

**IN THE ENVIRONMENT COURT AT WELLINGTON**

**IN THE MATTER** of the Resource Management Act  
1991 ("**the Act**")

**AND**

**IN THE MATTER** of clause 14 of the First Schedule of  
the Act

**BETWEEN** **MIGHTY RIVER POWER LIMITED**

ENV-2010-WLG-000139

**AND** **TRUSTPOWER LTD**

ENV-2010-WLG-000145

**AND** **FEDERATED FARMERS OF NEW  
ZEALAND**

ENV-2010-WLG-000148

**AND** **MERIDIAN ENERGY LTD**

ENV-2010-WLG-000149

**AND** **MINISTER OF CONSERVATION**

ENV-2010-WLG-000150

**AND** **PROPERTY RIGHTS IN NEW ZEALAND**

ENV-2010-WLG-000152

**AND** **NEW ZEALAND TRANSPORT AGENCY**

ENV-2010-WLG-000153

**AND** **HORTICULTURE NEW ZEALAND**

ENV-2010-WLG-000155

**AND** **WELLINGTON FISH & GAME COUNCIL**

ENV-2010-WLG-000157

**AND** **A DAY**

ENV-2010-WLG-000158

**AND** **GENESIS POWER LTD**

ENV-2010-WLG-000159

**AND**

**WATER & ENVIRONMENTAL CARE  
ASSOCIATION INC.**

ENV-2010-WLG-000160

**Appellants**

**AND**

**MANAWATU-WANGANUI REGIONAL  
COUNCIL**

**Respondent**

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**STATEMENT OF EVIDENCE BY LYNETTE PEARL WHARFE FOR  
HORTICULTURE NEW ZEALAND IN RELATION TO THE APPEALS ON  
THE PROPOSED ONE PLAN FOR MANAWATU WANGANUI  
REGIONAL COUNCIL ON SUSTAINABLE LAND USE/ACCELERATED  
EROSION**

**(17 FEBRUARY 2012)**

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**ATKINS | HOLM | MAJUREY**

Solicitor on the record  
**Contact solicitor**

Helen Atkins  
Helen Atkins

[helen.Atkins@ahjmlaw.com](mailto:helen.Atkins@ahjmlaw.com)  
[helen.Atkins@ahjmlaw.com](mailto:helen.Atkins@ahjmlaw.com)

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Helen Atkins  
PO Box 1585  
Shortland Street  
AUCKLAND 1140

(09) 304 0421  
(09) 304 0421

## QUALIFICATIONS AND EXPERIENCE

1. My name is Lynette Pearl Wharfe. I am a planning consultant with The AgriBusiness Group. I have a BA in Social Sciences and post graduate papers in Environmental Studies, including Environmental Law, Resource Economics and Resource Management.
2. I have been a consultant with The AgriBusiness Group since 2002. The Agribusiness Group was established in 2001 to help build business capability in the primary sector.
3. I have spent over 12 years as a consultant, primarily to the agricultural industry, specialising in resource management including planning on multiple issues at the regional and district level, environmental matters, environmental education and facilitation.
4. In my years as a consultant I have worked primarily in the rural sector. Some of the projects I have been involved in that I consider are particularly relevant in this context are:
  - (a) Project Manager and facilitator for a Sustainable Management Fund ("**SMF**") Project 'Reducing nitrate leaching to groundwater from winter vegetable crops', to develop management tools for vegetable growers to implement best practice for fertiliser applications, to assist in changing fertiliser usage.
  - (b) Managed an SMF project for NZ Agrichemical Education Trust communicating the revised NZS 8409:2004 Management of Agrichemicals to local authorities throughout NZ, including development and leading workshops with councils.
  - (c) Revised the Manual for the Introductory GROWSAFE® Course for the NZ Agrichemical Education Trust, to make the Manual more user friendly and accessible and to align it with the Hazardous Substances and New Organisms legislation.
  - (d) Programme Manager, MAF Agricultural Recovery Programme (Government response to February 2004 storm and flood event in the Lower North Island –

- including the Manawatu Wanganui region) March – August 2004.
- (e) Chair, Crop Committee, MAF Agricultural Recovery Programme Sept 2004 – 2006.
  - (f) Managing the research component for SFF project – SAMSIN – developing a framework for the development of Sustainable Management Systems for agriculture and horticulture.
  - (g) Project Manager MAF Operational Research Project Effectiveness of Codes of Practice investigating the use of codes of practice in the agriculture and horticulture sectors.
  - (h) Project team member for MfE Hill Country Erosion scoping study.
  - (i) Undertook a review of Current Industry and Regional Programmes aimed at reducing pesticide risk, including assessing a number of Codes of Practice.
5. In 2009/10, with Andrew Barber, I was engaged by Horticulture New Zealand to help develop a set of Best Management Guidelines for cultivated soil in the Horizons Region. These guidelines are based on local grower experience, my experience in grower education and uptake, and trials that are being conducted both with and alongside the Holding it Together (“**HIT**”) Project. The HIT Project is a Horticulture New Zealand led research project that focuses on preventing soil loss, soil degradation and adverse effects on surface water ways.
6. I have been involved as a consultant to Horticulture New Zealand on the Proposed One Plan (“**POP**”) since its inception. This has involved consultation meetings, initial discussions, submissions on draft plans, submission and further submissions on the Proposed One Plan and participation in hearings and mediation.
7. I have been provided with a copy of the Code of Conduct for Expert Witnesses contained in the Environment Court’s Consolidated Practice Note dated 1 November 2011. I have read and agree to comply with that Code. This evidence is

within my area of expertise, except where I state that I am relying upon the specified 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.

#### **OVERVIEW OF THE MATTERS THAT THIS EVIDENCE RELATES TO**

8. I am familiar with the technical evidence mentioned in my next paragraph as referenced in the Technical Evidence Bundle ("**TEB**"):
9. I have referred to the Evidence and s42A Report of Allan Kirk. It is the only technical Evidence presented by Council that includes any reference to cultivation. I have also read the Planning Report to the Hearing Panel by Phillip Percy the Reporting Planner for Council on the Land Chapters.
10. There have been many changes since the evidence in the TEB was produced so rather than comment specifically on that evidence here I will refer to it as appropriate in the relevant sections of my evidence.
11. In particular, this evidence is in response to the planning evidence by Phillip Hindrup on behalf of Manawatu-Wanganui Regional Council ("**Council**") on Sustainable Land use and Accelerated Erosion.
12. The focus of this evidence is on provisions as they relate to cultivation, particularly Rules 12-3 and 12-5 and their associated objectives and policies and Rule 12-1A in the latest version attached to Mr Hindrup's evidence
13. Appendix 1 of Mr Hindrup's evidence includes recommended provisions for Chapters 5 and 12. These will be referred to as the Recommended Version ("**RV**") in my evidence. I need to note that the RV version is different to that circulated by Council on 23 December 2011, which has become known as 'the green version'. The green version set out the amendments to Chapters 5 and 12 that Council would support for the hearing. The green version was used as the basis of discussion at the Technical Caucusing on 7 February 2012.

14. Significant changes to the Decisions Version ("**DV**") are recommended by Mr Hindrup in the RV to Rule 12-3. These include:
- (a) Applying the cultivation rule to all land, not just to the land within 5m of the bed of a river that is permanently flowing or has an active bed width greater than 2m, or the bed of a lake or a wetland;
  - (b) Deleting the provision for bunding, silt traps, interception drains or other alternative methods to minimise sediment run-off to water as an ancillary activity to cultivation;
  - (c) Including a condition requiring that any ancillary discharge of sediment into water must not, after reasonable mixing, cause the receiving water body to breach the water quality numeric for visual clarity set out in Schedule D for that water body;
  - (d) Deleting provisions requiring that methods such as bunding, silt traps, interception drains or other alternative methods to minimise sediment run-off to water be installed prior to and maintained during cultivation;
  - (e) Adding a requirement that the activity must not occur within a rare habitat, threatened habitat or at-risk habitat;
  - (f) Including a provision that does not provide for cultivation as a permitted activity within:
    - (i) 5m of the bed of a river that is permanently flowing or has an active bed width greater than 1m, or the bed of a lake;
    - (ii) 10m of a *wetland* or sites valued for trout spawning as identified in Schedule AB;
  - (g) Amending the width of an active bed from 2 metres to 1 metre (although I note that in 11(c) Mr Hindrup states 2 metres and in the strikethrough version it is 1 metre.)

- (h) Retaining the Advice Note (regarding the Code of Practice for Commercial Vegetable Growing in the Horizons Region (Version 2010/2) Horticulture New Zealand), but no longer linking it to conditions on 'alternative methods' as these clauses have been deleted.
15. Mr Hindrup recommends that cultivation not complying with Rule 12-3 be included in Rule 12-4 as a Restricted Discretionary Activity, rather than 12-5 as a Discretionary Activity. Cultivation within the coastal foredune or in a rare habitat, threatened habitat or at-risk habitat would be caught by Rule 12-5 as a Discretionary Activity.
16. The consequences of these recommended changes are:
- (a) All cultivation is regulated, not just cultivation adjacent to waterbodies;
  - (b) The same conditions apply regardless of the slope or location of the cultivation;
  - (c) Cultivation within 5m of the bed of a river that is permanently flowing or has an active bed width greater than 1m, or the bed of a lake will require resource consent, rather than be a Permitted Activity;
  - (d) Cultivation within 10m of a wetland or sites valued for trout spawning as identified in Schedule AB will require resource consent, rather than be a Permitted Activity;
  - (e) Cultivation within a rare habitat, threatened habitat or at-risk habitat will require resource consent as a Discretionary Activity;
  - (f) The use of best practice management tools to manage the potential for sediment run-off to water are not required as a condition of the Permitted Activity;
  - (g) Ancillary activities such as bunding, silt traps, interception drains or other alternative methods are not provided as part of the Permitted Activity and

would need to be assessed under the land disturbance rules 12-1A and 12-1;

- (h) The ancillary discharge of sediment into water would need to meet the numeric of visual clarity in Schedule D.

#### **SCOPE OF THIS EVIDENCE**

- 17. This evidence will address the following matters:
  - (a) Appeals relating to provisions cultivation;
  - (b) The provisions for cultivation in the Notified Version ("NV") of the POP;
  - (c) The provisions for cultivation in the Operative Land and Water Regional Plan;
  - (d) The reasons for the Hearing Panel decision to include Rule 12-3 for cultivation;
  - (e) The policy framework in Chapters 5 and 12;
  - (f) Whether a permitted activity rule for all cultivation is necessary, which includes consideration of Section 9(2) and sections 15 and 17;
  - (g) If a permitted activity rule is deemed necessary, what activities should that rule apply to and what would be the appropriate conditions to include;
  - (h) An analysis of the implications of the Restricted Discretionary Rule;
  - (i) Ancillary sediment control measures and Rule 12-1A;
  - (j) Comments on the section 32 analysis in support of the RV.
- 18. Attached to this evidence as Appendix 1 is a Modified Version (MV) of Rules 12-3 and 12-4 that addresses matters raised in this evidence and the evidence of Chris Keenan, Andrew Barber, Lindsay Fung and Stuart Ford.

**APPEALS RELATING TO PROVISIONS ON CULTIVATION**

19. There are three appeals relating to provisions for cultivation, namely from, Fish and Game, Federated Farmers and Horticulture New Zealand.
20. The Fish and Game appeal seeks to reinstate Rules 12-1 to 12-6 inclusive as notified. This relief would mean that cultivation would be permitted subject to the conditions in NV Rule 12- 1 as follows:
  - (a) Effective erosion and sediment control measures need to be installed and maintained during and following completion of works.
  - (b) Conditions relating to archaeological sites, waahi tapu or koiwi.
21. The relief now being recommended by the Council would add different conditions with a greater scope than the requirements for cultivation in the NV.
22. Federated Farmers appeal relates to the requirement in Rule 12-3 to refer to the Code of Practice for Commercial Vegetable Growing in the Horizons Region (Horticulture New Zealand) as it is a code of practice developed for horticulture, not pastoral or arable farming. No similar code covers arable or pastoral activities.
23. Horticulture New Zealand's appeal relates to the default status if permitted activity conditions for cultivation cannot be met. A Restricted Discretionary Activity was sought. The RV attached to the evidence of Phillip Hindrup includes cultivation within the Restricted Discretionary Rule 12-4 – which is recommended to be renamed 'Vegetation clearance, forestry or cultivation not complying with Rules 12-2, 12-3 or 12-4A.'
24. Before assessing Mr Hindrup's RV of Rule 12-3 it is necessary to set the background context to the provisions for cultivation including the NV, the Operative Land and Water Plan and the DV.

## PROVISION FOR CULTIVATION IN NOTIFIED VERSION OF THE PROPOSED ONE PLAN

25. There were no specific provisions for cultivation in the Notified Version of the POP. Cultivation was effectively included in the definitions of land disturbance and vegetation clearance<sup>1</sup>.
26. The Rules in Chapter 12 covered the following:

Rule	Activity	Classification
12-1	Vegetation clearance and land disturbance not covered by other rules	Permitted
12-2	Production forestry	Controlled
12-3	Land disturbance on highly erodible land with area threshold	Controlled
12-4	Vegetation clearance coastal highly erodible land, hill country erodible land with area and slope thresholds	Discretionary
12-5	Vegetation clearance and land disturbance on coastal foredunes and near water bodies	Discretionary
12-6	Vegetation clearance and land disturbance that do not comply with permitted and controlled activity rules	Discretionary

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<sup>1</sup> **Land disturbance** means the disturbance of land surface by any means including blading, blasting, contouring, cutting of batters, excavation, ripping, root raking, moving or removing soil or earth. This definition excludes normal maintenance or legally established structures, roads, tracks and railway lines.

**Vegetation clearance** means the cutting, crushing, spraying, burning or other means of removal of vegetation, including indigenous and exotic plants. It does not include:

- a) Grazing
- b) Pruning or thinning operations associated with production forestry
- c) The control of pest plants as defined in the Regional Pest Plan Management Strategy.

27. As cultivation for horticultural activities in the region mostly occurs outside of coastal highly erodible land or hill country erodible land as defined in the NV, Rule 12-1 is the applicable rule for most cultivation. The key condition in Rule 12-1 is:
- a) For any land disturbance involving a volume of fill or excavation of more than 1000 m<sup>3</sup>/y per property, effective erosion and sediment control measures shall be installed and maintained during and following completion of works.
28. Where cultivation for horticultural activities was to occur on coastal highly erodible land, hill country erodible land Controlled or Discretionary Activity consent would have been required under Rules 12-3 or 12-5.
29. Horticulture New Zealand made a submission seeking specific provision for cultivation as a permitted activity subject to conditions<sup>2</sup>.
30. As a result of this submission and evidence presented at the Hearing and Supplementary Evidence to the Reconvened Hearing the Hearing Panel made decisions that amended the definitions and rule structure to specifically provide for cultivation as a separate rule. Consequential changes were made to the Issues, Objectives and Policies in Chapter 5 and the Policies in Chapter 12.
31. The Decisions Version Rule Structure is as follows:

<b>Rule</b>	<b>Activity</b>	<b>Classification</b>
12-1	Large scale land disturbance including earthworks- subject to conditions	Permitted
12-2	Forestry – subject to conditions	Permitted
12-3	Cultivation - subject to conditions	Permitted

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<sup>2</sup> The extract from Horticulture New Zealand's submission is attached as Appendix 2.

<b>Rule</b>	<b>Activity</b>	<b>Classification</b>
12-4	Specified vegetation clearance and land disturbance in a Hill Country Erosion Management Area	Restricted Discretionary
12-5	Vegetation clearance and land disturbance, cultivation or forestry that does not comply with Rules 12-1 to 12-4	Discretionary
12-6	Some activities within rare habitats, threatened habitats and at risk habitats	Discretionary

32. The DV inserted a definition for cultivation<sup>3</sup>. The DV definitions of vegetation clearance and land disturbance specifically exclude cultivation.

**OPERATIVE LAND AND WATER REGIONAL PLAN AND LAND MANAGEMENT RULE 2: PERMITTED VEGETATION CLEARANCE, SOIL DISTURBANCE AND CULTIVATION**

33. Phillip Hindrup addresses the Operative Rule Framework<sup>4</sup> in respect to Vegetation clearance. I note that Land Management Rule 2 addresses vegetation clearance, soil disturbance and cultivation. A copy is attached as Appendix 3. The specific provision for cultivation is clause c)

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<sup>3</sup> Cultivation means preparing land<sup>^</sup> for growing pasture or a crop and the planting, tending and harvesting of that pasture or crop but excludes:

(a) Direct drilling of seed

(b) No tillage practices

(c) Recontouring land<sup>^</sup>

(d) Forestry\*

(e) The clearance of woody vegetation\* and new tracking\* in a Hill Country Erosion Management Area.\*

\*denotes that these terms are defined in the POP

<sup>^</sup> denotes that these terms are defined in the RMA

<sup>4</sup> See paragraphs 51-62 Hindrup Statement of Evidence

as follows:

c) no cultivation shall occur within 5 metres of the bank of any waterbody identified in Appendix 6 or within 3 metres of the bank of any other permanently flowing river, or any river with a bed width in excess of 2 metres, or any lake or any wetland unless bunding, silt traps, interception drains or other alternative methods to control runoff are installed prior to, and maintained during cultivation;

34. Cultivation is specifically excluded from the definition of soil disturbance and vegetation clearance so the clauses specific to soil disturbance and vegetation clearance are not relevant to cultivation.
35. I assisted with the writing of the submissions from Horticulture New Zealand on the POP. I note that Rule 2 in the Operative Plan was used as a basis for the submission as there was nothing in the section 32 Report that indicated that the operative provisions were not adequately addressing the adverse effects from cultivation.

#### **REASONS GIVEN BY THE HEARINGS PANEL**

36. The Hearing Panel considered submissions relating to cultivation in their Decisions Report for the Land Hearing in Section 4.6.6 "*What activities should be regulated?*"
37. The decisions states: "*New Rule 12-3 regulates cultivation adjacent to some water bodies in order to avoid or mitigate adverse effects on surface water quality. The form of new Rule 12-3 is generally consistent with the detailed relief sought by Horticulture New Zealand*" and specifically refers to the evidence of Mr Keenan that was presented at the hearing on 18 July 2008. Section 4.2 of that evidence is specifically related to the provisions for cultivation.
38. While Mr Hindrup comments that the Hearing Panel did not provide much detail as to why cultivation was separated out the decisions clearly reference the Horticulture New Zealand evidence which links to the rationale that was accepted. It is important to note that part of the reason for a specific rule was so that relevant conditions for the specific activity could be included rather than applying a generic rule and conditions. Of relevance is that the RV of Rule 12-3 reverts to

a generic approach rather than cultivation specific conditions.

39. Other parts of relevance in the Decision are:
- (a) 4.6.6 regarding s9(2) of the RMA "*Rules expressly allowing the use of land are not needed unless we wish to control the way in what that use of land occurs*";
  - (b) 4.6.6 regarding inclusion of ancillary activities;
  - (c) 4.7.20 regarding numerical standards and to not include reference to Schedule D;
  - (d) 4.7.32 Glossary and the definition of 'active bed'. The DV rules included an active bed width of 2 metres as an appropriate threshold over which consent would be required.

#### **ISSUES/ OBJECTIVES AND POLICY FRAMEWORK OF THE POP**

40. In this section I review the issues, objectives and policy framework of the DV particularly as they pertain to cultivation. I indicate what version I am referring to as appropriate noting that most of the non-regulatory provisions have remained largely unchanged from the DV. I have removed the reference to the definitions in the provisions that are included as quoted to assist the flow. As noted in footnote 3 above the POP includes a key to what definitions are included in the plan itself and what are included in the RMA and used in the POP.
41. Chapter 5.1.3 describes the focus of this section of the POP as being:
- (a) On reducing accelerated erosion;
  - (b) Largely non regulatory;
  - (c) A regulatory focus that recognises s9(2) where use of land can occur as of right unless a rule in a plan states otherwise;
  - (d) Allowing for the majority of activities as of right except four activities which need to meet conditions

to be permitted. This includes cultivation occurring adjacent to certain water bodies.

42. The significant resource management issues are set out in section 5.2 and for cultivation it is stated:

Cultivation does not generally cause soil erosion problems within the Region. However, cultivation\* undertaken adjacent to water bodies has the potential to result in increased sediment loads to those water bodies unless appropriate industry best practice sediment run-off control measures are implemented.

43. Objective 5-1 relates only to hill country land. As notified the POP had one objective (5-1 Accelerated Erosion) which focused on Highly Erodible Land and Whole Farm Business Plans, but also included reference to Schedule D. The decisions changed the focus of Objective 5-1 turning it into a non-regulatory and more general objective and added a new objective relating to regulation. Hence the DV includes Objective 5.2 which focuses on regulating potential causes of accelerated erosion.

44. Objective 5.2 states:

**Objective 5-2: Regulating potential causes of accelerated erosion**

Land is used in a manner that ensures accelerated erosion and increased sedimentation in water bodies<sup>^</sup> (with resultant adverse effects on people, buildings and infrastructure) caused by vegetation clearance, land disturbance, forestry, or cultivation are avoided as far as reasonably practicable, or otherwise remedied or mitigated.

45. The policies include:

- (a) Encouraging and supporting sustainable land management in the hill country (Policy 5-1).<sup>5</sup>
- (b) Regulation of land use activities – new policy added by decisions (Policy 5.2A). Policies 5-2, 5-3 and 5-4 were deleted with no appeals lodged on these policies.

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<sup>5</sup> Fish & Game have an appeal on this policy relating to clause c) that was deleted.

- (c) Support for codes of practices, standards, guidelines, environmental management plans and providing information on best management practices (Policy 5-5).
- (d) The DV version of Policy 5-2A is the most relevant to cultivation. This states:

**Policy 5-2A: Regulation of land use activities**

- (a) The Regional Council must regulate vegetation clearance, land disturbance, forestry and cultivation through rules in this Plan and decisions on resource consents, in order to achieve Objective 5-2.
  - (b) Territorial Authorities may regulate, through rules in district plans and decisions on resource consents, the actual or potential effects of the use, development, or protection of land, in order to achieve Objective 5-2. However, Territorial Authorities must not have rules that are contradictory to the rules in this Plan that control the use of land.
  - (c) The Regional Council will generally allow vegetation clearance land disturbance, forestry and cultivation to be undertaken without the need for a resource consent<sup>6</sup> if they are undertaken adjacent to some water bodies (including certain wetlands<sup>6</sup>) in Hill Country Erosion Management Areas or in coastal foredune areas. Removal of some woody vegetation and the formation of new tracking in Hill Country Erosion Management Areas also requires a resource consent.
43. Attached to Mr Hindrup's evidence is a strikethrough version of the Council's latest position on this Policy<sup>6</sup>. I note that there have been no appeals on Policy 5-2A and the changes in Mr

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<sup>6</sup> Appendix 1 Hindrup evidence, pages 56 and 57

Hindrup's evidence appear to be consequential to the proposed changes to the rules<sup>7</sup>.

44. The Explanation and Principal Reasons state that Policy 5-2A recognises that vegetation clearance and land disturbance are two of the main contributors to accelerated erosion.
46. In summary the points to note in DV Issues/ Objectives/ Policies in Chapter 5 relating to cultivation are:
  - (a) The Hearing Panel's determination of s9(2) and the reasons why some land use activities were not regulated;
  - (b) There is a focus on non-regulatory approaches;
  - (c) The cultivation activities to be regulated are those adjacent to water bodies and other cultivation is enabled as of right under s9(2).
47. There are also objectives and policies relating to land management in Chapter 12, the Regional Plan part of the POP.
48. Objective 12-1 was added as a result of decisions and seeks that land use activities are regulated to ensure that accelerated erosion and increased sedimentation in water bodies as a result of human activity are avoided as far as reasonably practicable or otherwise mitigated.
49. It is important to note that the objective is not an absolute of avoid but provides for "as far as reasonably practicable" or otherwise mitigated.

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<sup>7</sup> (c)The Regional Council will generally allow *vegetation clearance land disturbance, forestry and cultivation* to be undertaken without the need for a *resource consent* if *conditions*<sup>^</sup> are met. *Vegetation clearance\* and land disturbance\** requires a *resource consent*<sup>^</sup> if ~~they are~~ undertaken adjacent to some *water bodies*<sup>^</sup> (including certain *wetlands*<sup>^</sup>) in a coastal foredune\* area or involving an area greater than 2 hectares. Land disturbance\* requires a resource consent<sup>^</sup> if for an area greater than 2500m<sup>2</sup>, on land with a slope greater than 25° in *Hill Country Erosion Management Areas\** or in *coastal foredune\** areas. ~~Removal of some woody vegetation and the formation of new tracking\* in Hill Country Erosion Management Areas\* also~~ Cultivation requires a resource consent<sup>^</sup> if undertaken adjacent to some *water bodies*<sup>^</sup>, including *wetlands*<sup>^</sup>.

50. Policy 12-1A provides a framework for land use activity rules. Clause a) relates to vegetation clearance, land disturbance, forestry and cultivation while clause b) relates to resource consents and effects to be managed for to vegetation clearance and land disturbance in the Hill Country Erosion Management Areas.
51. The RV recommends deleting Policy 12-1A b).
52. Policy 12-1 establishes the framework for consents for vegetation clearance, land disturbance, forestry and cultivation. The DV added clause fc) relating to cultivation:
- Managing the effects of cultivation adjacent to some water bodies through the use of sediment run-off methods.
53. The RV recommends that this be amended as follows:
- Managing the effects of cultivation ~~adjacent to some water bodies~~ through the use of sediment run-off methods and riparian setbacks.
54. The evidence of Andrew Barber describes that riparian setbacks are only one method of managing sediment and therefore the policy should reflect that appropriate sediment run-off controls be used, which may include riparian setbacks.

#### **THE PERMITTED ACTIVITY APPROACH**

55. In this section of my evidence I comment on the approach now proposed by Council and set out in the evidence of Mr Hindrup regarding making all cultivation subject to a permitted activity land use control. I will consider:
- (a) the meaning of sections 9(2), 15 and 17; and
- (b) that if a permitted activity rule is required then what activities should it apply to and what conditions ought to be included.
56. Section 9(2) is well described in both the DV 5.1.3 and Decisions Report 4.6.6:
- The regulatory focus recognises that under s9(2) of the RMA the use of land can occur as of right unless a rule in a plan states otherwise.

57. Section 17 provides a duty to avoid, remedy or mitigate adverse effects, regardless of whether or not the activity is carried out in accordance with a rule in the plan or a resource consent.
58. So while an activity may be allowed as of right under s9(2) there is still a duty to avoid, remedy or mitigate adverse effects under s17. It is not an unfettered right.
59. Council can take enforcement action under s17 where there is evidence that the adverse effects from the activity have not been avoided, remedied or mitigated.
60. Section 15 requires that no person may discharge contaminants into water or onto or into land where it may enter water unless allowed by a rule in a regional plan or resource consent.
61. The effect of s15 is that a land use activity allowed as of right cannot discharge unless otherwise provided for.
62. The discharge of sediment is the contaminant of concern in respect to cultivation.
63. The approach taken by the Hearing Panel was to provide for the s15 discharges of sediment from cultivation as part of Rule 12-3 where the activity was adjacent to a water body.
64. This approach was consistent with the policy framework in both Chapter 5 and 12.

#### **Analysis of Council's latest approach to cultivation**

65. Mr Hindrup considers (11c) that all cultivation should be regulated and that cultivation within 5m of a water body is not appropriate as a permitted activity.
66. The reasons for this approach are (Para 123) that poorly managed cultivation, has the potential to cause significant adverse effects and therefore a permitted activity rule for all cultivation with performance standards is necessary to ensure that the potential adverse effects are managed.
67. The policy framework in Chapter 5 and 12 supports the regulation of cultivation adjacent to water bodies, not all cultivation. While some changes are recommended by Mr

Hindrup to the policy framework the shift in approach from s9(2) to a permitted activity rule for all cultivation is not supported by the policy framework. Nor are there appeals that seek to amend the framework in a manner that would be consistent with the approach now being recommended.

68. The question that needs to be addressed is whether providing for an activity under s9(2) is inadequate in terms of meeting the objectives and policies in the POP.
69. In my opinion s17 and s15 provide the scope for Council to address adverse effects that may arise from cultivation that is not regulated through a rule in the plan.

### **Analysis of Council's latest version of Rule 12-3**

70. If a permitted activity rule is deemed to be required for all cultivation the matter then becomes 'what are appropriate conditions to apply'.
71. Conditions to be addressed include:
- (a) Ancillary activities
  - (b) Best practice and code of practice
  - (c) Setbacks and riparian margins
  - (d) Active bed width
  - (e) Schedule D numerics.
72. Mr Hindrup (under land disturbance<sup>8</sup>) states:
- Earth worked sites require erosion and sediment control to prevent environment effects. The extent of the erosion and sediment controls required will depend on the risk the activity poses. This in my view is the main driver behind regulating land disturbance activities. It is acknowledged that there is a risk, and the issue is setting out a rule framework that effectively provides for the management of those effects.

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<sup>8</sup> Para 98 Hindrup evidence

73. I agree with Mr Hindrup that it is about managing risks and appropriate rule framework. Under the heading Cultivation he states:

In summary cultivation has the potential to cause significant adverse environmental effects if poorly managed. The key risk is from exposed sediment entering water. This risk increases with greater slopes and closer proximity to water bodies. It is also dependent on the soil type, the area exposed and the length of time it is exposed for<sup>9</sup>

74. The question is 'What is an appropriate rule framework for cultivation?'

75. The DV of Rule 12-3 included conditions that are designed to address the potential adverse effects from cultivation and to ensure that appropriate action is taken by those undertaking the activity. The RV now seeks to substantially change those conditions.

76. The requirements are based on installation of bunding, silt traps interception drains or other alternative methods to minimise sediment run-off to water prior to, and maintained during cultivation.

77. The DV Rule 12-3 also provides for the ancillary activity of discharge of sediment into water pursuant to s15(1) resulting from the cultivation or the use of bunding, silt traps interception drains or other alternative methods to minimise sediment run-off to water.

78. The RV now being advanced by the Council in the evidence of Mr Hindrup deletes the provision for the ancillary activity of the use of bunding, silt traps interception drains or other alternative methods to minimise sediment run-off to water to be included as part of the activity.

79. There is no reason provided in his evidence why this provision is deleted.

80. The consequence of deleting "*the use of bunding, silt traps, interception drains or other alternative methods to minimise sediment run-off into water*" from the activity is that the

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<sup>9</sup> Hindrup evidence, paragraph 123

provision of best practice methods for sediment control are not included as part of the cultivation rule.

81. Such sediment control measures are not specifically included in the definition of cultivation. By not providing for such mechanisms within RV Rule 12-3 means that they would need to meet the requirements of recommended Permitted Activity Rule 12-1A Small scale land disturbance including earthworks.
82. The provisions in RV Rule 12-1A provide for any *land disturbance* pursuant to s9(2) RMA of a total land area less than 2500m<sup>2</sup> per property per 12 month period. Where a sediment control measure on a property will exceed 2500m<sup>2</sup> in a 12 month period a consent would be required under RV Rule 12-1 Large Scale land disturbance including earthworks which Council is seeking be a controlled activity.
83. The evidence of Andrew Barber shows that blading for headland maintenance on properties over 5ha is likely to exceed the 2500m<sup>2</sup> threshold and so consent would be required. The evidence of Stuart Ford has considered the economic cost.
84. The evidence of Mr Hindrup<sup>10</sup> supports the use of sediment control measures, yet the recommended change puts a regulatory hurdle in place for the use of such mechanisms.
85. The Decisions specifically provided for these ancillary activities as being a component of the land use activity (Decisions Report 4.6.6 Pg 4-22).

As notified, the rules in Chapter 12 dealt with water related ancillary activities such as discharges and diversions. We have decided to amend the Chapter 12 rules so that the ancillary water-related activities are narrowly defined and relate directly to the primary land use activities controlled by the rules. For example we have limited the scope of ancillary diversion activities to those that occur on the land subject to earthworks or cultivation. We took this approach in order to avoid an overlap with Chapters 13.15 and 16 which deal with general water-related activities.

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<sup>10</sup> Para 137a

86. In my opinion this is an appropriate approach. If all cultivation is to be subject to a permitted activity rule then all activity associated with the cultivation should be provided within the one rule.
87. The RV Rule 12-3 also deletes the requirement for bunding, silt traps, interception drains or other alternative methods to minimise sediment run-off to water to be installed prior to and maintained during cultivation.
88. The requirement for sediment control measures is linked to the Advice Note and the Code of Practice for Commercial Vegetable Growing in the Horizons Region that is described in the evidence of Andrew Barber.
89. While the Advice Note is recommended to be retained it is no longer connected to conditions requiring the use of such mechanisms, so it has limited weight.
90. At Para 137 Mr Hindrup includes "*requirements to install and maintain appropriate sediment runoff control measures to minimise sediment run-off to water*" as part of the rule framework he supports. However these are in an advice note which is not a statutory part of the rule framework.
91. If management is the key to managing the risks, (Refer Para 73 above) then reference to the Code of Practice and measures to manage potential adverse effects from sediment run-off in the RV is necessary.
92. It is my opinion that Rule 12-3 in the RV does not align with the relevant objectives and policies I have set out in my evidence.
93. The evidence of Andrew Barber and Lindsay Fung outline the benefits of a best management practice approach based on the code or practice. I consider this is the most appropriate approach to managing the issues outlined.
94. Attached to this evidence as Appendix 1 is a Modified Version of Rule 12-3 that incorporates best management practices and references to the Code of Practice for Commercial Vegetable Growing in the Horizons Region as part of the rule framework.

95. Another change that is recommended in the evidence and RV Rule 12-3 of Mr Hindrup is the inclusion of a 5 m riparian margin. This is based on the evidence of Dr Quinn.
96. As set out in the evidence of Andrew Barber riparian margins are one mechanism for managing sediment run-off, which may, or may not, be appropriate in some circumstances.
97. The concern I have is that the elevation of one mechanism over others means that the most appropriate mechanism may not be used. Rather than limiting the consideration to one mechanism to achieve the outcome the Plan should incentivise the use of a variety of mechanism so the most appropriate mechanism to achieve the outcome is able to be chosen in any given situation.
98. On this basis I support a change that provides for riparian margin where no other mechanism is used to manage sediment run-off, as set out in the attached version of Rule 12-3 in Appendix 1.
99. Linked to the issue of riparian margin is where the margin will be measured from.
100. The DV of Rule 12-3 includes the area in which cultivation is a permitted activity as follows:
- Except as regulated by Rule 12-6, any *cultivation* pursuant to s9(2) RMA within 5m of:
- a) the *bed* of a *river* that is permanently flowing or has an *active bed* width greater than 2 m, or
  - b) the *bed* of a *lake*, or
  - c) a *wetland*
101. The RV of Rule 12-3 (Condition d) now recommends that those distances be used as the riparian margin, but with one major change. It is recommended to amend the *active bed* width of a river from 2 metres to 1 metre. No reasons are given in Mr Hindrup's evidence for this recommended change.
102. The Hearing Panel added a definition of 'active bed'. The Decisions Report (4.6.6 and 4.7.32) details the reasoning behind the definition and the inclusion of the 'active bed' requirement.

103. In the absence of clear evidence why the active bed width should be reduced, I cannot support the change being recommended.
104. The other condition that has been added in the RV of Rule 12-3 relates to the requirement to meet, after reasonable mixing, the visual clarity numeric in Schedule D. (RV Condition b).
105. Mr Hindrup states: (Para 136):
- One last issue is that Rule 12-3 in the DV POP provides for is the ancillary activity of discharging sediment into water. This is the same as for the land disturbance permitted activity rule. I have discussed the merits of including a performance standard to address water quality in my evidence in the section Key Issue 2 – Land disturbance. The need to include such a performance standard is the same for cultivation activities to meet section 70 requirement of the Act and to provide greater protection to the environment.
106. In respect of Land disturbance Mr Hindrup (Paras 108/109) states:
- As a result of my analysis on sub-issues a) and b) I recommend inclusion of water quality performance standards for any Permitted activity on land disturbance. Section 70 of the RMA sets out that any discharge of a contaminant to land or water cannot be permitted in a rule unless appropriate standards are met. The DV POP does not include any such performance standard of the Permitted Activities in Chapter 12. I therefore recommend a performance standard relating to the protection of water quality to meet the requirements of s70 as follows: *“any ancillary discharge of sediment into water must not, after reasonable mixing, cause the receiving water to breach the water quality numeric for visual clarity set out in Schedule D for that water body.”*
107. This condition is problematic in that it will be difficult for a grower to know before the event if he or she is likely to breach the Schedule D standard. While the grower may install and maintain appropriate sediment control measures the grower has no control over the weather and rainfall events.

108. Further, it is problematic to determine how the condition may be monitored and enforced. For instance: where will the upstream measure be taken and how can visual clarity in a water body be linked to one property?
109. It will be difficult to determine the extent to which growers who are not discharging directly to the water body are contributing to the visual clarity, as those adjacent to a water body may be held responsible for managing the sediment run-off from other properties that are not adjacent to the water body, including land use activities other than horticulture.
110. The Decisions Report at 4.7.20 considers inclusion of numerical standards:

We also deleted (e) and g) from Policy 12-1. Clause (e) referred to the use of turbidity standards which are no longer included in Schedule D. Clause g) referred to the use of best practicable option (BPO) if numerical standards were difficult to establish. The Chapter 12 rules do not necessitate that degree of specificity. The rules simply restrict certain land uses and ancillary diversions and discharges. The permitted activity conditions in the rules relate to the application of best management land use practices rather than the application of BPO or numerical discharge standards. Even if a consent were required for the primary land use activity due to its not meeting the permitted activity conditions, it is unlikely that a BPO or numerical standards approach would ever be used to set conditions on the ancillary diversion and discharge activities

111. At 4.7.24 the Decision Report states:

It is not appropriate to refer to numerical receiving water quality standards in a permitted activity rule dealing with rural land use activities.

112. It is important that conditions in rules are workable, equitable and enforceable.
113. While the merits of including a measurable performance standard, if one is available, are recognised, in this case the condition is neither workable, equitable nor enforceable.
114. Mr Hindrup (Para 109) himself acknowledges that there are limitations with the condition:

Such a condition will offer a greater level of protection to the environment. However, I do consider this to be an ambulance at the bottom of the cliff approach, particularly for large scale land disturbance

115. I consider that a more pro-active and expedient approach is to include conditions requiring adoption of best management practices to ensure that growers, regardless of the proximity of water bodies, are undertaking all practicable measures to minimise sediment run-off from cultivation activities. This is 'putting the fence at the top of the cliff,' which is a much more preferable and effects based approach.

#### **RESTRICTED DISCRETIONARY RULE**

116. The Decisions retain the default rule for cultivation, as well as land disturbance, vegetation clearance and forestry as a discretionary activity in Rule 12-5. The Horticulture New Zealand appeal seeks that the default rule for cultivation be a restricted discretionary activity with the matters of discretion limited to the methods used to manage run-off.
117. Mr Hindrup recommends changing the activity status for cultivation, (Para 137 b) vegetation clearance and forestry to Restricted Discretionary by amending Rule 12-4, which the DV has as 'Specified vegetation clearance and land disturbance in a Hill Country Erosion Management Area'.
118. The RV Rule 12-4 addresses vegetation clearance, forestry or cultivation not complying with Rules 12-1, 12-3 or 12-4A, which addresses the activity status part of the Horticulture New Zealand appeal.
119. However the recommended change does not consider the matters of discretion and retains them as for the DV when the rule applied to Hill Country Erosion Management Area. In particular there is no consideration by Mr Hindrup as to whether the matters of discretion are appropriate for cultivation activities.
120. RV Rule 12-4 Matter of discretion c) requires consideration of the principles and erosion and sediment control measures set out in Chapter 3-9 of the Erosion and Sediment Control Guidelines for the Wellington Region (September 2002).

These guidelines are intended to be applicable to earthworks, cleanfills, landfills and quarrying and forestry operations. Reference to the Code of Practice for Commercial Vegetable Growing in the Horizons Region (Horticulture New Zealand, 2010) would be a more appropriate matter for consideration for cultivation activities. An amended Rule 12-4 is included in Appendix 1.

#### **LAND DISTURBANCE RULES**

121. The activity status of the ancillary activities to cultivation of bunding, silt traps interception drains or other alternative methods to minimise sediment run-off to water are addressed earlier in this evidence.
122. It has been identified that the RV will make the activities ancillary to cultivation a land disturbance activity under Rule 12-1A and that is likely that growers will not meet the permitted activity conditions.
123. The provisions in RV Rule 12-1A provide for any *land disturbance*\* pursuant to s9(2) RMA of a total land area less than 2500m<sup>2</sup> per property per 12 month period. Where a sediment control measure on a property will exceed 2500m<sup>2</sup> in a 12 month period a consent would be required under RV Rule 12-1 Large Scale land disturbance including earthworks which Council is seeking be a controlled activity.
124. RV Rule 12-1 has a range of conditions, including requiring an Erosion and Sediment Control Plan prepared by an appropriately qualified person. The Plan needs to be based on the Erosion and Sediment Control Guidelines for the Wellington Region (September 2002). As stated above this is not considered to be the most appropriate guide or code of practice in relation to cultivation and as Andrew Barber identifies it is rather perverse given that the activity is installation of sediment control measures. The costs associated with this condition are addressed in the evidence of Stuart Ford and I concur with his finding that this is not the most effective or efficient means of achieving the objectives of the Plan.
125. RV Rule 12-1 also limits the activity to not occur within 5 metres of a bed of a river. There will be times when the most

appropriate location of sediment control measures will be within the 5 metre setback area.

126. The effect of this is that for a grower to implement such measures would require a Discretionary Consent as land disturbance not meeting the Controlled Activity RV Rule 12-2 defaults to RV Rule 12-5 as a Discretionary Activity. This is considered to be a significant regulatory hurdle for mechanisms that will assist in achieving the objectives and policies in the Plan.

### **SECTION 32**

127. Section 32 requires council when preparing a regional policy statement and a regional plan to undertake a consideration of alternatives, benefits and costs. The evaluation is to consider the appropriateness of objectives to achieve the purpose of the Act and the efficiency and effectiveness and appropriateness of the policies and rules for achieving the objectives.
128. Council undertook a s32 Report prior to notifying the POP that considered options in respect of land management issues. The report addresses a range of land activities, such as forestry and vegetation clearance on hill country but does not appear to consider cultivation as a specific land activity. The focus is very much on accelerated erosion in the hill country and highly erodible land.
129. The Hearing Panel addressed s32 obligations at 4.6.5 in the Decisions Report:
- We are mindful of our obligations under s32 of the RMA to consider these issues. This has led us to ensure that the land use rules in the POP are focused on activities that have a potential to lead to more than minor adverse effects. We have also sought to develop amended rules that are easier to understand and implement.
130. The evidence of Mr Hindrup addresses s32 in Appendix 3 Statutory tests for land where the Hearing Panel comments on s32 are replicated.
131. However Mr Hindrup recommends changes to the rule structure in Chapter 12 that are significantly different to those

in the DV on which the Hearing Panel based their assessment of the s32 obligations.

132. The Modified Version of Rules 12-3 and 12-4 attached to this evidence in Appendix 1 have been developed giving consideration to the requirements of s32 in respect of appropriateness, effectiveness and efficiency.
133. Throughout this evidence I have identified issues in the RV Rules 12-3 and 12-4 and have sought to address these matters, with reference to the framework established by the Hearing Panel to focus on activities that have a potential to lead to more than minor adverse effects and ensure that the amended rules are easier to understand and implement.

### **CONCLUSION**

134. For all the reasons set out in my evidence it is my opinion that the Decision Version of the POP is the most appropriate method to adopt in relation to cultivation having regard to all the technical evidence presented to the Court and the statutory tests. As an alternative to the Decisions Version Horticulture New Zealand has proposed a Modified Version in Appendix 1 to this evidence that it considers meets the objectives and policies of the POP, and the other relevant statutory tests and addresses the concerns that have been raised by the Council in its evidence and what is anticipated to be raised in the evidence of other parties, notably Fish and Game.

**L P Wharfe**

**17 February 2012**

## RULES 12-3 AND 12-4 MODIFIED BY HORTICULTURE NEW ZEALAND

Rule	Activity	Classification	Conditions/Standards/Terms	Control/Discretion Non-Notification
<p>12-3</p> <p><b>Cultivation*</b></p>	<p>Except as regulated by Rules 12-4 and 12-6, any <i>cultivation*</i> pursuant to s9(2) RMA and any ancillary:</p> <p>(i) diversion of <i>water</i><sup>^</sup> pursuant to s14(1) RMA on the <i>land</i><sup>^</sup> where the <i>cultivation*</i> is undertaken, or</p> <p>(ii) <i>discharge</i><sup>^</sup> of sediment into <i>water</i><sup>^</sup> pursuant to s15(1) RMA resulting from the <i>cultivation*</i> or the use of bunding, silt traps, interception drains or other alternative methods to minimise sediment run-off into <i>water</i><sup>^</sup>.</p>	<p><b>Permitted</b></p>	<p>(a) The activity must not take place on <i>land</i><sup>^</sup> that is within a <i>coastal foredune*</i>.</p> <p>(b) <u>The activity must not take place in any <i>rare habitat*</i>, <i>threatened habitat*</i> or <i>at risk habitat*</i></u></p> <p>(c) <u><i>Cultivation*</i> must not occur on <i>land</i><sup>^</sup> that is in, or within:</u></p> <p>(i) <u>5 m of the <i>bed</i><sup>^</sup> of a <i>river</i><sup>^</sup> that is permanently flowing or has an <i>active bed</i> width greater than 2 m; or</u></p> <p>(ii) <u>5m of the <i>bed</i><sup>^</sup> of a <i>lake</i><sup>^</sup> ; or</u></p> <p>(iii) <u>10m of a <i>wetland</i><sup>^</sup> or sites valued for trout spawning as identified in Schedule AB.</u></p> <p>d) <u>For vegetable crops listed within the Commodity Levies (Vegetables and Fruit) Order 2007 a paddock assessment must be undertaken in accordance with the Code of Practice for Commercial Vegetable Growing in the Horizons Region (Horticulture New Zealand) Version 2010/2 and appropriate bunding, silt traps, interception drains, or alternative methods to minimise sediment runoff to water must be installed prior to and maintained during cultivation.</u></p> <p>e) <u>For <i>cultivation*</i> other than in d) the activity must be undertaken so that any discharge of sediment should not, after <i>reasonable mixing*</i>, cause the receiving water body to breach the water quality numerics for visual clarity for that water body set out in Schedule D</u></p> <p>Advice Note: Examples of alternative methods for minimising sediment run-off can be found in the Code of Practice for Commercial Vegetable Growing in the Horizons Region Version 2010/2 (Horticulture New Zealand).</p>	

Rule	Activity	Classification	Conditions/Standards/Terms	Control/Discretion Non-Notification
<p><b>12-4</b></p> <p><b><u>Specified-vegetation clearance* and land disturbance not complying with Rules 12-1, 12-1A or 12-4A * or cultivation and ancillary activities not complying with Rule 12-3 or forestry not complying with Rule 12-2 in a Hill Country Erosion Management Area*</u></b></p>	<p>Except as regulated by Rule 12-6, any <i>vegetation clearance*</i> or <i>land disturbance*</i> not complying with <u>Rules 12-1, 12-1A or 12-4A</u> or <u>cultivation and ancillary activities not complying with Rule 12-3</u> or <u>forestry not complying with Rule 12-2</u> pursuant to s9(2) RMA undertaken within a <i>Hill Country Erosion Management Area*</i>:</p> <p>(a) <del>within 5 m of the bed<sup>^</sup> of a river<sup>^</sup> that is permanently flowing or has an active bed* width greater than 2 m, or</del></p> <p>(b) <del>within 5 m of the bed<sup>^</sup> of a lake<sup>^</sup>, or</del></p> <p>(c) <del>5 m of a wetland<sup>^</sup>, or</del></p> <p>(d) <del>involving the clearance of 1 ha or greater per property* per 12-month period of woody vegetation* where the canopy* cover of woody vegetation* in the area to be cleared is greater than 70%, or</del></p> <p>(e) <del>involving new tracking*</del> and any ancillary:</p> <p>(f) diversion of water<sup>^</sup> pursuant to s14(1) RMA on the land<sup>^</sup> where the <i>vegetation clearance*</i> or <i>land disturbance*</i> is undertaken, or</p> <p>(g) <i>discharge<sup>^</sup></i> of sediment into water<sup>^</sup> pursuant to s15(1) RMA resulting from the <i>vegetation clearance*</i>, <i>land disturbance*</i> or <i>cultivation*</i>.</p>	<p><b>Restricted</b></p> <p><b>Discretionary</b></p>	<p>(a) The activity must not take place on land<sup>^</sup> that is within a <i>coastal foredune*</i>.</p>	<p>Discretion is restricted to:</p> <p>(a) the location, nature, scale, timing and duration of the activity</p> <p>(b) <i>effects<sup>^</sup></i> of the activity and associated sediment run-off on soil conservation, surface water<sup>^</sup> quality and aquatic ecology</p> <p>(c) the principles and erosion and sediment control measures set out in Chapters 3-9 of the Erosion and Sediment Control Guidelines for the Wellington Region (September 2002)</p> <p>(d) <u>for cultivation and ancillary activities the measures in the Code of Practice for Commercial Vegetable Growing in the Horizons Region (Horticulture New Zealand) Version 2010/2</u></p> <p>(e) duration of consent and review of consent <i>conditions<sup>^</sup></i></p> <p>(f) compliance monitoring.</p> <p><i>Resource consent<sup>^</sup></i> applications under this <i>rule<sup>^</sup></i> will not be notified and written approval of affected persons will not be required (notice of applications need not be served<sup>^</sup> on affected persons).</p>

## APPENDIX 2

### EXTRACT FROM HORTICULTURE NEW ZEALAND SUBMISSION ON THE CULTIVATION PROVISIONS IN THE NOTIFIED VERSION OF THE POP

#### **Rule 12-1 Vegetation clearance and land disturbance not covered by other rules- Permitted Activity**

Rule 12-1 provides a permitted activity rule for a very limited range of vegetation clearance and land disturbance activities.

Horticulture New Zealand has sought changes to the definitions of both vegetation clearance and land disturbance to ensure that cultivation and harvesting activities are not put into the same category as earthworks and forestry harvesting, as presently worded.

There should be provision for cultivation as a permitted activity subject to standards and conditions. A 1000m<sup>3</sup>/y per property threshold is not realistic for cultivation activities. The 1000m<sup>3</sup>/y per property threshold is for 'fill or excavation' so should not include cultivation, but it is not clear given the current definitions. In addition a per property threshold does not provide any scale of potential effects. The same threshold applies to a 1000ha property as to a 10 ha property.

#### **Decisions Sought:**

Amend Rule 12-1 to include cultivation as a permitted activity subject to the following condition:

*No cultivation shall occur within 5 metres of the bank of any waterbody identified as an Site of Significance – Aquatic or within 3 metres of the bank of any other permanently flowing river, or any river within a bed width in excess of 2 metres, or any lake or any wetland unless bunding, silt traps, interception drains or other alternative methods to control runoff are installed prior to and maintained during cultivation.*

Remove cultivation from the 1000m<sup>3</sup>/y per property threshold in Rule 12-1.

Amend the definition of vegetation clearance so it is clear that harvesting of horticulture crops is not classed as vegetation clearance.

## APPENDIX 3 OPERATIVE LAND AND WATER PLAN

### LM RULE 2: PERMITTED VEGETATION CLEARANCE, SOIL DISTURBANCE AND CULTIVATION

Subject to LM Rule 1, vegetation clearance, soil disturbance and cultivation is a **Permitted Activity** provided:

- a. the area of contiguous vegetation clearance, other than for the harvesting of plantation forest<sup>40</sup>, does not exceed 2 hectares per annum; and
- b. no vegetation clearance, other than the clearance of plantation forestry established prior to the date of this Plan becoming operative, occurs
  - i. within 20 metres of any waterbody identified in Appendix 6;or
  - ii. within 5 metres of any other permanently flowing river, or any other river with a bed width in excess of 2 metres, or any other lake or any other wetland; and
- c. no cultivation shall occur within 5 metres of the bank of any waterbody identified in Appendix 6 or within 3 metres of the bank of any other permanently flowing river, or any river with a bed width in excess of 2 metres, or any lake or any wetland unless bunding, silt traps, interception drains or other alternative methods to control runoff are installed prior to, and maintained during cultivation; and
- d. no soil disturbance, except as provided for by condition c. above, shall occur within 5 metres of the bank of any permanently flowing river, or any river with a bed width in excess of 2 metres, or any lake or any wetland; and
- e. any area of bare ground (other than building sites, firebreaks, tracks, roads or forestry landings) is revegetated to protect from erosion as soon as practicable and no later than 18 months from the date of vegetation clearance or soil disturbance with species that provide equivalent land stabilisation; and
- f. water run-off controls are installed and maintained for building sites, tracks, roads or forestry landing sites; and

- g. batters, cuts and side castings are established by methods that prevent slumping; and
- h. trees are felled away from any permanently flowing river, or any river with a bed width in excess of 2 metres, or any lake, or any wetland other than where this would endanger the health and safety of site workers; and
- i. slash, soil or debris from any vegetation clearance, soil disturbance or cultivation is not directly deposited into any permanently flowing river, or any river with a bed width in excess of 2 metres, or any lake, or any wetland; or left in a position where it may avalanche down any slope; and
- j. any pieces of slash greater than 10 cm stem diameter or greater than 2 m in length that enter any permanently flowing river, or any river with a bed width in excess of 2 metres, or any lake, or any wetland are removed; and
- k. felled vegetation is not dragged through any permanently flowing river, or any river with a bed width in excess of 2 metres, or any lake, or any wetland.

### **Advisory Note**

Please check with your local district council for any additional requirements contained within their district plans relating to this activity.

For free advice, please contact your local Land Management Officer at one of Horizons Regional Council's offices.

This rule does not restrict vegetation clearance or soil disturbance associated with an authorised river crossing.

### **Explanation**

This rule applies to all vegetation clearance and soil disturbance (as defined in the Glossary) in the Region except on the coastal foredune. Vegetation clearance and soil disturbance on the coastal foredune is addressed in LM Rule 1. LM Rule 2 also applies to any soil disturbance (including roading, tracking or earthworks) associated with forest clearance.

Re-vegetation under condition c. may be with any form of vegetation, including grass, scrub or trees. To prevent future erosion care should be taken to manage and protect young vegetation

from animal browsing. Where vegetation was originally planted for erosion control purposes, re-vegetation should be undertaken in order to provide equivalent land stabilisation.

For the purpose of this rule "slash" means any branches, parts of trees or waste trees remaining as a result of vegetation clearance. For the purpose of this rule 'material' means any vegetative or soil matter resulting from this activity.

The following activities must be undertaken in accordance with the provisions of the Regional Plan for Beds of Rivers and Lakes and Associated Activities or a resource consent:

- Vegetation clearance within the bed of a river or lake;
- Any river crossings or structures in or on the bed of a river or lake; and
- Any activities involving the construction of culverts or soil disturbance in the bed of a river or lake.

Any activities involving the deposition of dust beyond the property boundary must be in accordance with the Regional Air Plan or a resource consent.

### **Definitions**

**cultivation** means preparing the soil for growing a crop or pasture, and the planting, tending and harvesting of that crop.

**soil disturbance** the disturbance of land surfaces by any means, that will result in increased exposure of land or soil to erosive processes and effects, or facilitate flooding or subsidence, or cause deposits in rivers and streams; and **excludes** cultivation; or situations where land surface disturbance is incurred during normal maintenance of roads, tracks, railway lines, and public utility networks; or construction or maintenance of drains or fences; or direct drilling into the ground; or within domestic gardens; and **includes** the activities associated with mining and quarrying.

(Note: Maintenance of roads, tracks, railway lines, and public utility networks includes grading, clearance of drains and clearance of slips; but does not include widening if new cuttings, excavations or earthworks are involved.)

**vegetation clearance** means the destruction of vegetation by any means, including cutting, burning, clearing or spraying; and **includes** clear felling of forest; and line clearance by bulldozer or similar machine for fences or planting; but **excludes** clearance of agricultural and horticultural crops, pasture, forest thinnings or

coppicing, or any plant defined as a plant pest; or clearance of tracks for the use of foot traffic only; or any clearance for the purposes of a recognised river control scheme or any clearance for the normal maintenance of existing roads, tracks, fire water points, fence lines, railway lines and public utility networks; or the clearance of isolated or scattered manuka or kanuka regrowth on productive pasture; or clearance associated with authorised river crossings; or the clearance of any indigenous vegetation understorey beneath plantation forest.

(Note: Maintenance of existing roads, tracks, fire water points, fence lines, railway lines and public utility networks includes the trimming of adjacent vegetation; but does not include vegetation clearance for new installations, roads, or access ways)

Footnotes:

<sup>40</sup> There is no restriction on the size of plantation forest that can be harvested in any one year.

<sup>41</sup> The Regional Plan for Beds of Rivers and Lakes and Associated Activities regulates the construction and placement of structures within the bed of a river, lake or wetland. Any alternative methods must also comply with the provisions of that Plan.