BEFORE THE MANAWATU-WANGANUI REGIONAL COUNCIL

In the matter of	the Resource Management Act 1991
and	
In the matter of	Submissions and further submissions made by **TRUSTPOWER LIMITED** to the Manawatu-Wanganui Regional Council on the Proposed Horizons One Plan – Biodiversity Provisions.

SUPPLEMENTARY EVIDENCE OF ROBERT JOHN SCHOFIELD
Environmental Planner

---

1 December 2008

Introduction

1.1 The purpose of this supplementary evidence is to confirm the position of TrustPower Limited ("TrustPower") in regard to the outstanding matters relating to the biodiversity provisions of the proposed One Plan ("the Plan") raised in my planning evidence of 11 July 2008.

1.2 Since preparing my evidence, pre-hearing meetings have taken place between other submitters and expert ecologists, as well as caucusing between energy generators. I commend the constructive attitude and response of those parties concerned. As a result of these meetings a number of provisions have been revised by the section 42A officer's report. My supplementary evidence responds to these recommendations where they differ from the original section 42A report, focusing on matters of outstanding differences in opinion.

1.3 As part of my role as consultant planner to TrustPower on the Biodiversity provisions of the proposed One Plan, I attended the pre-hearing meeting on biodiversity on 22 October 2008, as well as an earlier meeting of energy generators on 7 August 2008. My evidence takes into account the supplementary ecological evidence of my colleagues, Matiu Park and Stephen Fuller, on the biodiversity provisions of the proposed One Plan, most notably Schedule E.

1.4 As a result of the pre-hearing meetings and caucusing, agreement has been reached on a number of submission points raised by TrustPower that I discussed in my original expert planning evidence; the most important areas are outlined below. However, there remain a number of areas that remain unresolved and this supplementary evidence considers the following matters that I consider to be outstanding:

(a) Schedule E /activity status for activities in rare, threatened and at-risk habitats

(b) Section 6(c) versus general biodiversity protection

(c) The significance assessment criteria outlined in Policy 7.7 (now Policy 12.7)

Matters of Agreement

1.5 The most important area of agreement, as will be discussed in more detail in the evidence of Matiu Park, is that the Schedule E – the basis for the biodiversity provisions – has been greatly improved as a result of the caucusing and pre-hearing meeting process. I consider that the amendments have resulted in increased clarity and certainty as to the habitat types that Horizons Regional Council ("Horizons") is seeking to protect and is much more 'user friendly', given its primary role in determining which habitat types are captured by the corresponding rules, and the need for easy interpretation and understanding. However, I note that Mr Park still has some residual concerns on the inclusion of some additional habitats.

1.6 The supplementary evidence of Ms Marr includes a revised list of submission points and the section 42A report's recommendations that were missing from the original section 42A report on biodiversity. These submission points are consistent with the original planning evidence of TrustPower and I will not expand on these points in my supplementary evidence.

1.7 I support the revised approach to providing for biodiversity offsets and the concept of biodiversity gain as revised by the supplementary evidence. This approach suitably seeks to ensure areas of the same habitat type are used as biodiversity offsets, but also recognises other options are available to consider if there are no other suitable alternatives. This policy should result in some substantial biodiversity gains for the region and I commend Horizons for being proactive in providing such options with the proposed One Plan.

1.8 Overall, unless outlined otherwise, TrustPower supports the majority of the recommended amendments to the biodiversity provisions, and the addition of new Method 7-8, Biodiversity Advice and Information, as improved knowledge and understanding by land-owners is an important factor in promoting voluntary initiatives for protecting biodiversity on private land.

Outstanding Matters

Schedule E and the activity status of rare and threatened and at-risk habitats

1.9 First and foremost, it is important to re-emphasise to the Committee that Schedule E determines the activity status of activities that are proposed to occur within rare, threatened and at-risk habitats. As outlined in some detail in the original evidence of Mr Park for TrustPower, the application of Schedule E remains a relatively broad-brush prediction of a site's potential significance based on rareness and risk status. However, as a result of the caucusing and evidence circulated to date, there remains little doubt among the experts that this predictive modelling approach is a valid method, and indeed has some merits over the traditional approaches to sites of significance.

1.10 However, while predictive modelling has some advantages over traditional field-based assessments of significance undertaken at the regional scale, I remain concerned that Schedule E is the only basis by which the activity status of a resource consent is determined. As outlined by Mr Park, field assessment remains a fundamental consideration in any assessment of significance. For an activity proposed in an area of 'significant indigenous vegetation and significant habitats of indigenous fauna' to be classified as a non-complying activity, the consent authority should have a high degree of certainty that the habitat is indeed significant under section 6(c) of the Act (I note that the proposed One Plan is recommended to be amended to clarify that the controls in the proposed One Plan on biodiversity are focused solely on s6(c) matters).

1.11 Given the level of work that has gone into Schedule E to develop it as a tool for assessing significance, I consider the activity status to be the most important outstanding matter for TrustPower, as this methodology determines the consent stream by which activities are assessed. While the supplementary report of Ms Marr for Horizons Regional Council gets into some discussion on the matter of bundling of consents, it does not discuss the more substantive issues raised by TrustPower (and other submitters) and expanded on in my expert evidence.

1.12 Before I get into the specifics of TrustPower's submission, I will briefly discuss the matter of bundling. Although canvassed to a certain extent by Ms Marr's supplementary report, I still consider there to be significant risks associated with a bundling approach. My experience to date is that, although bundling of consents is

'not compulsory,' it is being universally applied by Councils, particularly for larger projects, and certainly any prudent advice to applicants should be based on the need to cover off the potential for all aspects of a proposal to be considered as a non-complying activity. To achieve this, however, can come at a large cost, particularly for large projects, where applications seek to demonstrate that all the effects of a proposal are no more than minor and/or not contrary to the objectives and policies of a Plan. This factor alone is reason to suggest that discretionary status is a more effective and efficient (in s32 terms) method for managing potential adverse effects on these habitats, particularly when these effects can be demonstrated to be no more than minor.

1.13 In my opinion, the non-complying activity status should be used as a 'bottomline' policy for managing activities with the potential for significant effects on key environment values or resources. However, the thresholds that are established to determine the status of non-complying activities have to be based on clear and readily measurable limits, based on the expectation that, in most cases, the effects of a proposal are likely to be beyond the tolerance level of 'no more than minor'. However, if there are likely to be many situations where the effects of activities are likely to be less than significant (i.e. more than the rare exceptional circumstance), then, in my opinion, the preferred management tool should be discretionary activity consent process. While I accept that the non-complying activity does send the message that these habitats are very important and highly valued resources (which is the fundamental reason that I believe it is being used by the proposed One Plan at present), that message would be better made through clear and strong policy direction.

1.14 Aside from the bundling issue, I feel it is important to highlight the wider implications of the non-complying activity status on landowners who are seeking resource consents for small-scale activities with minor effects. As outlined in the original evidence of Mr Park, there remains a real risk that the non-complying status of activities in rare and threatened habitats will lead to an unintended loss of biodiversity as a result of landowners assuming that a non-complying consent is too difficult, expensive and risky to obtain.

1.15 As I noted in my original evidence, in my experience most landowners negatively perceive the non-complying status of the activity, without any reference to the policies. I reaffirm here the stated Horizons principles (from Ms Maseyk's original evidence for the Overall Plan Hearing) that the proposed One Plan will 'embrace a more non-regulatory approach'.

1.16 On this matter, I note that the subsequent addition of a number of habitat types between the notified version of the proposed One Plan and this version is likely to affect large areas of private land beyond those originally envisaged. As outlined in the evidence of Mr Park, these substantially change the scope and scale of area that is covered.

1.17 In my opinion, the use of discretionary activity status would retain Horizons' ability to decline consent for applications in rare and threatened habitats.

1.18 Similarly, for 'at-risk' habitats, I remain concerned at what I consider to be a very restrictive approach to activities in these areas through the discretionary activity status. The supplementary recommendations of Ms Marr suggested that restrictive discretionary status was inappropriate because these habitats *'may be part of a*

complex ecological landscape' and *'a wider consideration of effects than that possible under a restricted discretionary activity may be needed'*. I struggle to accept, however, that the scope of potential matters of discretion cannot be adequately, albeit broadly, defined at this stage. It is not as though the range of potential effects can be so broad and uncertain, no matter the complexity of the particular ecology in question. As outlined in my original evidence, I still consider that appropriate matters of discretion could be developed for managing the potential effects of activities in at-risk habitat types – and most importantly that the restricted discretionary activity status would suitably retain the opportunity to decline consent in appropriate situations. It can also be used to limit the necessity for notification, another costly and risk-inducing aspect of discretionary activity status, especially where not necessary.

1.19 In summary, it is my opinion that a discretionary activity status would be more appropriate for managing activities within 'rare' and 'threatened' habitats, and that a restricted discretionary status would be more appropriate for 'at-risk' habitats, and request that amendments be made to Rules 12-7 and 12-8 accordingly. Alternatively, a simpler approach in my opinion would be to have a discretionary activity status for any activities identified as rare, threatened or at-risk in Schedule E, and then the assessment criteria in Policy 12-7 could be used to determine the significance of the site (subject to the revisions to the assessment criteria as outlined by Mr. Park). While this latter approach does not eliminate some of my concerns with the current methodology of the rules (that I will shortly outline), it at least addresses the primary issues in using non-complying activity status.

Section 6(c) versus General Biodiversity Protection

1.20 Section 6(c) of the Act requires the protection of areas of *significant* indigenous vegetation and *significant* habitats of indigenous fauna. As outlined in my original evidence, while I recognise that Horizons has tried to implement a 'precautionary approach' to protecting at-risk habitat types, I concur with the evidence of Mr Park that requiring their protection as provided for by Policy 7-3 seems to be more closely related to the more generic function of maintaining indigenous biodiversity under section 30(1)(ga).

1.21 While some of the at-risk habitats may be potentially significant, if the consent process identifies an affected area as not significant under Policy 12-7, then what is the purpose of the consent process? In this respect, I again note that it is now recommended to amend the policies in the proposed One Plan to clarify that indigenous biological diversity is a matter for territorial local authorities to address.

1.22 In my opinion, the Proposed One Plan (as currently recommended) does not apply a clear and consistent approach to the obligation under section 6(c) (the protection of significant indigenous vegetation and significant habitats of indigenous fauna) or the function under section 30(1)(ga) (requirements to maintain indigenous biodiversity). The Officer's now recommend that the focus of the Regional Council's policy attention under the Proposed One Plan should be on s6(c) matters and yet, the way the rules are framed, vegetation and habitats that are not significant are caught up in the regulatory net.

1.23 I understand and accept that the rare and threatened habitats outlined in Schedule E are likely to be either highly representative or rare, and are therefore most likely to

be significant and should be protected in accordance with section 6(c). However, for at-risk habitats such as *'grassland below the treeline'*, many types of habitat and vegetation types are not likely to be deemed significant. This appears to be acknowledged by the Plan in that the focus of the controls is on the maintenance of these habitats rather than their protection, and is therefore more consistent with the Act's general biodiversity obligations than with section 6(c) matters. This is demonstrated by the related policies seeking to *maintain* them, as opposed to the 'protectionist' approach for rare and threatened habitat types.

1.24 As has been discussed in the evidence of Mr Park, traditional approaches to determining ecological significance involve site specific assessments and field work that determine a site's values and characteristics in relation to a defined set of parameters. However, as described in the evidence of Mr Park, the proposed One Plan has determined that all these habitat types to be potentially significant, irrespective of condition and inherent ecological sustainability. This is certainly a different approach to most other statutory plans in New Zealand.

1.25 While the supplementary evidence of Ms Maseyk and Ms Marr has clarified that the habitats in Schedule E are indeed to address section 6(c) obligations, I consider that there still remains some fundamental inconsistencies within the policies of Chapter 7 whereby the policies seek to 'protect' rare and threatened habitats yet only 'maintain' at-risk habitats.

1.26 In addition to the differing management approaches for activities in these habitats, I note that there is an additional level of ranking of these habitats evident in Policy 7-4 whereby Horizons seeks to improve the health and functioning of the best representative examples of these habitats. However, I am not aware of any criteria within the biodiversity provisions that would be used to rank these sites and remain unsure how this is to be achieved within the provisions of the proposed One Plan.

1.27 As outlined in the supplementary evidence of Mr Park, Objective 7.1(a) and Policy 7-4 further bring into question the level of significance of these areas – i.e. are the 'best representative examples' of these rare, threatened and at-risk habitats *all* the sites in Schedule E? If not, how will this be determined and what thresholds will be used? Method 7-2 also proposes similar ranking in relation to the 'top 200 bush remnants in the Region'. Linked to my point above, one would naturally assume that these areas are to be ranked as more significant than others, which leads to the question whether those sites that are not in the top 200 are less significant? This question leads onto the next outstanding concern; that relating to the criteria used to determine ecological significance.

1.28 In summary, these issues relate back to my initial concerns about the structure of the rules, and particularly the role of Schedule E with the table of criteria for assessing ecological significance under (now) Policy 12-7.

1.29 In terms of relief, preferably, I would recommend that Schedule E be reviewed to ensure that it is only focused on habitats of significance, or at least where there is very strong likelihood of significance when any of the listed habitats are assessed. However, I accept that this may be problematic and that there will always be a level of uncertainty until specific sites are individually assessed.

1.30 Consequently, a more pragmatic approach would be to treat all modifications to Schedule E sites as a discretionary activity, and then to have the actual level of ecological significance assessed according to Policy 12-7 as part of the consent

process (subject to some revisions to the assessment criteria as outlined by Mr. Park). While this approach does not obviate the problems of capturing sites that are then assessed as not being significant, this approach would at least better address the wide variability and uncertainties involved with the proposed regulatory methodology.

1.31 As part of this revised approach, sites assessed as not significant should be managed more lightly as a restricted discretionary activity, particularly in terms of non-notification.

Policy 12-7 and the Criteria for Assessing Ecological Significance

1.32 I support the proposed shift of Policy 7-7 to Chapter 12 as it does relate better to the decision-making policies of this Chapter. However, given the broad-brush approach used in Schedule E, the assessment of significance remains the core outstanding matter for TrustPower, particularly given the misrepresentation of the 'representativeness' criterion, and in the absence of a criterion relating to the ecological viability or sustainability of any specific habitat.

1.33 As Mr Park observes in his evidence, there are no nationally adopted criteria for assessing ecological significance. Most RMA plans that address the management of indigenous biodiversity have incorporated a combination of criteria loosely based on the Protected Natural Areas Programme (promulgated under the Reserves Act 1977), and refined by Norton & Roper-Lindsay (2004). Where plans do set out criteria for assessing ecological significance, one of the matters is invariably the ecological condition or viability of a site or habitat.

1.34 As has been discussed in some detail by Mr Park, the recommended absence of such a criterion is inconsistent with both established ecological practice and case law. From a statutory planning perspective, ecological sustainability remains a highly important consideration as to whether habitats or vegetation are significant as required under section 6(c) RMA. The supplementary ecological evidence of Mr Park and Mr Fuller expands on the importance of such criterion in more detail.

1.35 I agree with Mr Park and Mr Fuller that consideration of a site's condition and ecological sustainability should be an important component of any RMA significance assessment criteria. Given the broad-brush approach to assessing ecological significance prescribed by Schedule E, I concur with Mr Park that Policy 12-7 should allow for a more comprehensive assessment of a site's full values through inclusion of a criterion on the ecological sustainability of a site.

1.36 Ultimately, the lack of such a criterion could create a negative perception by landowners and others: an apparent policy that seeks to protect areas in poor and unsustainable condition is likely to run counter to achieving the outcomes being sought by the Plan.

1.37 The supplementary evidence of Mr. Park also gets into some detail on the proposed One Plan's misrepresentation of the 'representativeness' assessment criterion under Policy 12-7. Mr Park states that the narrow definition employed has a number of implications for the use of the term to both assess a site's significance and to assess the effects of an activity on a site's values.

1.38 On this point, I note the supplementary evidence of Ms Marr for Horizons which states that, on balance, the activity status purposely sets a high bar so as to ensure the significant areas are protected and maintained. While this approach has some merit

from a biodiversity viewpoint and a broad policy-making perspective, it is ultimately about controls on private landowners – in many cases, the very landowners who have worked hard to maintain and protect these areas to date. Again, I reiterate my point above regarding the proposed One Plan's principle of less regulation.

1.39 While these other sites may still have high ecological values, their management is, in my opinion, more appropriately dealt with via other statutory requirements and non-regulatory approaches. Mr Park provides the example of an area of grazed red tussock grassland where the current significance assessment provisions (either Schedule E or Policy 12-7) do not provide for any distinction between this area of tussock grassland that may have been grazed for 150 years and is ecologically unsustainable, and red tussock grassland that has never been grazed and is ecological sustainability – i.e., as currently recommended, the proposed One Plan determines that they are both significant habitats under section 6(c).

1.40 As outlined in the evidence of Mr Park, the criteria of representativeness, rarity and ecological context are not exhaustive and are not consistent with case law and other ecological practice under the RMA across New Zealand. Given the large amount of habitat types that the proposed One Plan seeks to protect through the broad-brush criteria of Schedule E, I agree with Mr Park and Mr Fuller that it is essential that the representativeness criteria is consistent with the established use of this term and that some measure should be incorporated regarding a site's condition or ecological sustainability.

1.41 Given Schedule E is unlikely to change substantially so as to take into account the condition of a site's values, I support the suggested criterion suggested by Mr Park to amend the representativeness criteria and add a further secondary criterion 'ecological sustainability' Policy 12-7. This would be consistent with case law and indeed the intended application of representativeness by ecologists.

1.42 On this matter, I consider that reference to Policy 12-7 within Policies 12-4 and 12-6 should either be amended to refer to the full suite of ecological criteria (including ecological sustainability) or be deleted to refer simply to a revised Policy 12-7. This needs to be consistent in all mentions or cross-references to Policy 12-7, including matters of discretion within the rules.

Controlling Discharges and Diversions

1.43 As a final matter, I remain opposed to including reference to "*discharge of contaminants into water"* and "*diversions of water"* within Rules 12-7 and 12-9, as I consider that other sections of the proposed One Plan adequately deal with these issues without the need for repetitious controls. This duplication of other provisions within the proposed One Plan in my view unnecessarily confuses these rules which are about biodiversity.

Conclusion

1.44 In conclusion, while significant improvements are now recommended to be made to the proposed One Plan provisions for biodiversity, there are still a number of concerns with the proposed regulatory approach:

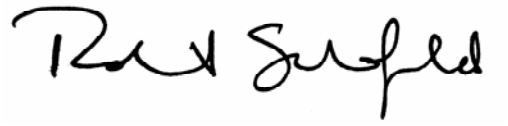
(a) The capture of any habitat listed in Schedule E by the consent process, from which ecological significance is only then ascertained – paradoxically, this method could lead to the result of non-significant sites requiring consent, contrary to the policies of the proposed One Plan;

(b) The use of non-complying activity status in managing an area of great uncertainty and variability, and the consequent costs, risks and negative perception that this would engender;

(c) The misrepresentation of the representativeness criterion in Table 12-7, and the lack of recognition for the ecological sustainability of a site in determining significance.

1.45 Acknowledging that this is a resource management issue of great complexity, with inherent problems under any regulatory framework that may be adopted, the most pragmatic approach I would advise would be to use Schedule E (subject to further revision) to determine sites of potential ecological significance, with any modification managed as a discretionary activity. Policy 12-7 could then be used to determine the level of significance, including the site's ecological viability, which would inform the assessment of effects on the environment, and decision-making. If needed, additional policies to support this approach.

1.46 In my opinion, this approach would be a simpler, more effective and efficient process, and therefore the most appropriate means to meet the One Plan's objectives and policies.



Robert Schofield
Director, Boffa Miskell Limited | Environmental Planner
1 December 2008