

**BEFORE THE MANAWATU – WANGANUI REGIONAL COUNCIL (HORIZONS  
REGIONAL COUNCIL)**

*In the matter of*            **The Resource Management Act 1991; and**

*In the matter of*            **The Proposed One Plan: Consolidated Regional  
Policy Statement, Regional Plan and Regional  
Coastal Plan for the Manawatu - Wanganui Region**

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**STATEMENT OF EVIDENCE BY DAVID RICHARD MURPHY  
FOR PALMERSTON NORTH CITY COUNCIL**

**CHAPTERS 7 AND 12 AND SCHEDULE E OF THE ONE PLAN**

**THE BIODIVERSITY AND HERITAGE SECTIONS OF THE ONE PLAN**

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Dated: 11 July 2008

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## Introduction

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1. My name is David Richard Murphy. I hold the position of Senior Policy Planner with the Palmerston North City Council. I have the tertiary qualification of Bachelor of Resource and Environmental Planning (honours) from Massey University and I am a full member of the New Zealand Planning Institute. I have six and a half years planning experience, of which four and a half years have been in local government with the Palmerston North City Council (PNCC).
2. I have read the One Plan Hearing Procedures and Directions and Requests from the Chairperson circulated to all submitters by Horizons Regional Council (Horizons) on 9 May 2008. I have read the Code of Conduct for Expert Witnesses (section 5 of the Environment Court Consolidated Practice Note 2006). I agree to comply with this Code of Conduct.
3. I have overseen PNCC's formal response to the Proposed One Plan: Consolidated Regional Policy Statement, Regional Plan and Regional Coastal Plan for the Manawatu - Wanganui Region (the One Plan) since the initial submission on the One Plan "Road Map" in October 2005. This work has included attendance at a number of meetings, including pre-hearing meetings, with Horizons officers; the preparation of PNCC's submissions on earlier One Plan working documents; and the preparation of PNCC's formal submission and further submission on the Proposed One Plan.
4. While this is my own expert planning evidence, given the strategic importance of the One Plan to PNCC's long term planning, I do refer, in parts, to the collective view PNCC has on the One Plan.

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## Structure of Evidence

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5. My evidence is structured in the following manner:
  - (a) Introduction (above)
  - (b) Structure of Evidence (this section)
  - (c) Scope of Evidence
  - (d) PNCC's interest in the Biodiversity and Heritage sections of the One Plan
  - (e) The basic elements of the Biodiversity and Heritage sections of the One Plan
  - (f) PNCC's submission points on the Biodiversity and Heritage sections of the One Plan
  - (g) Dialogue with Horizons Regional Council before and after public notification of the One Plan

- (h) An overview in terms of the requirements set out in the Resource Management Act 1991
- (i) PNCC Strategic Planning and Policy documents
- (j) Horizons Regional Council s42A Reports
- (k) Suggested Amendments
- (l) Conclusions

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## Scope of Evidence

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6. The primary purpose of my evidence is:
- To provide planning evidence to support the submission points made by PNCC on the Biodiversity and Heritage sections of the One Plan; and
  - Respond to Horizons s42A reports.
7. My planning evidence covers 3 main topic areas:
- Biodiversity;
  - Heritage; and
  - Relevant functions of regional councils and territorial authorities (TAs)
8. My planning evidence takes into account the following matters that have occurred since the lodgement of PNCC's original submission on the One Plan:
- Ongoing discussions that have occurred between PNCC and Horizons officers and experts on the One Plan, e.g. pre-hearing meetings;
  - The more detailed evidence provided by Horizons through its s42A reports;

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## PNCC's Interest in the Biodiversity and Heritage sections of the One Plan

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9. PNCC lodged a submission on the One Plan in August 2007. PNCC also lodged a further submission on the One Plan in December 2007.
10. PNCC has a statutory duty to the Palmerston North community to ensure the sustainable management of the City's natural and physical resources is achieved in an integrated manner. It follows that the City's interest in the Biodiversity and Heritage sections of the One Plan rests on the following grounds:
- PNCC and Horizons are jointly responsible for a number of resource management functions under the RMA, including the management of

biodiversity and heritage. It is important the roles and responsibilities of the two authorities are clearly communicated.

- PNCC has a number of areas of significant indigenous vegetation and notable trees listed in its current District Plan.
- There are a number of ecological areas within Palmerston North City that are not currently listed in the District Plan that may be captured by the proposed One Plan biodiversity provisions.
- PNCC has a number of buildings and objects of cultural heritage value listed in its current District Plan.
- PNCC is close to completing stage one of the Heritage Review, a project being undertaken in anticipation of the pending review of the Palmerston North City District Plan.

### **The Basic Elements of the Biodiversity and Heritage sections of the One Plan**

14. The One Plan is a consolidated Regional Policy Statement, Regional Plan and Regional Coastal Plan for the Manawatu-Wanganui Region. It consists of two key parts:
- Part I – The Regional Policy Statement
  - Part II – The Regional Plan
15. The key parts of the One Plan in terms of the management of biodiversity and heritage are:
- Chapter 7 – Living Heritage (RPS): Chapter 7 contains the RPS objectives and policies regarding biodiversity and heritage. These objectives and policies also provide direction to the land-based biodiversity rules in Chapter 12 (the Regional Plan). Chapter 7 also contains a description of the significant resource management issues and lists a number of methods.
  - Chapter 12 - Land Use Activities and Land Based Biodiversity (Regional Plan): Chapter 12 contains a number of policies that provide direction to the land-based biodiversity rules that are also contained within Chapter 12. The relevant objectives and policies contained within Chapter 7 also provide direction to the land-based biodiversity rules contained in Chapter 12.
  - Schedule E – Indigenous Biological Diversity: Schedule E contains a series of tables and figures which essentially define the terms *rare and threatened habitats* and *at risk habitats* that are referred to in Chapters 7 and 12.
16. Given the significance of proposed Policy 7-1 of the One Plan to the contents of my evidence, I have reproduced it in full below:

*In accordance with s 62(1)(i) RMA, local authority responsibilities for controlling land use activities for the purpose of maintaining indigenous biological diversity in the Manawatu-Wanganui Region are apportioned as follows:*

(a) The Regional Council shall be responsible for:

(i) developing objectives, policies and methods for the purpose of establishing a region-wide approach for maintaining indigenous biological diversity

(ii) developing rules controlling land use activities for the purpose of maintaining biological diversity.

(b) Territorial Authorities shall be responsible for:

(i) implementing the objectives and policies of this chapter when developing rules and making decisions on subdivision and land-use consent applications.

(ii) retaining schedules of notable trees and amenity trees in their district plans and/or such other measures as they see fit for the purpose of recognising amenity and cultural values associated with indigenous biological diversity.

**PNCC's submission points on the Biodiversity and Heritage sections of the One Plan**

Biodiversity:

17. PNCC submitted in support of Horizons taking the lead on biodiversity. The relevant extract from the PNCC submission is provided below:

*Therefore PNCC supports the enhanced role that Horizons is specifying for itself as the lead agency for biodiversity in the Region*

18. PNCC also submitted in support of biodiversity (threatened native habitats) being identified by Horizons as one of the "big four" issues.
19. PNCC's submission points in support (above) are qualified by concerns regarding the certainty provided by the proposed rules; the resourcing required from Horizons to respond to inquiries regarding biodiversity across the region; and the future role for District Plans (see decisions requested below).
20. It is important to note at this early stage in my evidence that, in my opinion, there is a distinct difference between Horizons taking the lead on biodiversity and Horizons being the sole agency responsible for biodiversity under the RMA. Mr. John Maassen states at paragraph 33 of his s42A report that TAs that attempted to provide a biodiversity regime alongside the regime in the One Plan would not be giving effect to the RPS. If the intended implication is that TAs can not provide for or consider matters relating to biodiversity, I disagree, as discussed further below. In my opinion the RPS cannot override the provisions of the RMA, which provides a clear biodiversity function for TAs.

Heritage:

21. PNCC submitted in support of the proposed heritage provisions, in particular Issue 7-3, Objective 7-3 and Policy 7-10.

## Decisions Requested

22. PNCC requested the following decisions within its original submission on the Biodiversity and Heritage sections of the One Plan.

### Biodiversity:

- *That Horizons adopt Issue 7-1, Objective 7-1 and Policy 7-1.*
- *That Horizons either remove or amend Policies 7-2 & 7-3, in particular by amending Schedule E so that landowners are informed directly which parts of their land are subject to regulation.*
- *That Horizons remove Rule 12-8 and amend Rule 12-7 to apply to activities within “at risk, rare or threatened” habitats.*
- *That Horizons adopt Policy 7-3, Policy 7-4 and Policy 7-5, but move and renumber them as Policy 7-2, Policy 7-3 and Policy 7-4.*
- *That Horizons adopt Section 7-5 Methods but amend by including reference to support for regional parks, where agreed and where justified for the very best sites, in the “top 200” bush remnants and “top 100” aquatic sites.*

### Heritage:

- *That Horizons adopt Issue 7-3, Objective 7-3 and Policy 7-10*

23. PNCC also lodged a further submission in support of a number of original submission points made by other TAs within the region, in particular PNCC supported the following original submission points of other TAs:

### Biodiversity:

- *Amendment of the Policy to properly reflect the division of responsibility between Regional and local government and their respective functions.*
- *Clarification as to whether the Regional Council seeks to have all responsibility for developing and administering rules controlling land use activities for the purpose of maintaining biodiversity, or whether it seeks to have territorial authorities also develop land use activity rules and, if so, what should be the nature and scope of such rules.*
- *That rule 12.8 be deleted in its entirety, or, if it is to be retained, that the rule be amended to discretionary activity status, and all areas to which it relates to in Schedule E be mapped at an appropriate individual property scale.*
- *Some rules in Section 12 of the Plan do not provide certainty as to activity status and therefore it may be difficult for a landowner or a district planner administering the land use provisions of a District Plan to discern whether or not a consent is required and, if required, what type of consent.*

*Withdraw the whole plan; or clarify*

*all the above matters [referring to Rule 12-8] and provide certainty of interpretation and activity status for land users and Plan users seeking to interpret and apply the rules in Section 12 of the Plan.*

- *Remove the definition of "At-risk habitat", as part of providing a clear new set of rules for the protection of biodiversity.*
- *Rare and threatened habitat means an area mapped in Schedule E.*
- *Provide consistency so that the Plan either uses the term "Rare and Threatened Habitat", or "Rare or Threatened Habitat", but not both.*
- *Council seeks that Schedule E be deleted in its entirety, or that rare and threatened habitats be specifically identified and mapped at an appropriate scale and included in Schedule E, and 'at-risk' habitats be deleted.*
- *Delete or substantially amend Schedule E, as part of providing a clear new set of rules for the protection of biodiversity.*
- *Delete Schedule E in its entirety or (if it is to be retained) specifically identify and map at an appropriate scale Rare and Threatened Habitats and include in Schedule E and delete at risk Habitats.*

## **Dialogue with Horizons Regional Council before and after public notification of the One Plan**

24. The purpose of this section of my evidence is to provide some context to the extent and nature of the dialogue that has occurred between PNCC and Horizons before and after public notification of the One Plan with regards to biodiversity and heritage.

### **Dialogue before public notification of the One Plan**

25. As indicated in my planning evidence on the overall One Plan, given the long lead in time before public notification of the One Plan, a number of meetings were held at the officer level between PNCC and Horizons before public notification of the One Plan.

### **Biodiversity:**

26. Dialogue between PNCC and Horizons before public notification of the One Plan on the issue of biodiversity is summarised in PNCC's submission points on the One Plan "Roadmap" and Version 4 of the One Plan working document. The relevant extracts from each submission are provided below:

PNCC "Roadmap" submission:

*The One Plan should define regional and district roles relating to biodiversity. Horizons has suggested that it take a leadership role and Council supports this in*

*principle. Removing duplication of functions between Horizons and territorial authorities is obviously desirable. Rules to protect particular sites in private ownership are often strongly contested and difficult to enforce, and an alternative approach worthy of consideration might be a combination of voluntary means to protect significant sites in private ownership, such as covenants, coupled with financial incentives for protection and enhancement.*

PNCC version 4 working document submission:

*The Council strongly supports this as a key issue, and agrees that Horizons is the key agency. The Council recognises that Horizons has identified new issues around biodiversity and is proposing to put significant additional emphasis and resources into biodiversity. PNCC endorses this.*

*While agreeing with the overall objectives, the Council suggests a change of emphasis in the methods. Horizons is proposing new projects to identify and protect significant habitats, and provide financial incentives. These are strongly supported. However, the use of strong regional regulation to protect habitats at the same time is highly questionable. Blanket rules to protect vaguely or arbitrarily defined habitats in private ownership will often be strongly contested and be difficult to enforce. If Horizons is seen as a biodiversity enforcement agency, this will tend to work against achieving success with the non-regulatory methods.*

*An alternative approach is for Horizons to concentrate on firstly being a provider of biodiversity information, to both landowners and TAs; and secondly, to offering the proposed wide range of non-regulatory methods to protect and enhance threatened habitats. The information gathering function is vital to biodiversity, and is a necessary foundation for an effective approach whether this is based on incentives or regulatory methods. TAs should have the function of protecting specific sites, and of course most already do so in their district plans, but for this to be considered comprehensive they will require much better information. Landowners will be more likely to accept restrictions on their actions if a site is individually identified and its valuable features recorded in a district plan, rather than if it is caught by a bureaucratic definition of ecologically significant sites in the One Plan. The information provided from Horizons will assist TAs to do this.*

*This suggested allocation of functions would offer benefits by:*

- *enhancing Horizons leadership role for biodiversity;*
- *reducing duplication of function and effort between Horizons and territorial authorities;*
- *freeing up resources in Horizons to apply to the non-regulatory methods;*
- *increasing the amount of cooperation likely to be forthcoming from landowners.*

#### Heritage:

27. Limited correspondence occurred between PNCC and Horizons with regards to the heritage provisions of the One Plan prior to the notification of the One Plan. This is largely due to the fact the One Plan generally promotes the status quo with regards to the management of heritage, and PNCC support such an approach.



## Dialogue after public notification of the One Plan

### Biodiversity:

28. Dialogue between PNCC and Horizons after public notification of the One Plan on the issue of biodiversity was limited to PNCC's submission points on the One Plan (original submission and further submissions) and the pre-hearing meetings held on 8 May 2008 (PNCC and Horizons) and 26 May 2008 (TAs and Horizons).

### Heritage:

29. As mentioned above, there has been limited discussions on the heritage sections of the One Plan between Horizons and PNCC.

## An overview in terms of the requirements set out in the Resource Management Act 1991

### Biodiversity:

30. This section of my evidence contains three subsections:
- Background Discussion
  - Preferred Outcome
  - PNCC's role in Biodiversity - Functions of a TA and relevant Part II matters

### Background Discussion:

31. The general thrust of PNCC's submission on the One Plan with regards to biodiversity can be summarised as qualified support. That is, support for Horizons taking the lead on biodiversity and identifying threatened native habitats as one of its "big four" issues, but concern regarding the uncertainty of the proposed rules; the resourcing required from Horizons to respond to inquiries regarding biodiversity across the region; and the future role for District Plans.
32. The protection of indigenous biodiversity on private land has been one of the most controversial issues addressed under the RMA since its inception in 1991. It has become increasingly clear that there is no "silver bullet" for local authorities in terms of meeting their obligations under sections 6(c) and 7(d) of the RMA, as well as their relatively new biodiversity functions under sections 30 and 31 of the RMA. Like a number of resource management issues, successfully managing biodiversity requires local authorities to find the correct balance between the various regulatory and non-regulatory methods available.
33. Section 6(c) of the RMA requires all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, to recognise and provide for:

*the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna*

34. Section 7(d) of the RMA requires all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, to have particular regard to:

*the intrinsic value of ecosystems*

35. The recognition and provision of sections 6(c) and 7(d) of the RMA within planning documents has generally fallen on TAs. This is largely due to s31 of the RMA which provides TAs with the following functions:

*Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*

*(a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the **effects of the use, development, or protection of land** [emphasis added] and associated natural and physical resources of the district:*

*(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—*

*(i) the avoidance or mitigation of natural hazards; and*

*(ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and*

*[[ (iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:]]*

*(iii) the maintenance of indigenous biological diversity:*

36. It is acknowledged that the amendments to the RMA in 2003 added the maintenance of indigenous biological diversity as a function of both regional councils and TAs. These functions are addressed in more detail later in my evidence. As most existing regional and district planning documents were prepared prior to the passing of the 2003 RMA amendments, the focus of TAs functions on *the effects of the use, development, or protection of land* has meant they have generally taken the lead with respect to recognising and providing for section 6(c) and 7(d) matters in planning documents, in particular with regards to land based biodiversity.

37. The difficulty for TAs who have been required to recognise and provide for *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna* and *the intrinsic value of ecosystems* (significant natural areas) within their District Plan is that it generally imposes a restriction on private property rights, which in some cases can have a significant cost (opportunity cost). It is this cost, and the associated challenges to proposed planning provisions, that has led to difficulties in identifying and protecting significant natural areas within District Plans.

38. A number of TAs have also struggled with providing sufficient resources to properly identify, validate and map all potential significant natural areas within their District Plans. Insufficient information on the ecological value of individual sites provides landowners with the opportunity to challenge the proposed provisions through the First Schedule process. In some cases this has led to interim or revised provisions

being agreed to that merely restrict indigenous vegetation clearance over a certain area (similar to the rules proposed in the One Plan), or a situation where only those sites that are in public ownership, or those sites that are already provided with some form of legal protection, end up being listed in the District Plan.

39. For the reasons discussed above I support and commend Horizons for agreeing to take the lead with regards to biodiversity. It is a difficult and potentially costly function for TAs to manage and Horizons has put its hand up in this respect. In my opinion Horizons is in a better position than TAs to manage biodiversity due to its internal expertise, information databases, related work programmes such as pest control, and land management officers that are in regular contact with rural landowners, who are generally most affected by the imposition of biodiversity planning provisions.
40. Despite the support for Horizons taking the lead on biodiversity, for the reasons discussed below, in my opinion, Horizons' approach is also likely to be fraught with difficulty - which highlights my earlier comment that there is no "silver bullet" with regards to the protection of indigenous biodiversity on private land.
41. In my opinion, the potential problems with the approach proposed within the One Plan will be realised at the time of Plan implementation, as opposed to the Plan development stage where TAs have run into problems due to inadequacies in mapping and information.
42. While I commend Horizons' lengthy pre-notification consultation on the One Plan, in my opinion, the approach taken by Horizons within the One Plan with respect to the protection of biodiversity on private land is rather uncertain for landowners. The reason for this description, is that the proposed One Plan requires the interpretation of the lengthy Appendix E to determine whether or not a specific significant natural area is provided with a level of protection under the One Plan. In my opinion, interpreting the Plan will generally require skills beyond those held by a planner responsible for implementing it, or a landowner trying to establish if they require resource consent.
43. The reliance on the various definitions in Appendix E has meant Horizons has not had to map the areas it has defined as *rare and threatened habitats* and *at risk habitats*. This has advantages and disadvantages for Horizons. From my experience mapping a potential significant natural area and placing it in a proposed Plan tends to encourage a significant number of submissions in opposition to a Plan raising concerns with regards to various impositions on private property rights, i.e. it is much easier for a landowner to establish an imposition where specific sites are mapped. Horizons has, to a certain degree, avoided this situation by relying on the various definitions included in Appendix E of the One Plan.
44. Despite the attention it attracts at the Plan notification stage, the argument for mapping sites of significance, as opposed to relying on definitions as Horizons has, is that the mapping provides a much higher level of certainty for landowners and the people responsible for implementing and interpreting the Plan. It is clear which significant natural areas within a region or district are subject to the proposed rules and require consent, and which areas are not.
45. In my opinion, the biggest risk with the approach proposed by Horizons is that in most cases a decision on whether or not resource consent is required to clear an area of indigenous vegetation is likely to require a field trip to the site and an analysis by a qualified ecologist. This will add time, expense and uncertainty to the

planning process. It is unclear whether this assessment will fall on the applicant or Horizons (assuming it is acknowledged by the landowner that a resource consent may be required) The biggest advantage to the approach proposed by Horizons is that the One Plan does not rely on detailed information on each individual site of significance within the region (nor does it map each individual site).

46. Take for example the ecological processes report completed for PNCC in 2002. This report identified 80 ecological sites within Palmerston North City, but there are only 15 areas of **significant** indigenous vegetation listed in the Palmerston North City District Plan. How many of the remaining 65 ecological sites are now considered to be a rare and threatened habitat or an at risk habitat under the One Plan? Should a development proposal be lodged with PNCC that threatens one of the sites identified in the ecological processes report, it is likely that a detailed assessment of the site against Appendix E will be required to determine whether or not resource consent is required from Horizons.
47. As a planner working in a TA who has to help PNCC juggle its various functions under the RMA, and as a planner who has represented significant rural landowners on this very issue, I hope the potential uncertainties and inefficiencies with Horizons' approach that I have described are not realised and the One Plan proves to be an efficient and effective means of maintaining the region's indigenous biological diversity.
48. The big risk to biodiversity in the region is if the TAs remove their existing schedule of significant natural areas from their District Plans and the potential uncertainties with the approach proposed within the One Plan and described within my evidence are realised.

#### Preferred Outcome:

49. So far I have discussed the pros and cons of the various options for managing biodiversity more so than critiquing the approach proposed by Horizons within the One Plan. As previously mentioned, this is because I believe there is no silver bullet to managing biodiversity on private land. It is for this reason that I do not support Horizons being the *sole* agency for biodiversity. Nor do I agree that the RPS can prevent TAs from providing for or considering matters relating to biodiversity, if that is what is intended. The RPS cannot override the provisions of the RMA. The RMA makes it clear that regional councils and TAs have joint responsibility for managing biodiversity. For example, the Part 2 duties apply to all local authorities, and TAs are entitled (and arguably required) to consider all relevant effects of a land use activity, including any adverse effects on vegetation and habitat, regardless of which local authority has primary responsibility for biodiversity.
50. As mentioned earlier in my evidence, in my opinion, there is a distinct difference between being the *lead* agency for biodiversity and Horizons stipulating that it is the *sole* agency responsible for biodiversity protection under the RMA. PNCC supported Horizons taking the lead, but the assertion that Horizons is to be the sole agency and any implication that the One Plan overrides TAs' statutory functions is not supported.
51. In my opinion the upcoming reviews of the various District Plans within the region can be used as "backstop" to the approach proposed within the One Plan. That is, should the uncertainties with the approach proposed by Horizons described within my evidence be realised, then the District Plans within the region could be used to

fill the gap i.e. TAs could carryover any current listings and add to those listings based on the direction provided within Appendix E of the One Plan, as to what constitutes areas worthy of protection. Alternatively, Horizons could contribute to the development of new District Plans by helping to identify sites within individual districts that meet the various definitions outlined in Appendix E of the One Plan. The One Plan would then be providing regional direction as opposed to the actual regulatory controls themselves.

52. To state that TAs can no longer exercise their functions under the RMA to contribute towards the maintenance of indigenous biological diversity as they will not be giving effect to the RPS is, in my opinion, a risky and heavy handed approach. It also places too much confidence in the approach proposed by Horizons. Importantly, if TAs remove all listed sites from their District Plans as part of the upcoming District Plan reviews, should Horizons approach prove problematic, it may be 15-20 years before the sites return as part of third generation District Plans.
53. For the reasons discussed in my evidence, in my opinion, TAs should (and will) retain the ability to list significant natural areas in their District Plan regardless of whether the One Plan purports to curtail that ability. Should the approach proposed within the One Plan cause the problems discussed, the pending Palmerston North City District Plan review will provide the opportunity for PNCC to confirm or add to the 15 significant natural areas already listed in the current District Plan. PNCC may also elect to use zoning as a means of protecting areas of significance, as the existing Conservation and Amenity Zone already does in a number of areas across the City.
54. A realistic notification date for the second generation Palmerston North City District Plan is 2010 or 2011. This will provide a useful time period to “road test” the biodiversity provisions included in the One Plan prior to confirmation of the Proposed District Plan. If the One Plan provisions are working effectively PNCC could remove its schedule of significant natural areas from the District Plan at that time.

#### PNCC’s role in Biodiversity - Functions of a TA and relevant Part II matters:

55. As mentioned above, in my opinion, Horizons cannot override PNCC’s biodiversity functions under the RMA through the RPS section of the One Plan.
56. The relevant functions of regional council are outlined below:

#### ***30 Functions of regional councils under this Act***

*(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—*

*(i) Soil conservation:*

*(ii) The maintenance and enhancement of the quality of water in water bodies and coastal water:*

*(iii) The maintenance of the quantity of water in water bodies and coastal water:*

*[(iia) the maintenance and enhancement of ecosystems in water bodies and coastal water:]*

*(iv) The avoidance or mitigation of natural hazards:*

*(v) The prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:*

*[(ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:]*

57. The relevant functions of a TA are outlined below:

**31 Functions of territorial authorities under this Act**

*Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*

*(a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*

*(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—*

*(i) the avoidance or mitigation of natural hazards; and*

*(ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and*

*[[iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:]]*

*(iii) the maintenance of indigenous biological diversity:*

58. It is clear that both regional councils and TAs have functions under the RMA regarding the maintenance of indigenous biological diversity.

59. As discussed earlier in my evidence, prior to the 2003 RMA amendments that introduced the new biodiversity functions, the focus of section 31 of the RMA on land use has meant that TAs have traditionally picked up the recognition of section 6(c) and 7(d) matters through their District Plans. It is the new joint function regarding the maintenance of indigenous biological diversity that has provided an enhanced biodiversity role for regional councils.

60. Even though Horizons has the function under s30 of establishing objectives, policies and methods for maintaining biodiversity, in my opinion, that does not override PNCC's s31 functions, which include the control of all effects of land use including section 6(c) effects and effects on biodiversity.
61. Although Horizons proposes to have primary responsibility for biodiversity and have dedicated objectives, policies and methods relating to it, in my opinion, PNCC must still consider effects on biodiversity, and an RPS cannot exclude PNCC from considering those matters. This is reinforced by the fact that Part II of the RMA clearly imposes relevant obligations on PNCC as well, in particular sections 6(c) and 7(d).
62. Furthermore, in my opinion, the drafting of Policy 7-1 of the One Plan does not restrict the ability for a TA to include rules in a District Plan regarding biodiversity.
63. Policy 7-1 of the One Plan, as notified, is outlined below:

*In accordance with s 62(1)(i) RMA, local authority responsibilities for controlling land use activities for the purpose of maintaining indigenous biological diversity in the Manawatu-Wanganui Region are apportioned as follows:*

*(a) The Regional Council shall be responsible for:*

*(i) developing objectives, policies and methods for the purpose of establishing a region-wide approach for maintaining indigenous biological diversity*

*(ii) developing rules controlling land use activities for the purpose of maintaining biological diversity.*

*(b) Territorial Authorities shall be responsible for:*

*(i) implementing the objectives and policies of this chapter **when developing rules [emphasis added]** and making decisions on subdivision and land-use consent applications.*

*(ii) retaining schedules of notable trees and amenity trees in their district plans and/or such other measures as they see fit for the purpose of recognising amenity and cultural values associated with indigenous biological diversity.*

64. While policy 7-1(a)(ii) indicates the regional council shall be responsible for developing rules controlling land use activities for the purpose of maintaining biological diversity, policy 7-1(b)(i) does not specifically restrict the ability for a TA to develop rules in this regard.
65. It is acknowledged that policy 7-1(b)(i) is now recommended to read as follows:
- Ensuring that the objectives and policies of this chapter are taken into account when developing rules and making decisions on subdivision and land use consent applications.*
66. In my opinion, the only way Horizons could become the sole agency for biodiversity is if all TAs in the region transferred their section 31(b)(iii) functions to Horizons under section 33 of the RMA (transfer of powers). Even then however, the section 6(c) and 7(d) duties would continue to apply to TAs. In short, TAs must

recognise and provide for the matters in section 6(c) and must have particular regard to section 7(d) when preparing or changing or implementing their plans. TAs could only avoid having provisions dealing with these issues if they are satisfied that sufficient protection is provided by the One Plan. That judgment can not be overridden by the One Plan.

#### Heritage:

67. In terms of heritage, the One Plan essentially promotes the status quo with respect to TA and regional council responsibilities.
68. The RPS section of the One Plan provides some high level objectives and policies that the TAs will need to give effect to in their respective District Plans.
69. PNCC support Issue 7-3, Objective 7-3 and Policy 7-10
70. The approach proposed within the One Plan allows TAs to continue to manage built heritage and notable trees, which is supported.
71. It is noted that a new policy has been recommended with respect to the identification of historic heritage (Policy 7-11). This policy identifies specific requirements for TAs to develop and maintain a schedule or database of known historic heritage for their district and provides criteria for doing this.

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#### **PNCC Strategic Planning and Policy Documents**

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72. The One Plan, with the inclusion of the RPS, will become the new strategic planning document for the region. In making decisions on the One Plan it is therefore important that Horizons has good understanding of the strategic planning occurring at the local level.
73. An analysis of the most relevant PNCC strategic planning and policy documents, and the implications the One Plan may have on these documents, is provided below.

#### **Palmerston North City District Plan**

74. The Palmerston North City District Plan was prepared in the early to mid 1990s and is now due for review. PNCC is currently finalising a project plan and timeline for the District Plan review.
75. Chapter 17: Natural and Cultural Heritage of the Palmerston North City District Plan includes the following schedules:
  - Appendix 17A: Schedule of Buildings and Objects of Cultural Heritage Value
  - Appendix 17B: Schedule of Objects and Sites of Cultural Heritage Value to Tangata Whenua
  - Appendix 17C: Schedule of Notable Trees, Groups of Trees and Areas of Significant Indigenous Vegetation



76. As mentioned previously, a realistic notification date for the second generation Palmerston North City District Plan is 2010 or 2011. If the One Plan biodiversity provisions are working effectively at this time PNCC could remove the areas of indigenous vegetation from Appendix 17C of the District Plan. Conversely, if the One Plan biodiversity provisions are not working effectively the District Plan could act as “backstop” to the proposed One Plan provisions.
77. Consistent with Policy 7-1(b)(ii) of the One Plan, the pending District Plan review will provide PNCC with the opportunity to review the schedule of notable trees and groups of trees currently included in Appendix 17C of the District Plan.
78. The pending District Plan review will provide PNCC with the opportunity to review Appendix 17A and 17B of the District Plan.

### **Biodiversity Initiatives**

79. PNCC have a number of non-regulatory biodiversity initiatives underway including the Greening Strategy and the Green Corridors project.
80. For the purposes of clarification, in my opinion, nothing in the One Plan restricts PNCC from continuing these projects.

### **Heritage Review**

81. PNCC is close to completing stage one of the Palmerston North City Heritage Review. The purpose of the Heritage Review is:
- To undertake a review of the City’s built heritage stock with a particular focus on residential buildings and critical areas of the City excluded from earlier studies and to develop an appropriate policy response to the findings of the review.*
82. The pending District Plan review will provide PNCC with the opportunity to progress the Heritage Review and add to those buildings and objects already listed in Appendix 17A of the District Plan.
83. Should the recommended new Policy 7-11 - Historic Heritage Identification be approved as part of the One Plan, potential additions to Appendix 17A of the District Plan will be required to be identified in accordance with the criteria outlined in Policy 7-11.

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### **Horizons Regional Council s42A Reports**

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84. An evaluation of the Horizons s42A reports that fall within my area of expertise is provided below.

### **Helen Marr - Biodiversity**

85. The recommended amendments and evaluation of submissions are noted, in particular with respect to proposed policy 7-1 (a) and (b).

### **Fiona Gordon - Heritage**

86. The recommended amendments and evaluation of submissions are noted, in particular with respect to the recommended new Policy 7-11 Historic Heritage Identification.

### **John Maassen – Biodiversity and Heritage**

87. As previously discussed, I do not support any implication at paragraph 33 of Mr Maassen's s42A report (if such an implication is intended) that TAs cannot provide for or consider biodiversity in light of Policy 7-1 of the One Plan. In my opinion the RPS cannot override the provisions of the RMA, which provides a clear biodiversity function for TAs.

### **Suggested Amendments**

88. While the One Plan biodiversity provisions are a long way down their development path and alternative approaches may also raise some difficulties, there are, in my opinion, some amendments that could be made to the One Plan that will help alleviate the concerns expressed within my evidence. These are detailed below:

#### **Policy 7-1(b)**

89. To make it clear that TAs still have a biodiversity function and a responsibility to recognise and provide for section 6(c) and take into account section 7(d) of the RMA, it is suggested that the following words be added to Policy 7-1 of the One Plan (either in the text of Policy 7-1 or in an advice note):

***Nothing in Policy 7-1(a) and (b) shall restrict territorial authorities from developing objectives, policies and methods and carrying out functions to address those matters listed in Part II of the RMA 1991 that relate to indigenous biological diversity and effects upon it, in particular sections 6(c) and 7(d).***

#### **Regional Plan Rules and Appendix E**

90. In my opinion there are two alternatives that will help alleviate the problems discussed with the proposed biodiversity framework:
- 1 If the panel is satisfied that the proposed framework of rules within section 12 relating to biodiversity are sufficient, then highly detailed maps identifying the specific areas covered by the content currently included in Appendix E need to be added to the One Plan.
  - 2 If the panel considers the preparation of highly detailed maps to be too onerous then a more precautionary approach to mapping the areas covered by the content currently included in Appendix E could be added to the One Plan. A new permitted activity rule could then be added to the land-based biodiversity section of the One Plan that states that it is a permitted activity to undertake vegetation clearance or land disturbance in areas of indigenous vegetation that are not mapped in Appendix E. An amendment could then be

made to the relevant rules that cover the areas that are mapped that provides for vegetation clearance and land disturbance to occur if, after a detailed assessment of the site by an appropriately qualified ecologist, it is found that the area does not meet the Appendix E tests.

91. The main advantage of the two alternatives described above is that it makes it very clear to landowners and those responsible for implementing and interpreting the Plan what process needs to be followed should an activity be proposed in a particular area of indigenous biological diversity.

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## Conclusions

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### Biodiversity:

92. The general thrust of PNCC's submission on the One Plan with regards to biodiversity can be summarised as qualified support. That is, support for Horizons taking the lead on biodiversity and identifying threatened native habitats as one of its "big four" issues, but concern regarding the uncertainty of the proposed rules; the resourcing required from Horizons to respond to inquiries regarding biodiversity across the region; and the future role for District Plans.
93. There is a distinct difference between Horizons taking the lead on biodiversity and Horizons being the sole agency responsible for biodiversity under the RMA.
94. I do not agree with any implication that TAs can not provide for or consider biodiversity alongside the regime in the One Plan. In my opinion the RPS cannot override the provisions of the RMA, which provides a clear biodiversity function for TAs.
95. The content of this evidence is consistent with PNCC's submission points on the One Plan "road map" and the version 4 One Plan working document.
96. The protection of indigenous biodiversity on private land has been one of the most controversial issues addressed under the RMA since its inception in 1991. It has become increasingly clear that there is no "silver bullet" for local authorities in terms of meeting their obligations under sections 6(c) and 7(d) of the RMA, as well as their relatively new biodiversity functions under sections 30 and 31 of the RMA.
97. As most existing regional and district planning documents were prepared prior to the passing of the 2003 RMA amendments, the focus of TAs functions on *the effects of the use, development, or protection of land* has meant they have generally taken the lead with respect to recognising and providing for section 6(c) and 7(d) matters in planning documents, in particular with regards to land based biodiversity.
98. The reliance on the various definitions in Appendix E has meant Horizons has not had to map the areas it has defined as *rare and threatened habitats* and *at risk habitats*. This has advantages and disadvantages for Horizons and land owners.
99. The biggest risk with the approach proposed by Horizons is that in most cases a decision on whether or not resource consent is required to clear an area of

indigenous vegetation is likely to require a field trip to the site and an analysis by a qualified ecologist. There are potential enforcement issues if a landowner chooses not to go through the process. Either of the two alternative approaches suggested in paragraph 90 would alleviate this potential problem.

100. As a planner working in a TA who has to help PNCC juggle its various functions under the RMA, and as a planner who has represented significant rural landowners on this very issue, I hope the potential uncertainties and inefficiencies with Horizons approach that I have described are not realised and the One Plan proves to be an efficient and effective means of maintaining the region's indigenous biological diversity.
101. If TAs remove all listed sites from their District Plans as part of the upcoming District Plan reviews, should Horizons approach prove problematic, it may be 15-20 years before the sites return as part of 3<sup>rd</sup> generation District Plans.
102. For the reasons discussed in my evidence, in my opinion, TAs should and will retain the ability to list significant natural areas in their District Plan regardless of whether the One Plan purports to curtail that ability. Should the approach proposed within the One Plan cause problems, the pending District Plan reviews will provide the opportunity for TAs to confirm or add to the significant natural areas already listed in their respective District Plans.
103. Although Horizons proposes to have primary responsibility for biodiversity and have dedicated objectives, policies and methods relating to it, in my opinion, PNCC must still consider effects on biodiversity, and an RPS cannot exclude PNCC from considering those matters. This is reinforced by the fact that Part II of the RMA clearly imposes relevant obligations on PNCC as well, in particular sections 6(c) and 7(d).
104. In my opinion, the only way Horizons could become the sole agency for biodiversity is if all TAs in the region transferred their section 31(b)(iii) functions to Horizons under section 33 of the RMA (transfer of powers). Sections 6(c) and 7(d) would still apply to District Plans unless TAs are satisfied that the One Plan rules are adequate on their own. Even then, TAs would need to consider biodiversity and sections 6(c) and 7(d) when making land use consent decisions.

#### Heritage:

105. In terms of heritage, the One Plan essentially promotes the status quo with respect to TA and regional council responsibilities.
106. The RPS section of the One Plan provides some high level objectives and policies that the TAs will need to give effect to in their respective District Plans.
107. PNCC support Issue 7-3, Objective 7-3 and Policy 7-10
108. The approach proposed within the One Plan allows TAs to continue to manage built heritage and notable trees, which is supported.
109. It is noted that a new policy has been recommended with respect to the identification of historic heritage (Policy 7-11).



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