

IN THE MATTER **of the Resource Management Act 1991**

AND

IN THE MATTER OF **of a Submission on Chapters 7 and 12:
(Biodiversity) of the Proposed Horizons
One Plan**

TO **Horizons Regional Council**

SUBMITTER **Meridian Energy Limited (363)**

BRIEF OF EVIDENCE OF MARY O'CALLAHAN

Introduction

1. My name is Mary Elizabeth O'Callahan. I hold a Bachelor of Science degree from Victoria University and a Bachelor of Planning degree from Auckland University. I am a full member of the New Zealand Planning Institute and am the chairperson of the Wellington Branch of the New Zealand Planning Institute. I am a Principal Planner employed by GHD Ltd, based in Wellington.
2. I have over 14 years experience in planning and resource management in New Zealand and in Britain. This includes extensive experience in development control and policy development at the local authority level. Before my appointment to GHD Ltd in September 2005, I was a Team Leader for Wellington City Council's Resource Consents Team. My employment prior to Wellington City Council was with the London Borough's of Hackney and Lambeth. Prior to working in the UK, I worked at Marlborough District Council (a unitary authority), where I carried out RMA plan review work and processed resource consents in relation to the Council's regional and district council functions.
3. I have provided planning advice to a number of local authority clients and to Meridian Energy Ltd (Meridian) in relation to proposals within the Horizons Region, so I am a regular user of the Horizons regional plans. I have also assessed a number of proposals in relation to the Proposed One Plan rules since it was notified on 31 May 2007. Through this work, I have a good understanding of the geography of the area, the issues facing the Horizons Region and the practical implementation of the Proposed One Plan provisions.
4. In preparing this evidence I have reviewed:
 - Chapters 7 and 12 of the Proposed One Plan;
 - Relevant sections of Meridian's submission and further submissions on the Proposed One Plan;
 - The Officer's reports particularly in relation to Meridian's submissions on Chapters 7 and 12; and
 - The ecological evidence of Matiu Park on behalf of Meridian.
5. This evidence will cover Meridian's submissions and further submissions on Chapters 7 and 12, with particular attention on the biodiversity provisions and the land based biodiversity rules. These relate to:
 - The need for an appropriate policy framework for biodiversity to ensure that an appropriate balance is reached between enabling regionally and nationally important infrastructure (including renewable energy facilities) and managing the effects within the Regional Council's jurisdiction;
 - The need for an appropriate rule regime for activities within rare and threatened habitats and at-risk habitats in order to achieve the purpose of the Resource Management Act 1991 ('RMA' or 'Act'), as well as efficiency and effectiveness for the Regional Council and consent applicants;
 - Support in part for the officer's recommendations to Schedule E but concern that additional changes are still required; and
 - A conclusion that there needs to be clear and simple rules, which are easily understood by those carrying out land use activities within the Horizons Region.

6. This evidence is set out in relation to the key areas of submission made by Meridian, structured as the provisions occur within the Proposed One Plan in a similar manner to the Officer's report.

Code of Conduct

7. I have read the Code of Conduct for expert witnesses in the Environment Court Practice Note (31 March 2005). I agree to comply with this Code of Conduct. The evidence in my statement is within my area of expertise, except where I state that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Section 32 of the Resource Management Act 1991

8. My evidence will discuss the provisions of Section 32 of the RMA. I have set out the key parts of Section 32 that I will refer to:

(3) An evaluation must examine—

(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and

(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives...

(4) an evaluation must take into account—

(a) the benefits and costs of policies, rules, or other methods; and

(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

9. It is my understanding that Section 32 requires an evaluation of alternatives, benefits and costs. The evaluation for the objectives should examine:
- is it the most appropriate way to achieve the purpose of the Act?
 - does it assist the authority to carry out its functions in order to achieve the purpose of the Act?
 - is it in accordance with Part 2 of the Act?
10. Similarly, the tests for a policy, rule or other method included in a plan are:
- is it the most appropriate way to achieve the objectives of the plan?
 - does it assist the authority to carry out its functions in order to achieve the purpose of the Act?
 - is it in accordance with Part 2 of the Act?
 - and if a rule, does it achieve the objectives and policies of the plan?
11. I have approached my assessment of the plan provisions with these questions in mind, taking into account all relevant provisions of the RMA including the overarching purpose of the Act as set out in section 5.

Objective 7-1 (X522, points 214, 209, 200-206, 208-213, ME 110, 111, 112, 113)

12. I note Meridian's submission opposed Objective 7-1 and sought a number of points of relief. A number of further submissions were also lodged with respect to the objective. I also note the amendments proposed by the Officer to clause (a) of the objective.
13. The proposed amendment to clause (a) has resulted in the objective now contemplating some level of development in the areas of rare and threatened habitat through the insertion of the words "more than minor". Therefore, activities can be assessed in accordance with specific criteria and be found to be consistent with the objective and appropriate in terms of sustainable management. For example, the ecological context of a specific rare and threatened habitat may mean partial removal of it would only have a minor effect on indigenous biological diversity. I support this change, as I believe it ensures the objective relates more closely to the enabling presumption within Part 2 of the RMA, and the general approach of undertaking an effects assessment before determining whether an activity is of concern.
14. I support the Officer's amendments to clause (b) of this objective also, as the link to Table 7.1 provides an appropriate reference point for assessing ecological significance. I note that Mr Park is recommending amendments to Table 7.1, so my comments are made subject to these changes being made to Table 7.1.
15. I would, however, recommend a further amendment to the wording of this objective, in recognition of the concession that has been made by the Officer, which now contemplates some level of appropriate development within these areas. My recommendation is that the words "existing level" be deleted from the first sentence of Objective 7-1. Deletion of these words is considered appropriate because as the notified wording was drafted, it appeared to assume that a resource consent application could not be consistent with the objective if any small area of vegetation identified in Schedule E was removed, as this could be argued to reduce the level of indigenous biological diversity beyond the existing level. In my view, the phrase "existing level" is potentially unclear in the context of the revised wording for the objective recommended by the Officer and in any case, absolute protection is not necessarily consistent with sustainable management of natural and physical resources, as sustainable management does not necessarily require absolute protection of resources. Further, for the reasons explained in Mr Park's evidence, the maintenance of biological diversity does not require absolute protection.
16. The Officer's revised wording of the objective goes somewhat towards recognising that some loss of indigenous vegetation as a result of development may still achieve sustainable management under section 5 of the RMA. However, in my view, it requires this additional change to ensure this conflict and potential confusion within the objective is removed.
17. Amending the wording of the objective as described would provide for a balancing approach and would be consistent with the amended wording proposed to clause (a) which contemplates some loss or modification to rare and threatened habitat, as long as the effects are not more than minor.
18. Therefore I consider that in order to achieve the purpose of the RMA, Objective 7-1 should recognise that some loss of habitat as a result of a development can still be appropriate and that the sustainable management of natural and physical resources does not contemplate the maintenance of indigenous biological diversity at all costs. As notified, the objective cannot, therefore, be considered to be the most appropriate way to achieve the purpose of the Act.

Amendment to the wording would also reflect the changes proposed by the Officer to the associated policies, discussed below.

19. My recommended amendments to Objective 7-1 are set out as follows:

Objective 7-1: Indigenous biological diversity

~~The existing level of~~ *Indigenous biological diversity is maintained into the future by ensuring that:*

- (a) *rare and threatened habitats*, as defined in Schedule E, are protected from activities that may cause any more than minor loss or modification to the representativeness, distinctiveness or ecological context of the rare and threatened habitat*, as assessed in accordance with Table 7.1.*
- (b) *at-risk habitats*, as defined in Schedule E, are maintained by ensuring that activities do not cause any significant adverse effects on their to the representativeness, distinctiveness or ecological context of the at risk habitat*, as assessed in accordance with Table 7.1*
- (c) *the best representative examples of rare and threatened habitats* and at-risk habitats* are proactively managed in order to improve their function.*

Policy 7-2 (X522 points 235-239, 241, ME 116)

20. Meridian opposed Policy 7-2 in its submission. I generally support the amendment to the policy recommended by the Officer with respect to new clause (d). With the recommended amendment, this clause would allow for vegetation clearance and land disturbance within rare and threatened habitats and discharges of contaminants to land or water, or drainage or diversion of water, within or near these areas where the activity is for the purpose of providing or maintaining infrastructure of regional or national importance. Meridian's existing activities and development interests are clearly captured by the list in Policy 3-1 and I support clause (d) because as amended, the regional and national benefits associated with infrastructure can now be weighed against the previously unqualified protection of rare and threatened habitats, as currently provided for in Policy 7-2. The amendment better assists Horizon's to carry out its functions in order to achieve the purpose of the Act and is in accordance with Part 2 of the Act.
21. I note, however, that Meridian has sought, through its submissions on Chapter 3 to de-couple renewable energy from the general definition of "infrastructure" in order to provide appropriate recognition for this important resource, in line with the special recognition provided in section 7 of the RMA. If this submission is pursued by Meridian and it is successful, I note that consequential amendments may be required to Policy 7-2, particularly to the recommended clause (d).
22. I also support policy recognition for financial contributions to offset effects and consider that offsetting should be recognised within the policy framework. Recommended subclauses (d)(iii) and (iv) provide for the remediation or mitigation of any more than minor (but less than significant) adverse effects through the use of financial contributions. The policy amendment drafted by the Officer goes some way towards providing an appropriate policy framework for biodiversity offsets, but it fails to recognise that offsets are not always carried out through a financial contribution. Rather, and as highlighted in the evidence of Mr Park, these can be achieved through an applicant undertaking physical enhancement or protection works directly

(e.g. fencing off a stand of bush or implementing a pest management program). These works will not necessarily constitute 'like for like' offsetting.

23. I believe that the generic term "offsets" can encompass both physical and financial offset contributions, so there is no need to specifically refer to financial contributions when discussing offsets. The offsetting of effects, while offering considerable opportunity for biodiversity gains, is only appropriate for those significant residual effects that cannot be avoided, remedied or mitigated directly but still require some form of management. The amended policy I am recommending below better provides for this in my opinion.
24. I note the amendments proposed by the officer to subclause (iv) with respect to the use of the threshold "net conservation gain". I consider the term should more appropriately refer to biodiversity rather than conservation, as this is the term used throughout the Proposed One Plan, and it is similar to the term used and defined in the RMA (i.e. biological diversity). Conservation is not defined in the RMA or the Proposed One Plan and possibly has a wider meaning than biodiversity in this context. Keeping it tightly focused on biodiversity will ensure that any offsetting of effects relates to the specific effects at issue (biodiversity).
25. I note one further point in relation to Policy 7-2. In relation to the protection of rare and threatened habitats, clause (b)(ii) states that discharges of contaminants to land or water, or drainage or diversion of water, within **or near** these areas shall generally not be allowed. The phrase "or near" is unclear and has the potential to create confusion for both applicants and council officers assessing applications for consent.
26. Finally, with reference to Policy 7-2 and the objectives and policies in Chapter 7 generally, I consider that a very important issue, which needs to be clear and explicit in the Proposed One Plan, is the significance of "rare and threatened habitats". The introduction to Chapter 7 describes the decline of indigenous biological diversity as being one of the four most critical issues addressed in the Proposed One Plan. The key matter to be addressed is whether "rare and threatened habitats" and "at risk habitats" are a Section 6 matter (i.e. a matter of national importance covered by section 6(c) of the RMA) or a section 7 matter (other matters potentially covered by subsections (c), (d), (f), and (g) of the RMA). If the Proposed One Plan is silent on the relationship between 'rare and threatened habitats' and 'at risk habitats' and Section 6(c) of the RMA then there will potentially be numerous debates on these issues through resource consent processes.
27. I consider that for both applicants and council officers, providing a statement regarding the significance of rare and threatened habitats would remove this element of uncertainty through the resource consent process. Therefore I consider it appropriate that the Proposed One Plan contains advice notes and/or clarification on this matter.
28. Overall, it is my recommendation that Policy 7-2 be amended as follows in order to best achieve the test of Section 32 of the Act:

Policy 7-2: Activities in Rare and Threatened Habitats

- (a) *Rare and threatened habitats* are identified in accordance with Schedule E.*
- (b) *Rare and threatened habitats* shall be protected by generally not allowing any of the following activities unless the provisions of subsection (c) or (d) or (e) apply:*

- (i) *vegetation clearance* or land disturbance* within these areas*
 - (ii) *discharges of contaminants to land or water, or drainage or diversion of water, within ~~or~~ near these areas.*
 - (c) *The activities described in subsection (b) will be allowed where they are for the purpose of pest control or habitat enhancement.*
 - (d) *The activities described in subsection (b) may be allowed where the activity is for the purpose of providing or maintaining infrastructure of regional or national importance as identified in Policy 3-1 and*
 - (i) *There will be no significant adverse effect on the factors which contribute to the significance of the area as assessed in accordance with table 7.1, and*
 - (ii) *Any more than minor adverse effects are avoided as far as practicable, or*
 - (iii) *Any more than minor (but less than significant) adverse effects are adequately remedied or mitigated as far as practicable, or offset to result in a net biodiversity gain to the Region.*
 - (d)(e) *The activities described in subsection (b) may be allowed for other purposes where there are no more than minor adverse effects on the representativeness, rarity and distinctiveness or ecological context of the rare and threatened habitat*, as assessed in accordance with Schedule E Table 7.1.*
- Note: Rare and threatened habitats identified in Schedule E are likely to constitute significant indigenous areas under Section 6(c) of the Act, but this can only be determined following an assessment in accordance with Table 7.1.*

Policy 7-3 (X522 points 242-244, ME 117)

29. Policy 7-3 is the policy that sets out how at risk habits will be managed. The Officer states, and I agree, that the policy does need to provide clear guidance to decision-makers about what level of adverse effects may be appropriate and what mitigation may be required for activities in at risk habitats.
30. I consider it appropriate to provide the same recognition to “infrastructure of regional or national importance” as proposed by the Officer in Policy 7-2 within this policy also. Explicit recognition of infrastructure of national or regional importance would provide a suitable framework for the assessment of resource consent applications and would better reflect the definition of sustainable management provided in the RMA and the intent of Objective 7-1.
31. As I have mentioned previously, Meridian has sought, through its submissions on Chapter 3, to de-couple renewable energy facilities from the general definition of “infrastructure” in order to provide appropriate recognition for this important resource, in line with the special recognition provided in Section 7 of the RMA. If this submission is accepted, I note that consequential amendments may be required to my recommended amendments to Clause (d). This matter will be addressed at a later hearing.
32. As discussed in relation to the policy above, clause (b)(ii) states that discharges of contaminants to land or water, or drainage or diversion of water, within **or near** these areas shall generally not be allowed. The phrase “or near” is unclear and has the potential to create confusion for both applicants and council officers assessing applications for consent.

33. As I stated earlier, with respect to Policy 7-2, a very important issue is that the Proposed One Plan needs to be explicit on the significance of "at-risk" habitats. The Plan should state the relationship of at risk habitats to Section 6(c) under the Act to remove the potential for uncertainty when an application is considered and debated through the resource consent process. If the Proposed One Plan is silent on the relationship between 'at risk habitats' and Section 6(c) of the RMA then there will potentially be numerous debates on this issue through resource consent processes.
34. In my opinion, the policy which I set out below is more effective than that recommended by the Officer and is the more appropriate means of achieving the Proposed One Plan objectives around managing biodiversity together with the need to provide for infrastructure of regional and national importance. I consider that the wording below better meets Section 32(3)(b) of the RMA, than the Officer's recommendation.
35. It is my recommendation that Policy 7-3 be amended as follows:

Policy 7-3: Activities in at-risk habitats

- (a) *At-risk habitats* are identified in accordance with Schedule E.*
- (b) *At-risk habitats* shall be maintained by regulating the following activities, and by making consent decisions in accordance with subsections (c) and (d):*
- (i) *vegetation clearance* and land disturbance* within these areas*
- (ii) *discharges of contaminants to land or water, and drainage and diversion of water, within ~~or near~~ these areas.*
- (c) *The activities described in subsection (b) will be allowed where they are for the purpose of pest control or habitat enhancement*
- (d) *Where the activities described in subsection (b) are carried out for other purposes including for the purpose of providing or maintaining infrastructure of regional or national importance as identified in Policy 3-1, consent decisions will be made on a case by case basis, having regard to an assessment of the ecological significance of the site based upon the site's representativeness, rarity and distinctiveness, and ecological context as assessed in accordance with Table 7.1-Schedule E. Consents will generally be granted in circumstances where:*
- (i) *there will be no significant adverse effects on the factors which contribute to the significance of the area as assessed in accordance with Schedule E, or*
- (ii) *any significant adverse effects can be adequately avoided, remedied or mitigated as far as practicable, or offset to result in a net biodiversity gain to the Region.*
- ~~(iii) financial contributions can be used to adequately compensate for or offset significant adverse effects.~~

Note: At-risk habitats may or may not constitute significant indigenous areas under Section 6(c) of the Act. This can only be determined following an assessment in accordance with Table 7.1.

Table 7.1

36. Table 7.1 is a key part of the Proposed One Plan biodiversity provisions. This table sets out the assessment process for determining whether a site has ecological significance in accordance with Section 6(c) of the RMA. I note Mr Park recommends amendments to Table 7.1. He notes that amendments are necessary to ensure the ecological significance assessment process is consistent with the significance assessment criteria established through case law. I concur with his suggestions and agree that changes are needed to provide for this consistency and to ensure the table is consistent with Section 6(c) of the RMA. I have developed the amendments below from Mr Park's evidence:

Table 7.1 Criteria used for assessing ecological significance

Criteria	Definition
Representativeness	<ul style="list-style-type: none"> The site contains habitat type that is under-represented (20% or less known or likely former cover), assessed either at the national, regional, water management zone, or water management sub-zone, Ecological District or Ecological Region.
Rarity and Distinctiveness	<ul style="list-style-type: none"> The site supports one or more species that are classified as threatened (as determined by the New Zealand Threat Classification System); or The site supports a species that is endemic to the Manawatu-Wanganui Region, or any given Water Management Zone, or Water Management Sub-zone, or Ecological District or Ecological Region; or The site supports a species, or community of species, that is distinctive to the Manawatu-Wanganui Region. Distinctiveness describes the uncommon presence, or unique assemblage of species or habitat at any given geographical location.
Ecological Context	<ul style="list-style-type: none"> The site provides connectivity (physical connections) between two or more areas of indigenous habitat; or The site provides an ecological buffer (is a closely adjacent site of similar, degraded or exotic habitat that provides protection) to another area of indigenous habitat, including aquatic habitat; or The site is an area of indigenous habitat that forms part of an indigenous ecological sequence (connectivity between different habitat types across a gradient (eg. altitudinal or hydrological).
<u>Ecological Sustainability</u>	<ul style="list-style-type: none"> <u>The inherent ecological viability/long-term sustainability of the site;</u> <u>The size and shape of the site (affecting the long-term viability of species, communities and ecosystems, and amount of diversity).</u>
Previously Assessed Sites	<ul style="list-style-type: none"> Any site assessed at a previous time, or by a previous agency, on criteria in keeping with the policies, objectives and criteria of this plan, to be of ecological significance.

Chapter 7 Methods District Planning

37. Meridian opposed Method 7.5 in its entirety and sought its deletion. The Officer has not addressed Meridian's submission on Method 7.5 in this report. It is unclear if this is an oversight or as a result of the matter being addressed at a later hearing.
38. Given that Horizons has included land use rules relating to activities that affect biodiversity (activities which have historically been managed through district plan rules) there are already a number of similar rules and potentially overlapping rules within the district plans in the Horizons Region. Accordingly, there is need for a method requiring deletion of overlapping rules from district plans within the Region, so that duplication and/or potentially conflicting consent requirements does not arise.
39. To illustrate the importance of this issue, I have included as Appendix 2 to this evidence, a summary of the rules within the Ruapehu, Rangitikei, Manawatu, Palmerston North, Wanganui, Tararua and Horowhenua District Plans which potentially overlap and/or duplicate the biodiversity rules included in the Proposed One Plan. It is critical that the Proposed One Plan, as the Regional Policy Statement for the Horizons Region, includes a method of implementation in relation to how territorial authorities should manage biodiversity effects within their districts. In my opinion, this needs to specify that duplication needs to be avoided. A method which ensures applicants are not required to incur unnecessary costs seeking resource consents from both the district and regional council to remove or carry out works within the same piece of "significant vegetation", is essential, in order to meet Section 32(4)(a) of the RMA.
40. My recommended wording for the method is included below:

Project Description	<p>The Regional Council will formally submit on resource consent applications received by Territorial Authorities for land use activities where there is potential for effects on outstanding natural features, landscapes or native habitats.</p> <p>The Regional Council will formally seek changes to district plans if required to ensure provisions are in place to provide an appropriate level of protection to natural features, landscapes and native habitats.</p> <p><u>The Regional Council will formally seek changes to district plans if required, to ensure district plan rules requiring protection of indigenous vegetation and the habitats of indigenous fauna do not duplicate One Plan rules on biodiversity.</u></p>
Who	Regional Council and Territorial Authorities.
Links to Policy	This project links to Policies 7-1, 7-7 and 7-8.
Targets	<ul style="list-style-type: none"> • Submissions completed on consent applications. • District plan changes sought if necessary by 2008.

Section 7.6 Anticipated Environmental Results (ME 124)

41. Meridian's primary submission sought the deletion of the first Anticipated Environmental Result ('AER') under Section 7-6. This AER seeks to ensure the area of each habitat type identified as rare, threatened or at-risk is the same in 2017 as it was in 2007 by stating that it must be the

same as that estimated prior to this plan becoming operative and no “not threatened” habitat types are able to fall into “at-risk”.

42. I refer back to my evidence on Objective 7-1; – the AER as notified does not recognise that the removal of some areas of significant indigenous vegetation could still constitute sustainable management under Part 2 of the Act and achieve the objective of maintaining biodiversity. Further, the AER as notified does not reflect the proposed amendments to Policy 7-2, which now includes policy recognition for infrastructure of regional or national importance.
43. However, I support the addition of the words recommended by the Officer “... or change authorised by a resource consent”. The addition of these words acknowledges that through a resource consent process some loss in habitat may be appropriate. I would recommend that this aspect of the Officer’s proposed amendments to Chapter 7 be accepted by the Committee, as detailed below:

Except for change because of natural processes, or change authorised by a resource consent, by 2017, the area of each habitat type identified as rare, threatened or at-risk is the same as that estimated prior to this Plan becoming operative, and no “not threatened” habitat types have fallen into the at-risk category.

Policy 12-5 (ME 142)

44. Policy 12-5 states that Horizons will, when making decisions on resource consent applications involving rare and threatened and at risk habitats, take into account the objectives and policies in Chapter 7. The Officer has recommended the amendment of the policy to explicitly refer to the following specific provisions – Objective 7-1 and Policies 7-2, 7-3, 7-4, 7-5 and 7-6.
45. The Officer states that the changes they are recommending to Policies 7-2 and 7-3 will allow for energy and infrastructure activities appropriately, and they do not consider it necessary to repeat that in the policy or to exclude these types of developments from the policy entirely. While I have no concerns with the Officer’s approach to refer to specific policies, I do consider that reference to specific policies contained in Chapter 3 is also required here. Chapter 3 contains explicit policy reference to the benefits of renewable energy in Policy 3-1. If these policies are not taken into account when decisions are made on resource consent applications then their value in the Proposed One Plan is weakened.
46. While I have no concerns with the explicit reference to the Chapter 7 policies, these policies do not recognise the benefits that this type of infrastructure provide. As a result, I am concerned that the policy framework is not balanced and fails to take into account the enabling objectives and policies of the Proposed One Plan. Furthermore, if the activity status for activities that affect rare and threatened habitats remains as a non-complying activity then it is important all relevant objectives and policies are able to be considered to determine whether they activity can meet Section 104D of the Act. .
47. My recommended amendment to Policy 12-5 is in line with the Officer’s recommendation in relation to this same matter in the context of Policy 12-1 discussed in the context of the Land Hearing. Linking Policy 12-5 to the provisions, which acknowledge the benefits of infrastructure of regional and national importance, provides appropriate recognition of the potential necessity

for carrying out activities, which may unavoidably affect indigenous biological diversity, as a key part of establishing and maintaining renewable energy facilities in the region.

48. Amending the policy to refer expressly to the objectives and policies of Chapter 3 will better achieve the purpose of the Act and will ensure it is in accordance with Part 2 of the Act. Furthermore, it will ensure that Policy 12-5 is consistent with the provisions contained within Chapter 3 of the Plan. I have chosen not to refer to specific provisions of Chapter 3 in my recommended relief, as I am conscious that hearings on Chapter 3 have not yet been held and it is unknown what, if any, changes will be made to the form and number of objectives and policies in this chapter.
49. Suitable wording is included below:

Policy 12-5: Consent decision-making regarding rare and threatened habitats, and at-risk habitats

The Regional Council will make decisions on resource consent applications involving rare and threatened habitats, and at-risk habitats* in accordance with the Objectives 7-1 and Policies 7-2, 7-3, 7-4, 7-5 and 7-6 in Chapter 7, and the objectives and policies in Chapter 3.*

Rules General

50. As discussed in my evidence for the Land Hearing, Meridian supported a submission of TrustPower Limited (submitter number 358/76, page 76) which opposed the inclusion of all conditions and matters of control/discretion relating to rare, threatened and at risk habitats within Rules 12-3, 12-4 and 12-5. I note my comments on these conditions and matters of control/discretion here also, as I understand the matter may not be dealt with through the Land Hearing.
51. The inclusion of a condition on the highly erodible land (HEL) and waterbody setback rules (Rules 12-3, 12-4 and 12-5) preventing assessment of land disturbance and vegetation removal sited within rare and threatened habitats under these rules is unnecessary. In my opinion, it will result in un-intended and/or inappropriate elevating of consent statuses. Furthermore, it will increase the potential for multiple component resource consent applications to be bundled to a more restricted activity status than is necessary.
52. For example, the inclusion of the rare and threatened habitat condition in Rule 12-3 means that if an applicant wishes to seek resource consent for works within an area identified as HEL, and which meets the criteria for rare and threatened habitats, consent will be required under Rule 12-6, as well as 12-8 (amended to 12-9 in the Officer's report for biodiversity). There is an inconsistency in the drafting of the provisions which exclude consideration of works within rare and threatened habitats as a condition in rule 12-3 and the Officer's revised 12-4, yet require assessment of effects on these habitats through the matters over which control/discretion is retained.
53. In my opinion, assessment on rare and threatened habitats should be limited to land disturbance and vegetation clearance located within such areas via the specific rules applicable to this matter only. Biodiversity is dealt with under a different policy framework than erosion, and land use consent is only needed when you actually undertake land disturbance and vegetation clearance within a rare, threatened or at risk habitat, for the reasons established by the objectives and

policies specific to biodiversity. Rules 12-1 to 12-6 stem from Chapter 5. There is no support in Chapter 5 for mixing the two matters together and there are no objectives or policies within Chapter 5 which suggest effects on biodiversity needs to be considered when you are managing HEL and/or land disturbance/vegetation clearance within proximity to streams.

54. There are no objectives or policies within Chapter 7 requiring assessment of land disturbance and vegetation clearance activity on rare, threatened or at risk habitats other than when the land disturbance and vegetation clearance is directly affecting these areas. (That is, there are no objectives or policies requiring applicants undertaking land disturbance and vegetation clearance undertaken outside of rare, threatened or at risk habitats, to consider effects on biodiversity).
55. I note that rules must give effect to objectives and policies. The objectives and policies in Chapter 5 are given effect to through Rules 12-1 to 12-6. Chapter 7 is given effect to through Rules 12-7 and 12-8 (among other rules relating to water permits). As such, I recommended that all conditions and matters of control/discretion relating to rare, threatened and at risk habitats be deleted from Rules 12-3, 12-4 and 12-5. These amendments were incorporated into the evidence and tracked changes version of Rules 12-3, 12-4 and 12-5 that I provided to the Land Hearing.

Rules 12-7 (ME 152, 153, 156) and 12-8 (ME X313, ME 154,155)

56. Meridian made a number of submissions on Rules 12-7 and 12-8.
57. I note that both Rules 12-7 and 12-8 refer to discharges and diversions, in addition to the land use activities of "vegetation clearance" and "land disturbance". I consider these references should not be included within Chapter 12. This section of the rules is land based and it is more appropriate that other sections of the regional plan component of the Proposed One Plan deal with aquatic sites of significance and diversions/discharges (if necessary). For example, Chapters 13 and 15 of the Plan.
58. Chapter 12 is entitled "Land Use Activities and Land-Based Biodiversity". There are no policies within this chapter of the Plan specifically relating to any activities other than land use activities, namely vegetation clearance and land disturbance. The relevant heading (section 12.3) applicable to the biodiversity rules contained within Chapter 12 of the plan is "Rules – Land-Based Biodiversity Including Wetlands". It is clear by the nature of the policies in Chapter 12 and the headings referred to that this section of the Proposed One Plan is intended to address activities that require land use consent. So when one looks at the rules in Chapter 12, it is unclear why there are rules applicable to discharges and diversions, which are activities dealt with elsewhere in the Plan. In addition, it is unclear whether the Horizons are suggesting applicants need to apply for a land use consent for discharge/diversion activities, or whether applicants should seek a discharge or water permit for these activities, and then assess them under the land-based biodiversity rules, with reference to the land-based policies in Chapter 12?
59. I note also that the proposed rule relating to "treeland habitat" recommended by the Officer does not apply to discharges and diversions. The reason for the different approach for treeland habitats is not apparent from my reading of the Officer's report.
60. Accordingly, I recommend that the subsections (c) and (d) are removed from Rules 12-7 and 12-8, such that there are no rules relating to discharges of contaminants into water, or into or onto

- land, nor any rules relating to diversions of water within Chapter 12. Any rules which are deemed necessary to manage the effects of discharges and diversions of water in relation to biodiversity, should be included within Chapters 13 and 15.
61. I consider that this approach will better enable the regional council to carry out its functions under Section 30 and will ensure that applicants are not required to seek land use consents for activities which are restricted by Sections 14 and 15 of the RMA (restrictions relating to water and the discharge of contaminants to the environment) and/or unclear on which type of consent should be sought for a proposal.
 62. I have incorporated this recommendation into the tracked changes version of Chapter 12 included in Appendix 1 to this evidence.

Treeland Habitat

63. I note that the Officer recommends a new rule relating to works affecting treeland habitats. This is renumbered Rule 12-7 applying to “activities within rare and threatened habitat or at-risk habitat where they occur as treeland”. I support this amendment and agree that it is appropriate to assess these activities as a restricted discretionary activity.
64. A restricted discretionary classification provides the opportunity for focussed applications and Assessments of Environment Effects reports (AEEs). It provides the Council with the opportunity to focus its assessment on effects of the activity that are actually of concern and it offers a more streamlined administrative process. Through introducing this restricted discretionary classification, the council can pre-determine the matters which need to be addressed to just those of concern, reducing application and processing costs for both applicants and the consent authority. In addition, a restricted discretionary category for treeland habitat will provide greater certainty to landowners and public interest groups over what effects are relevant.
65. Furthermore, a restricted discretionary status would also provide more guidance with regard to the imposition of conditions under section 108 of the Act. Under section 104C, conditions may only be imposed only for those matters specified in the plan over which it has restricted its discretion.
66. In my opinion, a restricted discretionary activity status for Rule 12-7 meets the objectives and policies contained in Chapters 3, 7 and 12, and would better assist the Regional Council in undertaking its responsibilities under Section 30. It would also better reflect the permissive presumption in Section 9(3), and the enabling premise of Section 5 of the RMA.
67. I have included minor amendments for the Officer’s restricted discretionary rule in my Appendix 1.

Activities within At-Risk Habitats

68. Rule 12-7 (amended to Rule 12-8 in the Officers recommendations) classifies as discretionary activities, vegetation clearance, land disturbance, discharges of contaminants to water, and diversions of water within at-risk habitats. The primary submission of Meridian (ME 156) seeks controlled activity status for land disturbance and vegetation clearance within protected habitat areas.

69. I have considered the original submission by Meridian, the Officer's report and the evidence of Mr Park and I consider that a restricted discretionary activity status would be more appropriate for activities within at-risk habitats. A controlled activity status would not provide Horizons with the opportunity to decline applications and does not reflect the policy approach outlined in Chapter 7. In a similar manner to the Officer's recommendation regarding treeland habitat, I believe that a restricted discretionary activity status is appropriate for activities within at-risk habitats.
70. A restricted discretionary classification provides the opportunity for focused applications and Assessment of Environmental Effects reports (AEEs). It provides Horizons with the opportunity to focus its assessment on the effects of the activity that are actually of concern and it offers a streamlined administrative process. Through modifying amended Rule 12-8 to a restricted discretionary classification, the Council can pre-determine the matters which need to be addressed to just those of concern, reducing application and processing costs for both applicants and the consent authority. In addition, a restricted discretionary category for amended Rule 12-8 will provide greater certainty to landowners and public interest groups over what effects are relevant. I note that the evidence of Mr Park also includes a discussion on the important assessment matters for a restricted discretionary activity rule, for activities within at risk habitats.
71. In my opinion, a restricted activity status for at-risk habitats would better meet the objectives and policies contained within Chapters 3, 5 and 12 of the Plan, and would better assist Horizons in undertaking its responsibilities under Section 30 of the Act. It would also better reflect the permissive presumption in Section 9(3), and the enabling aspects of Section 5 of the RMA.
72. A restricted discretionary status is also consistent with Policy 11.1 of the Proposed One Plan. Policy 11.1 states that *"...regional rules will be adopted which...classify as restricted discretionary those activities for which the Regional Council needs to retain its discretion to decline consent owing to the potentially significant level of adverse effects, but it is possible to restrict the exercise of the Regional Council's discretion to a specified list of matters"*. Accordingly, the relevant policy on setting the activity status for those activities that require resource consent, expressly envisages that a restricted discretionary status is appropriate for activities with a potentially significant level of adverse effects, provided that it is appropriate to consider a discrete range of environmental effects. In my opinion, and based on the evidence of Mr Park, it is clear that there is a potential for significant effects within at-risk habitats, but that the types of effects which need to be assessed are limited in their nature, namely, the effects of concern are those relating to the maintenance of indigenous biodiversity. In my opinion, a restricted discretionary activity status does not conflict with the fact that removal of at-risk vegetation will at times have significant adverse effects and in some situations, it will be necessary to decline resource consent applications.
73. A restricted activity status provides for efficiency and effectiveness and offers reduced compliance costs and increased benefits (e.g. focused consent processes) for those undertaking a range of necessary activities involving land disturbance and vegetation removal within at-risk habitats. A restricted discretionary status limits the council's discretion when considering an application for resource consent to the matters specified in the plan, but still provides the council with the opportunity to decline an application under section 104B(b) of the Act, where this appropriate.

74. I consider that amending this rule would be consistent with the officer's findings regarding activity status for treeland habitats.
75. I have included an appropriate restricted discretionary rule in Appendix 1.

Activities within Rare and Threatened Habitats including Wetlands

76. Rule 12-8 (amended to Rule 12-9 in the Officers report) classifies as non-complying activities, activities within rare and threatened habitats including wetlands. The activities captured by this rule are specifically listed. Meridian's submission sought either the deletion of this rule or amendment to a less restrictive status.
77. I believe that while protection of rare and threatened habitats is clearly very important in terms of promoting sustainable management within the Horizons Region, a non-complying activity "tool" is not necessary to achieve this, nor is it the best method in my view.
78. I refer to Mr Park's statement of evidence on this matter. I note Mr Park confirms that not all activities in rare and threatened habitats will cause significant adverse effects. Further, not all sites identified as rare and threatened will be in a good condition. For instance some sites may have been trampled by stock but would still be captured by this rule. The policy framework as amended now contemplates that some effects may be appropriate and that effects that cannot be fully mitigated are able to be offset, which in my experience can achieve very successful outcomes in terms of maintaining indigenous biological diversity. Furthermore, given the inherent uncertainty provided by Schedule E (as opposed to mapped areas), I consider that a less onerous consent status would better correlate to the limited availability of site-specific information on rare and threatened habitats within the Region.
79. Rule 12-8 (amended Rule 12-9) as written does not reflect the change in emphasis to the policies contemplated by the Officer and therefore in terms of section 32 of the Act, is not the most appropriate way to achieve the relevant objectives and policies of the Plan. I recommend that the rule for activities within rare and threatened habitats be changed to discretionary activity status to provide for this. A discretionary status provides a high threshold for consideration of an application, as the status does not restrict the Council's discretion.
80. I do not agree with the officer's argument (on pages 108-109 of the report) that a non-complying activity status is appropriate for rare and threatened habitats. Given the proposed amendments to the policy framework, I consider a discretionary status would more appropriately reflect the changes to Policy 7-2. I note that rules must give effect to objectives and policies. The objectives and policies in Chapter 7 are given effect to through Rules 12-7 and 12-8 (now renumbered by the Officer to Rules 12-7, 12-8 and 12-9). The amendment of the rare and threatened habitat rule, which I have recommended, better reflects the outcomes sought for managing activities within rare and threatened habitats, within Policy 7-2.
81. Land use rules should start at the point of enabling activities and the use of resources subject to responsible management of effects of activities as Section 9(3) is a permissive presumptive applicable to regional council's governing the use of land. The implications of this are that the Plan should provide for the most liberal provision sought unless it is satisfied that it is appropriate for a greater restriction to be imposed.

82. The officer has made an argument that a non-complying activity status is appropriate for activities within rare and threatened habitats. However, a less onerous activity status would still provide Council with the ability to assess all effects associated with the application, there is no restriction on the conditions able to be imposed under section 108, and the ability to decline an application is retained.
83. In my opinion, a discretionary status would be more consistent with Policy 11.1 of the Proposed One Plan than non-complying. Policy 11.1 states that “...*regional rules will be adopted which...classify as non-complying those activities for which the Regional Council would generally not grant a resource consent owing to the potential for very significant adverse effects on the environment*”. Accordingly, the relevant policy on setting the activity status for those activities that require resource consent, expressly envisages that a non-complying activity status is appropriate for activities with a potential for very significant level of adverse effects and for which the Council has a level of certainty at the time of the preparation of this planning document, will generally be inappropriate to approve. In my opinion, it does not appear that Horizons has certainty, that generally all activities within rare and threatened habitats will have very significant effects and would be inappropriate.
84. It is my understanding from Mr Park’s evidence that these habitats have only been identified through a desk-top analysis, using just one series of criteria for assessing “ecological significance”. I understand that Schedule E is a tool that is useable by ecologists, as a trigger for where “likely” Section 6(c) habitats might be found, but there could be cases where an area which is included within Schedule E, may not necessarily meet Section 6(c) of the RMA in terms being significant indigenous vegetation or habitat. While in Mr Park’s opinion, this is appropriate as the starting point for an ecological assessment, it is not an assessment of significance in itself (i.e. in terms of Section 6(c) if the RMA), nor is it an assessment of the ecological effects of a proposal. So there is a considerable level of additional ecology work to be carried out for any specific resource consent application, in order to firstly determine whether the proposal involves a Section 6(c) habitat, and secondly, what the actual and potential effects are, and whether these can be avoided, remedied, mitigated, or where not, offset in some manner. In my opinion, these steps need to be carried out in sequence, before the Council can be satisfied that it is dealing with a habitat that relates to Section 6(c) and the proposed activity has the potential for very significant effects and for which it would generally not grant resource consent.
85. With reference to the above discussion, I note that my understanding of the relationship of Section 6(c) and Schedule E differs to that indicated by the reporting Officer. I refer the Committee to Page 109 of the Officer’s report where it is stated (based on the report prepared by Fleur Maseyk) that both the at risk and rare and threatened habitats “...*meet the necessary tests for being considered ‘significant’ for the purposes of Section 6(c) and therefore must be protected*”. I have reviewed Mr Park’s evidence and understand, as outlined above, that he does not consider that this connection can be made, due to the absence of any field assessment within the Schedule E process.
86. Accordingly, given the Council ‘s choice of a “desk-top” identification tool rather than traditional mapping incorporating field assessment work, it is inappropriate in my opinion, to structure a rule around the non-complying activity classification and a discretionary activity classification is the “trade-off” which should be made, given the lack of certainty. In my opinion, to retain a non-complying activity status, the Council would need to complete the significance assessment

process outlined by Table 7.1 (which I understand necessitates field work), and identify via specific mapping, only habitats that conclusively meet Section 6(c) of the RMA. Only then, would the condition/context and other relevant factors have been factored into the significance evaluation process, in a manner which would enable the plan users to be satisfied that Schedule E was equivalent to Section 6(c) of the RMA.

87. While I consider that a discretionary activity status is the most appropriate activity status, in my opinion, this activity status does not undermine or detract from the overall aims of the Council regarding the protection of indigenous vegetation and significant habitats of indigenous fauna, together with the maintenance of biodiversity. A discretionary status enables all potential effects to be considered, including significant effects. There is no limit to the matters, which the Council can consider and the same notification test applies to a discretionary activity as for a non-complying activity. Accordingly, the change to activity status will not alter whether or not affected parties are involved in the consent process or whether applications are publicly notified.
88. Overall, I consider the non-complying activity status to be too restrictive and it would not best achieve the objectives and policies of the Proposed One Plan. I consider that a non-complying activity status is overly onerous given the broad-brush information and lack of certainty around Schedule E. I believe a discretionary rule would better reflect the objectives and policies, particularly the revised form as recommended by the reporting Officer. A discretionary status is also consistent with Policy 11.1 of the Proposed One Plan. I also believe a discretionary rule would better reflect the permissive presumption in Section 9(3), and the purpose of the Act as set out in Section 5.
89. I have included appropriate wording for a discretionary rule in Appendix 1.

Schedule E (X451, 454, 452, 453, X455, ME 210)

90. Meridian opposed Schedule E and stated that it should be deleted or amended to be more appropriate to Section 6(c) RMA requirements, and amended to be less inclusive and contain improved justification of each of these habitats and species; and include individual maps identifying the locations for each threatened species identified in Schedule E.
91. The Officer recommends changes to Schedule E. I note the more substantive changes to the Schedule are covered in the evidence of Fleur Maseyk and the reporting Officer recommends that these be adopted. I support all these amendments made, but consider that additional changes are necessary to appropriately reflect the objectives and policies of the Plan.
92. There are habitats still retained within Schedule E, which either repeat the vegetation and land disturbance restrictions in Rule 12-5 of the Plan, or are unlikely to be significant in terms of Section 6(c) of the RMA as they relate to exotic vegetation. I note that clarification has been provided in Schedule E that exotic plantation forestry is not captured by the Schedule. It would be helpful if this could be included in respect of exotic pasture grasses also. If it was made clear in Schedule E that land covered with pasture could not be captured by the Schedule, then applicants wishing to carry out works only within pasture land, would not need to engage an ecologist to determine whether Schedule E applied or not. Also, as discussed in the evidence of Mr Park, Table E.2 seems to contain a large number of relatively similar criteria and a number of potential inconsistencies.

93. The key areas of Schedule E which appear to be either outside of those matters of national importance set out in Section 6(c) of the RMA, duplicate other rules in the One Plan, and/or are unclear, are:
- ▶ Table E.1 – reference to riparian margin habitats;
 - ▶ Table E.1 – habitat type containing species – reference to exotic vegetation and reference to “could reasonably known to contain”;
 - ▶ Table E.2 – too many criteria/potential inconsistencies and reference to exotic and riparian vegetation;
 - ▶ Figure E.1 – potentially unnecessary reference to water management sub-zones;
 - ▶ Consideration of a statement that pasture is excluded in the text above Table E3, in a similar manner to the exclusion for production forest.
 - ▶ The text between Tables E.2 and E.3 *“When determining ecological assessment of a site through a resource consent process, threatened species classification should in all cases be determined by current national threatened species lists as per the current New Zealand Threat Classification System”* seems to imply a need to refer to an external document to use Schedule E.
94. Further discussion on the content of Schedule E is provided in the evidence of Mr Park.
95. Provided that the above matters are addressed, I consider that the amended schedule will better meet the objectives and policies of the One Plan and therefore, better meet the provisions of Section 32 of the Act. However, I am concerned about the lack of certainty for plan users, due to the absence of maps. I am aware that from an ecological perspective the use of Schedule E is probably the “safest” approach based on the evidence of Mr Park. However, it does require some significant consideration and analysis on the part of any potential applicant. This is clearly a cost. I do not think costs should then be exacerbated by an overly restrictive activity status.

Conclusion

96. In conclusion, I support a number of changes proposed by the officers for biodiversity. However, as I have outlined in my evidence above, there are outstanding issues that need to be considered closely by the Committee.
97. I consider that the rule framework should be amended to better reflect the policy direction of chapters 7 and 12. Objectives, policies and rules that best reflect the requirements set out in the RMA are essential for ensuring the One Plan promotes the sustainable management of natural and physical resources.



Mary O'Callahan

11 July 2008