BEFORE THE HEARINGS COMMITTEE

IN THE MATTER	**of hearings on submissions concerning the proposed One Plan notified by the Manawatu-Wanganui Regional Council**

SUPPLEMENTARY SECTION 42A REPORT

OF PHILLIP PERCY

ON BEHALF OF HORIZONS REGIONAL COUNCIL

INTRODUCTION

1. This report supplements the Section 42A Report prepared by me for the hearing on the overall One Plan. The purpose of this supplementary report is to address matters raised in the evidence of Thomas Brent Layton on behalf of Fonterra.

Regulatory practice

2. Mr. Layton identifies the *Code or Good Regulatory Practice* as a guide for councils in undertaking evaluations of planning documents. On examining the Code, I agree that it provides a good framework for assisting with such evaluations and is complimentary to the evaluation required by s32 of the Resource Management Act 1991. However I note that it is not mandatory for councils to apply the Code, nor is the Code mentioned in the s32 Guidance Note from the Quality Planning website (referred to in the evidence of Mr. Baker), albeit that s32, the Quality Planning guidance note and the Code are largely consistent. The reason for the Code not being a requirement of local authorities in developing policy documents under the RMA is probably because the Code was not developed in the context of environmental management where the costs and benefits to the environment also have to be considered (not simply the costs and benefits to society).

3. To my knowledge, Horizons did not specifically implement the *Code or Good Regulatory Practice* in undertaking the evaluations of the various provisions of the POP, however Horizons was not required to do so. This does not diminish the appropriateness of the evaluation Horizons undertook pursuant to s32.

Transparency

4. At paragraph 23 of his evidence, Mr. Layton levels criticism at the adequacy of the s32 report prepared by Horizons, and considers that the report does not discuss or attempt to quantify the benefits and costs to society of most of the approaches in the POP.

5. I reiterate my comment in my original s42A Report (paragraph 15) that "*The report only needs to be a summary of the evaluation. It does not need to be a comprehensive record of the evaluation and does not need to document every consideration that constituted that evaluation*." Given that

the evaluation of the provisions of the POP was an on-going and complex undertaking that occurred throughout the plan development process, the s32 summary report can only practically provide a brief summary of that evaluation. The s32 report prepared for the POP was set up to provide an outline of the evaluation undertaken but with reference to key investigations and documents that informed the evaluation. The report was not intended to be a single point of reference for submitters to completely understand the evaluation that took place, rather it was directive to submitters. Where a submitter required further information on the evaluation that was undertaken by Horizons, they were able to obtain the documents referenced in the report or approach Horizons directly for additional information.

6. Mr. Layton appears to be considering the s32 summary report as the entirety of Horizons evaluation of the POP. I reiterate that it is simply a summary document of a much larger underlying evaluation process.

Evaluation after notification

7. At paragraphs 27 to 30 and 39 to 41 of his evidence, Mr. Layton expresses concern that it appears to him that provisions in the POP were notified without an evaluation first being undertaken. As stated in my evidence at paragraph 72, some on-going evaluation work could not be completed prior to the POP being notified. However this work was supplementary to the initial evaluations that were undertaken prior to the POP being notified. This approach (of undertaking an initial evaluation prior to notification and then undertaking further detailed evaluations post notification) does not diminish the overall evaluation of the provisions. The initial evaluation of the FARM Strategy method I referred to indicated that it would be an appropriate and effective method prior to notification. Discussions with farmers and interest groups indicated to horizons that further evaluation of the approach at a farm scale would be beneficial and Horizons undertook to do this further evaluation. Adjustments to the details of exactly how that approach is to be applied can then be made with the additional information brought to the hearing by both Horizons additional investigations and the comments of submitters.

8. Continuing to evaluate proposed provisions even after they have been notified would seem to be entirely consistent with the intent of s32 of the RMA as well as the Code of Good Regulatory Practice.

9. Submitters considering the provisions of the POP, and taking into account the evaluation that has been undertaken by Horizons prior to notification of the POP must give consideration to the effect of those provisions on their own operations. I consider that that is one of the key reasons why the RMA requires proposed plan provisions to be publicly notified. It allows for those provisions to be considered and tested by those who are likely to be affected by them and provides those people with the opportunity to raise concerns with those provisions through the formal submissions process. I reinforce my earlier comments that submitters are able to obtain the information that supported Horizon's evaluation prior to notification of the provisions to assist them with their site-specific evaluation. Submitters have also been provided with wide opportunities to engage directly with Horizons staff to discuss and test the proposed provisions throughout the POP development process at public meetings, workshops and one-on-one contact.

10. Submitters, as in all plan development processes, have a responsibility to consider the implications of the proposal on what they do by combining their own intimate knowledge of their activities with the information available from the Council. In most cases, reading of the provisions put forward in the POP is likely to be the most useful for submitters to gauge the impact of those provisions on their individual activities.

11. Mr. Layton expresses concern with this approach (paragraph 41), suggesting that it is not appropriate for submitters to have to provide their own supporting evidence if they wish to put forward alternatives to those proposed by Horizons. I consider that any submitter wishing to put forward an alternative to one of the provisions in the POP would recognize that to promote such a change, a reason for the change would need to be suggested. One reason may be a criticism of the information supporting the provision, or it may be the introduction of activity-specific information that demonstrates that the provision is not appropriate in a certain situation. This is supported by the direction in RMA Regulations Form 5 (Submission on publicly notified proposal for policy statement or plan) which requires a submitter to state "*whether you support or oppose the specific provisions or wish to have them amended; and reasons for your views."*

Economic analysis

12. Mr. Layton places emphasis in his evidence on the need to undertake economic analysis of the provisions of the POP. However in supporting his recommendation at paragraph 34, he seeks to simplify the evaluation process by assuming that all methods in the POP will achieve the same environmental outcome (he gives the example of better water quality). However Mr. Layton does not recognize in this argument that the variability of activities and environments throughout the region mean that often a single method will not be as effective as another in achieving a specific environmental outcome across all of those variable situations. For example a non-regulatory method may achieve the desired environmental outcome in one catchment for one activity, but quite a different outcome in another catchment or for another activity. Therefore it requires more than simply an evaluation of the actual cost of implementing the proposed method – the evaluation must also consider the degree to which the environmental benefits will be achieved at varying levels in variable environmental settings. To try to quantity the variable environmental and social benefits across a huge range of environmental characteristics cannot be done, in my opinion, by quantifying the costs and benefits in monetary terms.

13. Reinforcing that the RMA does not intend for monetary analysis to be undertaken, s2 (interpretation) defines benefits and costs as: "**Benefits and costs** *includes benefits and costs of any kind, whether monetary or non-monetary*"

14. This specification in the Act that benefits and costs are those of *any kind* appears to reinforce that trying to quantify complex and often subjective benefits and costs is difficult to do. This is where the Code of Good Regulatory Practice becomes less appropriate to considering environmental outcomes, with its focus on benefits to 'society'. In particular, bullet point three under the effectiveness guidelines in the code states "*Regulatory benefits outweigh costs: in general, proposals with the greatest net benefit to society should be selected and implemented."* In evaluating provisions under the RMA, the costs and benefits of a proposal need to take into account the net benefits to the environment as well to society. It is in the evaluation of the net benefits to the environment, in particular, where quantification (monetary or otherwise) is often inappropriate.

Equity

15. At paragraph 43 and 44 of his evidence, My Layton suggests that the POP does not demonstrate equity where different farmers will face different costs of compliance. Mr. Layton also raises concern that the regulatory approach for controlling discharges from farming activities (Rule 13-1) will have different costs of compliance than the non-regulatory approach for controlling land use activities via Policies 5-1 and 5-2.

16. The RMA specifies a different approach for management of discharges and land use activities. The Act at s15 limits the discharge of contaminants into the environment to those that are allowed by a rule in a regional plan, a resource consent or by regulations. In contrast, a permissive approach is adopted for land use activities whereby any activity is allowed unless it contravenes a rule in a regional plan. So for discharges of contaminants from dairy farms to be enabled through the POP, a rule must be put in place to enable this, with the appropriate controls necessary. Land use activities on hill-country farms (such as land disturbance and vegetation clearance) can take place unless they contravene a rule. So part of the response to Mr. Layton's concern about the different approaches adopted for different types of farming activities throughout the region is in response to the RMA framework.

17. The use of a non-regulatory method for managing land use activities on hill country land (via the Sustainable Land Use Initiative Whole Farm Business Plans (WFBPs) is available because the WFBP programme effectively forms a code of practice that can be enforced where non-compliance occurs. Hill-country farmers are able to benefit from this approach because the non-regulatory method was available at the time the POP was notified. A similar non-regulatory method was not available for managing the discharge of contaminants from dairy farms. If an appropriate non-regulatory method for dairy farm discharges is developed, Horizons have indicated that they would be happy to work with the relevant industry groups to incorporate such and approach into the One Plan.

18. I consider that the variation in approaches to managing the activities and effects of different land uses and discharges in different parts of the Region requires a range of methods and

approaches. Creating absolute equity across such variable land uses and activities is unlikely to be achievable.

Hydro-generation preference

19. Mr. Layton raises concern in his evidence (paragraph 49) that preference is given in the POP to hydro generation over other water users, specifically referring to policy 6-16. While this is a matter more appropriately addressed at the hearing on that particular chapter, my opinion is that Policy 6-16 only provides for existing hydro generation activities. Existing hydro generation facilities require water to maintain their electricity generation capacity which, as Mr. Layton rightly points out, is very important for the community and New Zealand. The policy establishes a degree of certainty for those existing activities. Policy 6-16 does not make water allocation for new hydro generation activities a preference because those activities would first need to pass through the resource consent process during which the effect of their water takes on other users would be assessed and evaluated. I also note that the benefits to be derived from renewable energy, which include hydro-generated energy, is a matter that particular regard must be had to in achieving the purpose of the Act (s7(j)) and therefore would seem to be afforded a higher level of importance than other water uses.

Water quality standards

20. Mr. Layton suggests that the water quality standards in Schedule D of the POP have been devised without consideration of the achievability of the proposed standards. I will not discuss the details behind these standards other than to say that there has been a large body of scientific research work that has been undertaken (all of which is available to submitters) to identify the water quality values for the various waterbodies and catchments within the Region. This work, as I understand it, has taken into consideration the land use activities in those areas, what contribution they are currently making to water quality effects, and what is able to be achieved to remedy those effects. These are details that will be explain in detail in expert evidence on the Water chapter at the appropriate hearing and it may be more appropriate to revisit Mr. Layton's questions in light of that evidence.

Way forward

21. Mr. Layton recommends that the matters of contention in the POP are revisited and another s32 evaluation is undertaken prior to proceeding with a decision on them. He proposes that the non-contentious issues can continue through the current process.

22. Firstly, I believe, based on my previous comments, that Horizons have undertaken an evaluation of the provisions of the POP in accordance with the requirements of s32 of the Act. Therefore, I do not consider it necessary to revisit the initial evaluation.

23. Secondly, the matters of contention for submitters are precisely that because submitters have given consideration to the provisions put forward by Horizons and are expressing their concerns over them. Many submitters are requesting amendments to provisions to make them more appropriate to their activities and uses. Horizons has been working with a large number of submitters on a range of issues through pre-hearing meetings and one-on-one discussions to work through issues with particular provisions. Where issues can be resolved, Horizons staff will be putting forward recommended amendments to the provisions of the POP to address these matters. Where agreement cannot be reached, the matters will be discussed at the hearing. This is the normal and prescribed course of events for the development of planning documents under the RMA and I do not see a need to deviate from this approach.

24. Thirdly, where it is identified that there is some level of evaluation lacking in relation to a particular matter, Horizons are able to undertake further evaluation as part of the iterative process that is plan making. The Quality Planning Guidance Note on s32 evaluations indicates that continuing to provide material and on-going evaluation of the proposed planning document throughout the hearing phase is common: *"The Council or Environment Court must satisfy itself that the most appropriate methods are being used, after having heard the evidence at the hearing. It is common practice for Councils to produce s32 material in relation to appeals on plans to the Court."*[1]

25. I see no benefit in pausing the planning process to go back and revisit the evaluation that has already been undertaken. The on-going evaluation process that forms the hearing and decision

[1] Applying section 32 at a hearing.

process is entirely adequate to address any evaluative questions on specific provisions that arise.

Phillip Percy

1 July 2008