions and powers as set out in Policy 7-1, *Territorial Authorities*<sup>^</sup> must take into account the risks of introducing pest plants or pest animals into *rare habitats*<sup>\*</sup>, *threatened habitats*<sup>\*</sup>, *at-risk habitats*<sup>\*</sup> and nearby areas.

**7.4.2 Landscapes and Natural Character**

Not dealt with in this Topic

**7.4.3 Historic Heritage<sup>^</sup>**

Not dealt with in this Topic

**7.5 Methods**

The main non-regulatory methods the Regional Council will pursue are outlined below as action plan summaries.

Method 7-1	Wetlands - Biodiversity
<b>Description</b>	<p>The Regional Council and other agencies will work with landowners to protect and enhance priority wetlands throughout the Region. Resources will be directed towards the most significant <i>sites</i><sup>*</sup>.</p> <p>Wetland owners will be provided advice and financial/project management assistance to carry out enhancement and protection measures including fencing, planting, and pest (plant and animal) control. The Regional Council will seek funding from third parties to assist with this method, and encourage the establishment of covenants.</p> <p>Monitoring of the effectiveness of the protection and enhancement works will be undertaken.</p> <p>This method will include publicity to increase public awareness about the importance of wetlands and indigenous biological diversity.</p>

<b>Method 7-1</b>	<b>Wetlands - Biodiversity</b>
<b>Who</b>	Regional Council, landowners, foresters, relevant consent holders, Federated Farmers, Territorial Authorities, Department of Conservation, <i>hapū</i> * and <i>iwi</i> *, non-government agencies including NZ Fish and Game, QEII Trust, NZ Wetland Trust, NZ Landcare Trust and relevant funding agencies including the He Tini Awa Trust, Biodiversity Condition Fund, Nga Whenua Rahui and Ducks Unlimited.
<b>Links to Policy</b>	This method implements Policy 7-4.
<b>Targets</b>	The top 100 wetlands in the Region are actively managed, including protection or enhancement measures, within 10 years of this Plan becoming operative.

<b>Method 7-2</b>	<b>Bush Remnants - Biodiversity</b>
<b>Description</b>	<p>The Regional Council and other agencies will work with landowners to protect and enhance priority bush remnants throughout the Region. Resources will be directed towards the most significant <i>sites</i>*.</p> <p>Bush remnant owners will be provided with advice and financial/project management assistance to carry out enhancement and protection measures including fencing, planting, and pest (plant and animal) control. The Regional Council will seek funding from third parties to assist with this method, and encourage the establishment of covenants.</p> <p>Monitoring of the effectiveness of the protection and enhancement works will be undertaken.</p> <p>This method will include publicity to increase public awareness about the importance of bush remnants and indigenous biological diversity.</p>
<b>Who</b>	Regional Council, landowners, foresters, relevant consent holders, Federated Farmers, Territorial Authorities, Department of Conservation, <i>hapū</i> * and <i>iwi</i> *, non-government agencies including QEII Trust and NZ Landcare Trust, and relevant funding agencies including the He Tini Awa Trust, Biodiversity Condition Fund and Nga Whenua Rahui.
<b>Links to Policy</b>	This method implements Policy 7-4.
<b>Targets</b>	The top 200 bush remnants in the Region are being actively managed, including protection or enhancement measures, within 10 years of this Plan becoming operative.

<b>Method 7-3</b>	<b>Sites of Significance - Aquatic</b>
<b>Description</b>	<p>The Regional Council and other agencies will work with landowners to protect and enhance water bodies and parts of water bodies that serve an important role in the lifecycle of the Region's rare and threatened native fish. Resources will be directed towards the most significant <i>sites</i>*.</p> <p>Owners of land adjacent to water bodies will be provided advice and financial/project management assistance to carry out enhancement and protection measures including fencing, planting, replacement of perched culverts and pest (plant and animal) control. The Regional Council will seek funding from third parties to assist with this method.</p> <p>Monitoring of the effectiveness of the protection and enhancement works will be undertaken.</p> <p>This method will include publicity to increase public awareness about the importance of native fish and indigenous biological diversity.</p>

<b>Method 7-3</b>		<b>Sites of Significance - Aquatic</b>
<b>Who</b>	Regional Council, landowners, foresters, relevant consent holders, Federated Farmers, Territorial Authorities, Department of Conservation, <i>hapū</i> * and <i>iwi</i> * and funding agencies including the He Tini Awa Trust, Biodiversity Condition Fund and Nga Whenua Rahui.	
<b>Links to Policy</b>	This method implements Policy 7-4.	
<b>Targets</b>	The top 100 Sites of Significance - Aquatic are actively managed, including protection or enhancement measures, within 10 years of this Plan becoming operative.	

<b>Method 7-4</b>		<b>Inanga Spawning and Native Fishery Sites - Biodiversity</b>
<b>Description</b>	<p>The Regional Council and other agencies will work with landowners to protect and enhance water bodies and parts of water bodies (wetlands and streams) that serve an important role in the lifecycle of the inanga and <i>whitebait</i>* species. Resources will be directed towards the most significant <i>sites</i>*.</p> <p>Owners of land adjacent to water bodies will be provided advice and financial/project management assistance to carry out enhancement and protection measures including fencing, planting, replacement of perched culverts and pest (plant and animal) control. The Regional Council will seek funding from third parties to assist with this method.</p> <p>Monitoring of the effectiveness of the protection and enhancement works will be undertaken.</p> <p>This method will include publicity to increase public awareness about the importance of native fish and indigenous biological diversity.</p>	
<b>Who</b>	Regional Council, landowners, foresters, relevant consent holders, Federated Farmers, Territorial Authorities, Department of Conservation, <i>hapū</i> * and <i>iwi</i> * and funding agencies including the He Tini Awa Trust, Biodiversity Condition Fund and Nga Whenua Rahui.	
<b>Links to Policy</b>	This method implements Policy 7-4.	
<b>Targets</b>	The top 30 inanga spawning and native fishery <i>sites</i> * are actively managed, including protection or enhancement measures, within 10 years of this Plan becoming operative.	

<b>Method 7-5</b>		<b>Biodiversity (Terrestrial and Aquatic) Research, Monitoring and Reporting</b>
<b>Description</b>	The aim of this method is to develop an integrated research, monitoring and reporting programme that supports delivery and refinement of existing policies and methods, guides implementation planning, and allows implementation effectiveness to be assessed.	
<b>Who</b>	Predominantly the Regional Council, with assistance from research institutes, universities, non-government agencies and community groups as required.	
<b>Links to Policy</b>	This method implements Policy 7-4.	
<b>Targets</b>	A research, monitoring and reporting programme that supports delivery and refinement of existing policies and methods, and guides and assesses implementation.	

<b>Method 7-6</b>		<b>Education in Schools – Biodiversity</b>
<b>Description</b>	The aim of this method is to raise awareness amongst the youth of the Region of the significance of indigenous biological diversity, the threats to it, and what	

Method 7-6 Education in Schools – Biodiversity	
	they can do to protect/restore it. This will be achieved through various environmental education programmes/initiatives eg., Green RIG, EnviroSchools, Trees for Survival and Youth Environment Forum.
<b>Who</b>	Regional Council, Department of Conservation and various national and local environmental education providers.
<b>Links to Policy</b>	This method implements Policy 7-5.
<b>Targets</b>	The Regional Council develops and delivers a biodiversity-related environmental education programme.

Note: Methods 7-7, 7-7A, 7-8 and 7-9 not dealt with in this Topic

## 7.6 Anticipated Environmental Results

Anticipated Environmental Result	Link to Policy	Indicator	Data Source
Except for change because of natural processes, or change authorised by a resource consent, by 2017, the extent of <i>rare habitat*</i> , <i>threatened habitat*</i> or <i>at-risk habitat*</i> is the same as (or better than) that estimated prior to this Plan becoming operative, and the number of <i>at-risk habitats*</i> has not increased.	Indigenous biological diversity, landscape and historic heritage Policies: 7-1, 7-2A, 7-4, 7-5, 7-6 and 7-8  Administration Policies: 11A-4, 11A-5, 11A-6 and 11A-8  Water Policies: 6-1, 6-2, 6-3, 6-4, 6-5, 6-7, 6-17, 6-18, 6-19, and 6-28	<ul style="list-style-type: none"> <li>Extent of each habitat type compared to former extent</li> <li>Number of <i>rare habitats*</i>, <i>threatened habitats*</i> and <i>at-risk habitats*</i> damaged by unauthorised activities</li> </ul>	<ul style="list-style-type: none"> <li>Landcare Research: Land Environments NZ Tool, EcoSat tool and Land Cover Database 2 tool</li> <li>Regional Council's incidents database</li> </ul>
By 2017, the Region's top 100 wetlands and top 200 bush remnants will be in better condition than that measured prior to this Plan becoming operative.	Indigenous biological diversity, landscape and historic heritage Policies: 7-1, 7-2A, 7-4, 7-5, 7-6 and 7-8  Administration Policies: 11A-4, 11A-5, 11A-6 and 11A-8  Water Policies: 6-1, 6-2, 6-3, 6-4, 6-5, 6-7, 6-17, 6-18, 6-19, and 6-28	<ul style="list-style-type: none"> <li>Number of top 100 wetlands and top 200 bush remnants under proactive management</li> <li>Habitat condition measure(s) which, where possible, will be consistent with those used by the Department of Conservation</li> </ul>	<ul style="list-style-type: none"> <li>Regional Council's identification and assessment of significant indigenous aquatic, coastal and terrestrial habitat types</li> <li>Regional Council's progress reports on results of proactive management of top wetland and bush remnant habitats</li> </ul>

Note: Anticipated Environmental results for Landscape and Natural Heritage not dealt with in this Topic

## 7.7 Explanations and Principal Reasons

### Indigenous biological diversity

*Rare habitats\** and *threatened habitats\** are made up of habitats that are either naturally rare in the Region (that is, there was never a large number of that type of habitat) or have been reduced to a level of 20% or less of their original extent in



the Region. At this level they cannot sustain themselves without intervention. Even a small loss of, or small amount of damage to, these habitats may lead to the total loss of this habitat type in the Region.

*At-risk habitats\** are made up of habitats that have been reduced to a level of less than 50% of their original extent in the Region. These habitats are at risk of falling into the threatened category (described above) in the lifetime of this Plan if something is not done to prevent that habitat loss. *At-risk habitats\** also include those areas which provide a habitat for a rare or threatened species.

The objectives, policies and methods adopted aim to prevent the further loss of *rare habitats\** and *threatened habitats\** and to control activities which may have an adverse effect on the unique characteristics of *at-risk habitats\**. Also included are objectives, policies and methods to actively manage, improve and protect identified habitats.

### **Natural features and landscapes**

Not Dealt with in this Topic

### **Natural character**

Not dealt with in this Topic

### **Historic Heritage**

Not dealt with in this Topic



## 12 Land Use Activities and Indigenous Biological Diversity

### 12.1 Land Use Activities

[Appeal points on regulation of land use activity provisions are dealt with under the Sustainable Land-use/Accelerated Erosion Topic]

### 12.2 Indigenous Biological Diversity

#### 12.2.1 Objective

##### **Objective 12-2: Regulation of activities affecting indigenous *biological diversity*<sup>^</sup>**

The regulation of *vegetation clearance*<sup>\*</sup>, *land disturbance*<sup>\*</sup>, *forestry*<sup>\*</sup> and *cultivation*<sup>\*</sup> 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*<sup>^</sup>, including enhancement where appropriate.

#### 12.2.2 Policies

##### **Policy 12-5A: *Regional rules*<sup>^</sup> for activities affecting indigenous *biological diversity*<sup>^</sup>**

The Regional Council must require *resource consents*<sup>^</sup> to be obtained for *vegetation clearance*<sup>\*</sup>, *land disturbance*<sup>\*</sup> and *cultivation*<sup>\*</sup> and certain other resource use activities within *rare habitats*<sup>\*</sup>, *threatened habitats*<sup>\*</sup> and *at-risk habitats*<sup>\*</sup>, and for *forestry*<sup>\*</sup> that does not minimise potential adverse *effects*<sup>^</sup> on those habitats, through *regional rules*<sup>^</sup> 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*<sup>\*</sup>, *threatened habitats*<sup>\*</sup> and *at-risk habitats*<sup>\*</sup>**

- (a) For activities regulated under Rule 12-6, the Regional Council must make decisions on consent applications and set consent *conditions*<sup>^</sup> 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*<sup>^</sup> of the proposed activity on that significance,

- (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.
- (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*<sup>^</sup> 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 and**
  - ~~(ii) any more than minor adverse *effects*<sup>^</sup> which cannot reasonably be avoided, remedied or mitigated are offset to result in a net indigenous *biological diversity*<sup>^</sup> gain.~~
  - (ii) mitigation may include consideration of the use of biodiversity offsets that result in a net indigenous *biological diversity*<sup>^</sup> gain, particularly where mitigation outside the affected area would result in a better indigenous *biological diversity*\* outcome than remedying or mitigating adverse effects within the area affected.**
- (c) Consent must generally 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*<sup>^</sup> 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*<sup>^</sup> are avoided, as far as reasonably practicable, and any residual adverse effects that cannot reasonably be avoided are remedied or mitigated, **and -**
  - (iii) mitigation may include consideration of the use of biodiversity offsets that result in a net indigenous *biological diversity*<sup>^</sup> gain, particularly where mitigation outside the affected area would result in a better indigenous *biological diversity*\* outcome than remedying or mitigating adverse effects within the area affected.**
  - ~~(iii) any significant adverse *effects*<sup>^</sup> which cannot reasonably be avoided, remedied or mitigated are offset to result in a net indigenous *biological diversity*<sup>^</sup> gain.~~
- (d) When assessing an offset in accordance with (b)(ii) or (c)(iii), decision-makers must have regard to:
  - (i) the desirability of providing for a net **indigenous *biological diversity*<sup>^</sup> gain** within the same habitat type,

- (ii) the desirability of providing for a net **indigenous biological diversity<sup>A</sup>** gain 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.
- (ii) whether offsets are inappropriate for the ecosystem (or habitat) type by reason of its rarity, vulnerability or irreplaceability, and**
- (ii) the importance of ensuring offsets have a significant likelihood of being achieved and maintained in the long term and preferably in perpetuity.**

**Policy 12-6: Criteria for assessing the significance of, and the effects<sup>A</sup> of activities on, an area of habitat**

- (a) An area of *rare habitat<sup>\*</sup>*, *threatened habitat<sup>\*</sup>* or *at-risk habitat<sup>\*</sup>* 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 that is **typical of the habitat type in terms of species composition, structure and diversity, or** large relative to other areas of **the same habitat type** 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<sup>\*</sup>*), 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*<sup>^</sup> of *vegetation clearance*<sup>\*</sup>, *land disturbance*<sup>\*</sup>, *forestry*<sup>\*</sup> or *cultivation*<sup>\*</sup> on a *rare habitat*<sup>\*</sup>, *threatened habitat*<sup>\*</sup> or *at-risk habitat*<sup>\*</sup> 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.

**12.3 Rules - *Vegetation clearance\**, *land disturbance\**, *forestry\** and *cultivation\** and indigenous biological diversity**

Rule	Activity	Classification	Conditions/Standards/Terms	Control/Discretion Non-Notification
<p>Rules 12-1, 12-2, 12-3, 12-4 and 12-5 are dealt with in the Sustainable Land-use and Accelerated Erosion Topic</p>				
<p><b>12-6</b> <b>Some activities within <i>rare habitats*</i>, <i>threatened habitats*</i> and <i>at-risk habitats*</i></b></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 <i>structure</i><sup>^</sup>, 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"> <li>(a) <i>vegetation clearance*</i>, <i>land disturbance*</i> or <i>cultivation*</i> pursuant to s9(2) RMA</li> <li>(b) <i>forestry*</i> pursuant to s9(2) RMA that does not meet <i>condition</i><sup>^</sup>, standard or term of Rule 12-2 (b)(iii) or (c)</li> <li>(c) the drilling, construction or alteration of any <i>bore*</i> pursuant to s9(2) RMA</li> <li>(d) activities restricted by s13(1) or s13(2) RMA in the <i>beds</i><sup>^</sup> of <i>rivers</i><sup>^</sup> or <i>lakes</i><sup>^</sup></li> <li>(e) the taking, using, damming or diverting of <i>water</i><sup>^</sup> pursuant to s14(2) RMA</li> <li>(f) <i>discharge</i><sup>^</sup> of <i>water</i><sup>^</sup> or <i>contaminants</i><sup>^</sup> into <i>water</i><sup>^</sup> or onto or into <i>land</i><sup>^</sup> pursuant to s15(1) or</li> </ul>	<p><b>Discretionary</b></p>		

Rule	Activity	Classification	Conditions/Standards/Terms	Control/Discretion Non-Notification
	s15(2A) RMA. (g) <u>This rule does not apply to the activities described in paragraphs (a) to (f) where they are carried out for the purposes of controlling pests for the purposes of protecting or enhancing the habitat.</u>			

# Attachment 4

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**Statutory tests for a Regional Policy  
Statement and Regional Plan for the  
indigenous biological diversity provisions of  
Chapters 7 & 12**

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Statutory tests for REGIONAL POLICY STATEMENTS	Statutory references	Assessment Narrative
<b>A. General requirements.</b>		
1. A regional policy statement should be designed in accordance with the functions of the regional council so as to achieve the purpose of the Act.	s.59, s.61	The DV POP is a single document incorporating the Regional Policy Statement, Regional Plan and Regional Coastal Plan. It is designed to achieve the purpose of the Act by providing an overview of the resource management issues for the Manawatu-Wanganui Region and the objectives, policies and methods to achieve integrated management of these resources.
2. When preparing its regional policy statement the regional council <b>must give effect to</b> any national policy statement or New Zealand Coastal Policy Statement.	s.62(3)	<p><b>National Policy Statement on Electricity Transmission 2008</b></p> <p>This NPS came into effect after the NV POP was notified but before the DV POP was released. However, I consider the DV POP gives effect to it in Chapter 3 which forms part of the planning framework of the RPS. It is a matter that decision-makers must have regard to when making consent decisions for activities in rare, threatened or at-risk habitats.</p> <p><b>National Policy Statement for Renewable Electricity Generation 2011</b></p> <p>This NPS came into effect after both the NV POP and DV POP were released. However, I consider the DV POP gives effect to it in Chapter 3 which forms part of the planning framework of the RPS. It is a matter that decision-makers must have regard to when making consent decisions for activities in rare, threatened or at-risk habitats.</p> <p><b>New Zealand Coastal Policy Statement 2010 (NZCPS)</b></p> <p>The NZCPS contains objectives and policies relating to biological diversity in the coastal environment. It came into effect after both the NV POP and DV POP were developed. The NV POP, Chapter 9 was developed to give effect to the previous NZCPS. Chapter 17 (Activities in a Coastal Marine Area) and Schedule H, together with Chapters 11, 11A and 18, and the relevant definitions in the Glossary, are the Regional Coastal Plan as required by s64 of the RMA</p> <p>The NZCPS is relevant to the extent that some rare, threatened or at-risk habitats may be located or partly located in the coastal environment. The DV POP gives effect to the NZCPS in Chapter 9 Coast.</p>
3. When preparing its regional policy statement the regional council must also:		The Historic Places Register is not applicable to indigenous biodiversity

<ul style="list-style-type: none"> <li>• <b>have regard to</b> any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations; and to consistency with policy statements and plans of adjacent regional councils;</li> <li>• <b>take into account</b> any relevant planning document recognised by an iwi authority; and</li> <li>• <u>not</u> have regard to trade competition;</li> <li>• must not be inconsistent with a water conservation order</li> </ul>	<p>s.61(1)</p> <p>s.61(3)</p> <p>s.62(3)</p>	<p>provisions.</p> <p>It is considered that policy statements and plans of adjacent regional councils be considered as a cross boundary issue. Cross boundary issues are dealt with in DV POP, Chapter 10A.</p> <p>In this region MWRC is aware of two iwi resource management plans</p> <ul style="list-style-type: none"> <li>• Ngati Rangi Waterways document (2002)</li> <li>• Ngati Tuwharetoa Environmental Iwi management Plan (2003).</li> </ul> <p>These documents were taken into account during the drafting of the RPS provisions for Chapter 4. Table 4.1 in Chapter 4 sets out the Resource Management Issues of Significance to hapu and iwi and the relevant chapter of the POP that addresses those issues. I note that there are a number of references in Table 4.1 to Chapter 7. Those that relate to indigenous biological diversity are Issues (ia), (k), (l) and (n).</p> <p>No trade competition situations identified.</p> <p>Two water conservation orders exist for the Manawatu-Wanganui Region. These are given effect in the DV POP Chapters relating to water and are not directly relevant to the provisions for indigenous biological diversity.</p>
<p>4. The regional policy statement must be prepared <b>in accordance with</b> any regulation;</p>	<p>s.61(1)</p>	<p>There are no regulations identified.</p>
<p>5. The formal requirement that a regional policy statement <u>must</u> also state:</p> <ul style="list-style-type: none"> <li>• The significant resource management issues for the region;</li> <li>• The objectives, policies and methods;</li> <li>• The principal reasons for adopting the objectives, policies and methods and;</li> <li>• the environmental results anticipated from the implementation of tho policies and methods;</li> <li>• The processes to be used to deal with cross-boundary issues;</li> <li>• The local authority responsible for specifying objectives, policies and methods for the control of the use of land relating to natural hazards, hazardous substances, and indigenous biological diversity;</li> <li>• The procedures to monitor the efficiency and effectiveness of the policies or methods in the regional policy statement.</li> </ul>	<p>s.62(1)(a)</p> <p>s.62(1)(c-e)</p> <p>s.62(1)(f)</p> <p>s.62(1)(g)</p> <p>s.62(1)(h)</p> <p>s.62(1)(i)</p> <p>s.62(1)(j)</p>	<p>The DV POP RPS includes the following policy provisions for indigenous biological diversity:</p> <ul style="list-style-type: none"> <li>- Issue 7-1 Indigenous biological diversity;</li> <li>- Objective 7-1 Outstanding natural features and landscapes, and natural character;</li> <li>- Policy 7-1 Responsibilities for maintaining indigenous biological diversity</li> <li>- Policy 7-2A Regulation of activities affecting indigenous biological diversity</li> <li>- Policy 7-4 Proactive management of indigenous biological diversity</li> <li>- Policy 7-5 Fostering an ethic of stewardship</li> <li>- Policy 7-6 Pest Plants and pest animals</li> <li>- Method 7-1 Wetlands - Biodiversity</li> <li>- Method 7-2 Forest Remnants - Biodiversity</li> </ul>

		<ul style="list-style-type: none"> <li>- Method 7-3 Sites of Significance – Aquatic</li> <li>- Method 7-4 Inanga Spawning and Native Fishery Sites - Biodiversity</li> <li>- Method 7-5 Biodiversity (Terrestrial and Aquatic) Research, Monitoring and Reporting</li> <li>- Method 7-6 Education in Schools - Biodiversity</li> <li>- Part Section 7.6 Anticipated Environmental Results</li> <li>- Part Section 7.7 Explanations and Principal Reasons</li> </ul> <p>MWRC specifies itself as the local authority responsible for specifying objectives, policies and methods for the control of the use of land relating to indigenous biological diversity (Refer Policy 7-1)</p> <p>The process to be used to deal with cross boundary issues is set out in Chapter 10A.</p> <p>The procedures for monitoring the efficiency and effectiveness of the policies and methods in the RPS are set out in Chapter 10A.</p>
<b>B. Objectives [the section 32 test for objectives]</b>		
<p>6. Each proposed objective in a regional policy statement <b>is to be evaluated</b> by the extent to which it is the most appropriate way to achieve the purpose of the Act.</p>	s.32(3)(a)	<p>The hearing panel made substantial changes to the policy provisions in Chapters 7 and 12. The Panel concluded that:</p> <p><i>“On balance, we have concluded that there is no need for a separate or additional s 32 report for the biodiversity provisions of the POP. We have reached that conclusion based on a number of factors, including:</i></p> <ul style="list-style-type: none"> <li><i>(a) the significant decline of indigenous biological diversity and s6(c) RMA areas in the Region and especially in certain parts of the Region;</i></li> <li><i>(b) the fact that the POP takes both non-regulatory and regulatory approaches to maintaining indigenous biological diversity and protecting s6(c) RMA areas and the changes that we have made in Volume 3 in relation to both;</i></li> <li><i>(c) new Policy 7-2A, including its provision for various activities to be allowed and that the existing use of production land should not be unreasonably restricted;</i></li> <li><i>(d) the unanimous view of the ecological experts that the general approach in Schedule E is appropriate;</i></li> <li><i>(e) the almost unanimous view of the ecological experts about the habitats that should be included in Schedule E;</i></li> <li><i>(f) the deletion of notified Table E.3 (and the entire notified Schedule E),</i></li> </ul>

		<p><i>the more focussed wording in Table E.1 (including restricting the riparian margin habitat type definition to woody vegetation) and the provisions in Table E.2(a) and (b);</i></p> <p><i>(g) the inclusion in Schedule E of a statement that the initial expert assistance to landowners regarding the interpretation and application of Schedule E is currently provided free of charge by the Regional Council;</i></p> <p><i>(h) new Objective 12-2 and Policies 12-5A, 12-5 and 12-6, which improve the decision-making policy framework;</i></p> <p><i>(i) the new Rule 12-2 provisions for forestry, with forestry unable to meet the relevant conditions being dealt with under Rule 12-6;</i></p> <p><i>(j) the exceptions from new Rule 12-6 which enable activities permitted in a number of other rules in the POP to occur without the need for a resource consent; and</i></p> <p><i>(k) the revised definitions of vegetation clearance and land disturbance which explicitly exclude a number of activities."</i></p>
<b>C. Policies and methods (excluding rules) [the section 32 test for policies and methods]</b>		
7.	The policies are to <b>implement</b> the objectives, and the methods are to <b>implement</b> the policies;	s.62(1)(d) and (e)
		Objective 7-1 is implemented through Policies 7-1, 7-2A, 7-4, 7-5 and 7-6 (and associated Schedule E which describes rare, threatened and at-risk habitats)
		These provisions are implemented by MWRC as a lead agency through resource consent decisions and Methods 7-1 to 7-6. Policy 7-1(b) and (c) are implemented through district planning mechanisms.
8.	Each proposed policy or method is to be examined, <b>having regard to its efficiency and effectiveness</b> , as to whether it is the most appropriate method for achieving the objectives of the regional policy statement: (a) <b>taking into account:</b> (i) the benefits and costs of the proposed policies and methods; and (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, or methods;	s.32(3)(b)  s.32(4)
<b>E. Other statutes:</b>		
9.	Finally regional councils may be required to comply with other statutes.	
		Other statutes identified in DV POP and provided for as appropriate, e.g., Historic Places Act 1993

<b>F. (On appeal)</b>		
10. On appeal the Environment Court must <b>have regard to</b> one additional matter – the decision of the regional council.	s.290A	The Decisions on Submissions to the Proposed One Plan Volumes 1-5 have been provided to the Court. Reference to the Hearing Panel decisions on indigenous biological diversity is made as appropriate in this planning evidence.

<b>Statutory tests for REGIONAL PLAN statements</b>	<b>Statutory references</b>	<b>Assessment Narrative</b>
<b>A. General requirements.</b>		
1. A regional plan (change) should be designed in accord with, and assist the regional council to carry out its functions so as to achieve the purpose of the Act.	s.30, s.63(1), s.66(1)	The DV POP is a single document incorporating the Regional Policy Statement, Regional Plan and Regional Coastal Plan. There is a clear cascade of policy provisions from the RPS to the Regional Plan. The Regional Plan contains the regulatory objectives, policies and rules to implement indigenous biological diversity provisions in the RPS.
2. When preparing its regional plan (change) the regional council <b>must give effect to</b> any national policy statement or New Zealand Coastal Policy Statement.	s.67(3)	<p><b>National Policy Statement on Electricity Transmission 2008</b></p> <p>This NPS came into effect after the NV POP was notified but before the DV POP was released. However, I consider the DV POP gives effect to it in Chapter 3 which forms part of the planning framework of the RPS. It is a matter in the Regional Plan that decision-makers must have regard to when making consent decisions for activities in rare, threatened or at-risk habitats.</p> <p><b>National Policy Statement for Renewable Electricity Generation 2011</b></p> <p>This NPS came into effect after both the NV POP and DV POP were released. However, I consider the DV POP gives effect to it in Chapter 3 which forms part of the planning framework of the RPS. It is a matter in the Regional Plan that decision-makers must have regard to when making consent decisions for activities in rare, threatened or at-risk habitats.</p> <p><b>New Zealand Coastal Policy Statement 2010 (NZCPS)</b></p> <p>The NZCPS contains objectives and policies relating to biological diversity in the coastal environment. It came into effect after both the NV POP and DV POP were developed. The NV POP, Chapter 9 was developed to give effect</p>

		to the previous NZCPS. Chapter 17 (Activities in a Coastal Marine Area) and Schedule H, together with Chapters 11, 11A and 18, and the relevant definitions in the Glossary, are the Regional Coastal Plan as required by s64 of the RMA
3. When preparing a regional plan (change) the regional council shall:  <b>(a) have regard to</b> any proposed regional policy statement;	s.66(2)(a),	The DV POP is a single document incorporating the Regional Policy Statement, Regional Plan and Regional Coastal Plan. There is a direct and demonstrable cascade of policy provisions from the RPS to the Regional Plan. The Regional Plan is the product of the RPS and contains the regulatory objectives, policies and rules to implement indigenous biological diversity provisions in the RPS.
4. In relation to other regional plans: (a) The regional plane (change) must <b>not be inconsistent with</b> an operative regional plan for the region or a water conservation order;	s.66(4)(a), (b)	The POP Regional Plan is a complete green-fields review of the operative regional plans and will replace them when it is made operative.  Two Water Conservation Orders exist for the Manawatu-Wanganui Region. These are given effect in the DV POP Chapters relating to water and are not directly relevant to the provisions for indigenous biological diversity.
5. In preparing its regional plan (change) the regional council must also: • <b>have regard to</b> any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations; and to consistency with plans and proposed plans of adjacent regional councils; and to the Crown's interests in the Coastal Marine Area.  • <b>take into account</b> any relevant planning document recognised by an iwi authority; and	s.66(b), (c)  s.66(2A)	Identified in DV POP and provided for as appropriate, e.g., New Zealand Waste Strategy 2002.  MWRC is aware of two iwi resource management plans  • Ngati Rangi Waterways document (2002) • Ngati Tuwharetoa Environmental Iwi management Plan (2003).  These documents were taken into account during the drafting of the RPS provisions for Chapter 4. Table 4.1 in Chapter 4 sets out the Resource Management Issues of Significance to hapū and iwi and the relevant chapter of the POP that addresses those issues. I note that there are a number of references in Table 4.1 to Chapter 7. Those that relate to indigenous biological diversity are Issues (ia), (k), (l) and (n).

<ul style="list-style-type: none"> <li>not have regard to trade competition;</li> </ul>	s.66(3)	No trade competition situations identified.
6. A regional plan (change) must be prepared <b>in accordance with</b> any regulation (there are none at present) and any direction given by the Minister for the Environment	s.66(1)	There are no regulations or directions identified.
7. The formal requirement that a regional plan (change) <u>must</u> state its objectives, policies and the rules (if any) and may state other matters.	s.75(1)	<p>The DV POP Regional Plan includes the following policy provisions for indigenous biological diversity:</p> <ul style="list-style-type: none"> <li>- Objective 12-2 Regulation of activities affecting indigenous biological diversity</li> <li>- Policy 12-5A Regional rules for activities affecting indigenous biological diversity</li> <li>- Policy 12-5 Consent decision-making for activities in rare habitats, threatened habitats and at-risk habitats</li> <li>- Policy 12-6 Criteria for assessing the significance of, and the affects of activities on, an area of habitat</li> <li>- Rule 12-6 Some activities within rare habitats, threatened habitats and at risk habitats</li> </ul> <p>MWRC specifies itself as the local authority responsible for specifying objectives, policies and methods for the control of the use of land relating to indigenous biological diversity (Refer Policy 7-1)</p>
7A. The formal requirement that a regional plan (change) <u>must</u> also record how it has allocated natural resource under s.30(1)(fa) or (fb) and (4) if it has done so.	s.67(5)	No allocation of natural resources in the indigenous biological diversity provisions.
<b>B. Objectives [the section 32 test for objectives]</b>		
8. Each proposed objective in a regional plan <b>is to be evaluated</b> by the extent to which it is the most appropriate way to achieve the purpose of the Act.	s.32(3)(a)	See statutory test 10. below.
<b>C. Policies and methods (including rules) [the section 32 test for policies and methods]</b>		
9. The policies are to <b>implement</b> the objectives, and the rules (if any) are to <b>implement</b> the policies;	s.67(1)	Objective 12-2 is implemented through Policies 12-5A, 12-5 and 12-6, and Rule12-6 supported by Schedule E

		These policies are implemented by MWRC.
<p>10. Each proposed policy or method (including each rule) is to be examined, <b>having regard to its efficiency and effectiveness</b>, as to whether it is the most appropriate method for achieving the objectives of the regional plan:</p> <p>(a) <b>taking into account:</b></p> <p>(i) the benefits and costs of the proposed policies and methods; and</p> <p>(ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, or methods; and</p>	<p>s.32(3)(b)</p> <p>s.32(4)</p>	<p>The hearing panel made substantial changes to the policy provisions in Chapters 7 and 12. The Panel concluded that:</p> <p><i>“On balance, we have concluded that there is no need for a separate or additional s 32 report for the biodiversity provisions of the POP. We have reached that conclusion based on a number of factors, including:</i></p> <p><i>(a) the significant decline of indigenous biological diversity and s6(c) RMA areas in the Region and especially in certain parts of the Region;</i></p> <p><i>(b) the fact that the POP takes both non-regulatory and regulatory approaches to maintaining indigenous biological diversity and protecting s6(c) RMA areas and the changes that we have made in Volume 3 in relation to both;</i></p> <p><i>(c) new Policy 7-2A, including its provision for various activities to be allowed and that the existing use of production land should not be unreasonably restricted;</i></p> <p><i>(d) the unanimous view of the ecological experts that the general approach in Schedule E is appropriate;</i></p> <p><i>(e) the almost unanimous view of the ecological experts about the habitats that should be included in Schedule E;</i></p> <p><i>(f) the deletion of notified Table E.3 (and the entire notified Schedule E), the more focussed wording in Table E.1 (including restricting the riparian margin habitat type definition to woody vegetation) and the provisions in Table E.2(a) and (b);</i></p> <p><i>(g) the inclusion in Schedule E of a statement that the initial expert assistance to landowners regarding the interpretation and application of Schedule E is currently provided free of charge by the Regional Council;</i></p> <p><i>(h) new Objective 12-2 and Policies 12-5A, 12-5 and 12-6, which improve the decision-making policy framework;</i></p> <p><i>(i) the new Rule 12-2 provisions for forestry, with forestry unable to meet the relevant conditions being dealt with under Rule 12-6;</i></p> <p><i>(j) the exceptions from new Rule 12-6 which enable activities permitted in a number of other rules in the POP to occur without the need for a resource consent; and</i></p> <p><i>(k) the revised definitions of vegetation clearance and land disturbance</i></p>

<p>(a) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances</p>	<p>s.32(3A)</p>	<p><i>which explicitly exclude a number of activities."</i></p> <p>No situations identified</p>
<p><b>D. Rules</b></p>		
<p>11. In making a rule the regional council must <b>have regard to</b> the actual and potential effect of activities on the environment.</p>	<p>s.68(3)</p>	
<p>12. There are special provisions for rules about contaminated land</p>	<p>s.68(11)</p>	<p>Not applicable</p>
<p>13. There are special provisions for rules relating to maximum or minimum levels or flows or rates of flows or rates of use of water or minimum standards for water quality or air quality, or ranges of temperature or pressure of geothermal water.</p>	<p>s.68(7)</p>	<p>Not applicable</p>
<p>13A. There are special provisions relating to rules in regional coastal plans</p>	<p>s.68(8), (9), (10)</p>	<p>Not applicable</p>
<p><b>E. Other statutes:</b></p>		
<p>14. Regional councils may be required to comply with other statutes.</p>		<p>Other statutes identified in DV POP and provided for as appropriate, e.g., Historic Places Act 1993</p>
<p><b>F. (On appeal)</b></p>		
<p>15. On appeal the Environment Court must <b>have regard to</b> one additional matter – the decision of the regional council.</p>	<p>s.290A</p>	<p>The Decisions on Submissions to the Proposed One Plan Volumes 1-5 have been provided to the Court. Reference to the Hearing Panel decisions on indigenous biological diversity is made as appropriate in this planning evidence.</p>