

Land Hearing

Volume 1 - Part 4

Chapters 5 and 12 and Schedule A

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4.1 Introduction

This decision of the Regional Council is made by the Land Hearing Panel (Land Panel or Panel).

The decision deals with Chapters 5 and 12, relevant terms from the Glossary, and Schedule A. It does not address the land-based biodiversity provisions of Chapter 12. That matter is dealt with in the Biodiversity and Heritage Hearing Panel's decision on Chapters 7 and 12.

This decision comprises:

- Part 1 (Introduction, Comments Forming Part of All Decisions and Conclusion) of this Volume;
- This Part, where, among other things, we set out our evaluation of the submissions and our reasons for accepting or rejecting them;
- Part 4 of Volume 2, which sets out the summary of submissions and further submissions and our decision in respect of each; and
- Chapters 5 and 12 (excluding the land-based biodiversity provisions), the relevant Glossary definitions, and Schedule A shown in the marked-up version of the POP in Volume 3 (clean version in Volume 4).

The Land Hearing Panel comprised:

- Joan Allin (Chairperson);
- Jill White;
- Murray Guy;
- Annette Main;
- David Meads;
- Rob van Voorthuysen; and
- Che Wilson.

The initial Land hearing was held on 14, 15, 17, 18, 21, 24, 25 and 31 July 2008 and 6 August 2008. A Chairperson's Minute¹ was issued on 18 August 2008 setting out the Panel's preliminary views on a number of matters and asking questions of the reporting officers. The Land hearing was then reconvened on 4, 5 and 8 December 2008. Six submitters² were heard on 1 July 2008 at a hearing that provided an opportunity for submitters who wished to present all, or part, of their submission or further submission (which we refer to either as separate terms or as submission) on different topics at one time. The Hearing Panel at that hearing included the members of this Panel.

4.2 Submissions and Further Submissions Received

The submitters and further submitters on Chapters 5 and the relevant parts of Chapter 12 are listed below. Further submission numbers are those above number 473.

¹ Chairperson's Minute #3 Land Hearing - Panel's Preliminary Views.

² Environment Network Manawatu, McKellar, AQA, Millard, Powerco and NKII.

Submission No.	Submitter
343	A & C Bovey Partnership
486	AgResearch Limited
36 and 485	Airways Corporation of New Zealand (Airways Corporation)
78	Ajit Singh Belling
62	Alan George & Catherine Susan Donaldson
387	Alfred James Sivyer
401	Alison Margaret Mildon
113	Allan Francis O'Neill & F J O'Neill & Sons
350	Almadale Produce Ltd
84	Amy Couper
421	Andrew Edward Day
249	Andrew Porritt
447	Angus Gordon
87	Annie Carmichael
56	Anthony David & Gaylene May Atkins
464	Aohanga Incorporation
391	Arbor Management Limited
309	Atihau - Whanganui Incorporation
106	B C & J E Gower Partnership
449	B S Young Ltd
439 and 475	B W Tylee on behalf of Property Rights in New Zealand
66	Barbara Anne Taylor
155	Barry & Glenda Wade
137	Barry Philip Leslie
96	Bert Judd
302	Blair Patrick Shortall
159	Brian Douglas Sherson
73	Brigette Neeson
436	Bruce & Pamela Hodges
98	Bruce Edward Culley
472	Bruce Maclean Stevenson
368	Bruce Noel Rhodes
422	C R Grace, M Hurley, Hinau Station Ltd, Duncan Land Co Ltd, Te Kumu Estates Ltd, Otairi Station Ltd and A Hurley known jointly as "The Hunterville Hill Country Objectors"
181	Chris Teo-Sherrell
39	Christopher John Baines
361	Clayton & Michelle Potts
58 and 133	Clifton Howard Tombleson
470	Colin Bond
156	Colin Caseley
413	Cuttriss Consultants
328	D J Kilsby - Halliday
378	Daniel Webb
352	Darrin Brown
451	David Aislabie on behalf of the Whanganui Branch of the Green Party
65	David Earle Robins Matthews
215	David Harold Porritt
225	David John Greenwood
223	David John Wells

382	David Leonard Hopkins
348	David Young
270 and 524	Dean Gregory Sparkes
158	Dean Robert Sherson
184	Dean Saddler Gower
443	Diana Baird
345	Digby Milne Brice
462	Don Stewart
186	Donald Alan Windle
329	Donald James Polson
456	Ecologic Foundation
81	Edward Nelson Tarrant
74	Elaine Couper
362	Elaine Gubb & Michael Sanderson
356 and 529	Environment Network Manawatu
386	Environmental Working Party
269 and 501	Ernslaw One Ltd
431	Euan Hodges
90	Evelyn Heale
426 and 533	Federated Farmers of New Zealand Inc (Federated Farmers)
455	Fiona Dalgety
417	Fish & Game New Zealand - Wellington Region (Wellington Fish & Game)
487	Fonterra Co-operative Group Limited
202	Forrest Chambers
289	Fraser Lindsay Horrocks
224	G M & S M Deadman Partnership
324	G P & C S Dempsey
128	G S Hall
120	Garry Burgess Dickie
83	Genee Leonie Ludlam
268 and 525	Genesis Power Ltd
86	Geoff & Jose Heale
271	Geoffrey Thomas Burton
313	George & Christina Paton
138	George Alexander Hopeful Gower
333	George Anthony Matthews
466 and 493	George McNie
441	George R Ross
41	Glenda Luscombe
300	Gordon George Kuggeleijn
354	Gordon McKellar
204	Gordon McNie
146	Gordon Robert Gower
88	Graham Carmichael
335	Grahme Watkins
428	Grant Adkins
139	Hainsworth - Kelfer Partnership
331	Hancock Forest Management (NZ) Ltd
144	Heather Oliver
42	Helen Claire McKenzie
191	Helen Margaret Irwin Liley
153	Higgins Group (Higgins)

505	Himatangi Station Ltd
2	Hoane Titari John Wi
182	Horizons Regional Council
280 and 515	Horowhenua District Council
392	Horowhenua District Growers Association
232	Horowhenua Fruitgrowers Association
357 and 531	Horticulture New Zealand (Horticulture NZ)
187	Ian Douglas McCoubrie
142	Ian Edward Roke
59	ICHYTHUS Consulting
150	Ivan Brent & Rosemary Lynette Watts
52	J N Tripe
322	J N Turner
400	James Bull Holdings Limited
109	James Edmund Fahey
304	James Truebridge & Sue Yerex
173	Jilesen Contractors Ltd
366	Jill Strugnell
355	John Batley
292	John Colin Black
154	John Collier Donald
112	John Francis Fahey
34	John Graham Dobson
71	Judy Johansen
317	Kapiti Green Limited
169	Karl Splitt
321	Kawautahi Farms Ltd
95	Ken Marshall
69	Kerry Blackburn
175	Kerry John Thompson
170	Kevin John Siemonek
315	Kim Young and Sons Ltd
429	Kirsten Ann Bryant
132	Kurua Farms
218	L A Carmichael
85	Lance & Mannix Houppapa
440	Landlink Ltd
388	Laura M Sivyer
221	Lionel West
220	Lionel West In Association With Property Rights in NZ
482	Livestock Improvement Corp Ltd (LIC)
435	Local Forestry Industry Group
183	Luke Christopher Green
77	Lyn Neeson
40	Lynda Jean Baines
195	Malcolm Farming Ltd
433 and 506	Manawatu Branch of NZ Green Party
340 and 507	Manawatu District Council
312	Manawatu Estuary Trust
148	Maraekowhai Whenua Trust, Tawata Whanau Trust, Ngati Tama o Ngati Haua Trust and Titi Tihu Farm Trust
437	Margaret Millard
46	Marion Gillard
110	Mary Gabrielle Fahey

256	Matt Bell
248	Matthew Black
363 and 522	Meridian Energy Limited
91	Merle Hemopo
141	Mervyn H George
48	Michael Davis
399	Michael George Petersen
185	Michael John Rogers
229	Michael Petersen - PETCO Contracts Ltd
44	Michael Stanwick
444	Middle Districts Farm Forestry Association
359 and 519	Mighty River Power Limited
372 and 492	Minister of Conservation
75	Miriam Jane Tarrant
179	Mountain Carrots NZ Ltd
136	N C Tylee
130	N Collier
17	N K & C F Deighton
210	Neil & Annie Petersen
194	Neville Francis Wheeler
458	New Zealand Contractors Federation
330 and 502	New Zealand Defence Force (NZDF)
415	New Zealand Fertiliser Manufacturers' Research Association Incorporated
353	New Zealand Historic Places Trust - Central Region (NZHPT)
419	New Zealand Institute of Forestry
390	New Zealand Pine Management Limited
427	Ngā Pae o Rangitikei
180	Ngati Kahungunu Iwi Incorporated (NKII)
227	Noel Olsson
319 and 520	NZ Forest Managers Ltd
336 and 498	NZ Transport Agency (formerly known as Transit New Zealand)
161	ONTRACK (New Zealand Railways Corporation) (ONTRACK)
341	Owen Bonnor
171	P John Chumun
476	Palmerston North Airport Ltd
241 and 481	Palmerston North City Council (PNCC)
189	Patrick William Carroll
134	Paul Alexander McGlade & Eunice Robin Weir
465	Paul James Mackintosh
438	Pescini Brothers
119	Peter & Gail Gower
70	Peter & Maxene Howie
121	Peter Alexander Anderson
72	Peter Douglas Hawkins
111	Peter Graham Fahey
29	Peter Lefeaux Nevins
68	Petersen Family Trust
305	PF Olsen Limited
143	Philipa Ann Roke

303	Pirie Consultants Ltd, Pacific Farms Ltd, Hoult Contractors Ltd, Keegan Contractors Ltd, Paranui Contractors Ltd, Ryman Healthcare Ltd, M & M Earthmovers Ltd, Titan1 Ltd and O'Hagan Contracting Ltd
408	Pohangina Valley Community Committee
197	Pongaroa & the Way to Go Rural Women
272 and 528	Powerco Limited
477	Pritchard Group Limited
393	Property Rights in New Zealand Inc
60	Pukekahu Farm Ltd
135	R T Waller
346 and 517	Rangitikei District Council
379	Ravensdown Fertiliser Co-operative Limited (Ravensdown)
310	Rayonier NZ Ltd
57	Richard John & Coral Evelyn Edwards
247	Richard Porritt
453	Rob Kirk & Tim Matthews
219	Robert George & Colleen Mary Donaldson
76	Rodney Brears
188	Rodney Stuart McCoubrie
320	Roger William Luscombe
193	Ron & Sandra Carey
217	Roseanne Parkes
131	Ross Charles & Justine Frances Walker
460	Royal Forest & Bird Protection Society of New Zealand Inc (Forest & Bird)
151 and 495	Ruapehu District Council
246	Ruapehu Federated Farmers of New Zealand Inc (Ruapehu Federated Farmers)
380	Rural Women New Zealand
94	Russell Sullivan
129	S Gall
67	Sally Jane & Keith Thomas Sherson
206	Sandra Rogers
254	Scott Gower
92	Sean Robert Trafford & Alexandra Rogers
116	Sharn Hainsworth
82	Sheryl Yvonne Fraser
178	Snow Country Gardens Ltd
199	Split Rock Station Ltd
342	Stewart Leslie Matthews
198	Stuart McNie
80	Susan Conrad
176	Sustainable Whanganui
216	Tania Faye Bolton
374 and 490	Taranaki / Whanganui Conservation Board
406	Taranaki Fish & Game Council
172 and 500	Tararua District Council
527	Tararua-Aokautere Guardians Inc (TAG)
461	Te Iwi o Ngāti Tūkorehe Trust
424	Te Runanga o Raukawa Inc
230	The Aggregate and Quarry Association of New Zealand Ltd (AQA)

445	Tim Matthews
265 and 523	Transpower New Zealand Ltd (Transpower)
255	Trevor & Wendy Schroeder
233	Trevor Allen Johnson
212	Trevor Owen Couper
358 and 511	TrustPower Limited
115	Vector Gas Limited
167 and 514	Velma June Siemonek
152	Visit Ruapehu
325	W J Rolston
12	Waikato District Health Board - Public Health Unit
351 and 509	Wanganui Branch of the National Council of Women of New Zealand
291 and 532	Wanganui District Council
446	Wanganui Province of Federated Farmers Inc (Wanganui Federated Farmers)
157	Warrick & Sally Street
311	Water and Environmental Care Assn Inc
208 and 483	William John Forrest
294	William Pehi Snr
145	Winston Oliver
347	Woodhaven Gardens Ltd.

4.3 Reports, Evidence and Other Material

In terms of the Regional Council, we received reports and evidence and heard in person from:

- Dr John Dymond, Scientist at Landcare Research;
- Greg Carlyon, a planner and the Council's Group Manager - Regional Planning and Regulatory;
- Allan Cook, the Council's Group Manager - Operations;
- Dr Jon Roygard, a scientist and the Council's Manager Science;
- Dr Alec Mackay, Principal Scientist and Programme Leader in the Climate, Land and Environmental Group at AgResearch;
- Lachlan Grant, co-director of LandVision Ltd, a land management consultancy company;
- Allan Kirk, the Council's Environmental Coordinator (Whanganui Catchment Strategy);
- Gregory Bevin, the Council's Senior Investigator;
- Helen Marr, a planner and the Council's One Plan Manager;
- Phillip Percy, a consultant planner and Director of Perception Planning Ltd; and
- Andrea Bell, an environmental consultant and planner.

We received a report and heard from John Maassen, resource management lawyer.

We received written reports from Richard Thompson, meeting facilitator, on pre-hearing meetings that had taken place.

In terms of submitters, we heard in person from:

- Dr Terry Kelly (Chairperson) and Sally Pearce for Environment Network Manawatu (1 July 2008);

- Gordon McKellar and Dr Alan Palmer for Gordon McKellar (1 July 2008);
- Amber Brown (Planner with Harrison Grierson Consultants Ltd) and Cobus van Vuuren for AQA (1 July 2008);
- Margaret Millard (1 July 2008);
- Karen Frew (Technical Regulation Manager) and Catherine Ross for Powerco (1 July 2008);
- Maurice Black (Resource Management Consultant) for NKII (1 July 2008);
- Andrew Green (Legal Counsel) and David Forrest (Planner Principal of Good Earth Matters Consulting) for the Horowhenua District Council, Wanganui District Council, Rangitikei District Council, Ruapehu District Council, Manawatu District Council and Tararua District Council (TA Collective);
- Anne-Marie Westcott (Team Leader Environment) Liezel Jahnke (Policy Planner), David Hammond (Chief Executive Officer) and Sue Morris (Mayor) for Ruapehu District Council;
- David Matthews;
- Sally Strang (Environmental Manager with Hancock Forest Management), Jackie Egan (Environmental Planner with NZ Forest Managers), Richard Heikell (with Ernslaw One) and Kit Richards (Environmental Manager with P F Olsen) for NZ Forest Managers, NZ Institute of Forestry, PF Olsen, Hancock Forest Management, Ernslaw One and Rayonier NZ;
- Bruce and Stephanie Rollinson for Snow Country Gardens;
- Allan O'Neill for Allan Francis O'Neill & F J O'Neill & Sons;
- Winston Oliver;
- Lyn Neeson (President), Geoff Burton, Jim Walker and Kirsten Bryant for Ruapehu Federated Farmers;
- Geoff Burton;
- Kirsten Bryant;
- Dr Margaret Liley;
- Brian Tylee and Donald Coles on behalf of Property Rights in New Zealand;
- Dr John McConchie (Principal Water Resources Scientist with Opus International Consultants Ltd) for Michael Petersen, Property Rights in New Zealand and a number of submitters;
- Annie Carmichael;
- Trevor Johnson;
- Gordon Gower;
- Velma Siemonek;
- Donald Siemonek;
- Scott Gower;
- Bruce and Josie Gower for B C & J E Gower Partnership;
- Kevin Siemonek;
- Peter Chumun;
- Elaine and Neville Wheeler on behalf of Ross Charles & Justine Frances Walker;
- Michael Petersen for Petersen Family Trust;
- Michael Petersen;
- Ken Malcolm for Malcolm Farming;
- Dean Gower;
- David Porritt;
- Michael Petersen for PETCO Contracts;
- Patrick Carroll;

- David Murphy (Senior Policy Planner) and Matthew Mackay (Policy Planner) for PNCC;
- Rob Owen (Environmental Manager) and Emily Grace (Resource Management Consultant with Tonkin & Taylor Ltd) for NZDF;
- Sarah Ongley (Legal Counsel) and Jo-Anne Munro (Legal Counsel) for Mighty River Power;
- David le Marquand (Director of Burton Planning Consultants Ltd) for Transpower;
- Richard Turner (Planning Manager), Ewen Robertson (Project Environmental Manager) and Mary O'Callahan (Principal Planner with GHD Ltd) for Meridian Energy;
- Daniel Webb;
- Julie Ireland (Contractor Policy Analyst), George Ross (past President Tararua Federated Farmers), Tim Matthews (Vice-President Wanganui Federated Farmers), Gordon McKellar (President Manawatu Rangitikei Federated Farmers), Andrew Day (President Tararua Federated Farmers), Brian Doughty (President Wanganui Federated Farmers) and Lyn Neeson (President of Ruapehu Federated Farmers) for Federated Farmers and Wanganui Federated Farmers;
- Andrew Day;
- Alison Mildon and Paul Stichbury (members of TAG) for TAG;
- Lisa Hooker (Graduate Planner with Opus International Consultants Ltd) for Airways Corporation;
- Phillip Teal (Chief Executive) and Corina Jordan (Resource Officer) for Wellington Fish & Game;
- Sara Dickon for Wanganui Branch of the National Council of Women of New Zealand;
- Chris Keenan (Manager - Resource Management and Environment) and Lynette Wharfe (Consultant with The Agribusiness Group) for Horticulture NZ and supported by John Clarke, Chris Pescini for Pescini Brothers, George Sue, Gordon Sue for B S Young Ltd and Hamish Macdougall for Horowhenua Fruitgrowers Association;
- John Henderson (Legal Counsel) for the Hunterville Hill Country Objectors;
- Ian Moore and Peter Lissington for Local Forestry Industry Group and New Zealand Pine Management;
- David Aislabie for the Whanganui Branch of the Green Party;
- Rocky Renquist for Manawatu Branch of N Z Green Party;
- Bert Judd;
- Chris Teo-Sherrell;
- George McNie;
- Nick Tripe;
- David Hopkins;
- John Dobson;
- Sharn Hainsworth;
- Tim Matthews for Rob Kirk & Tim Matthews;
- Tim Matthews;
- Dr James Griffiths for Forest & Bird;
- Jill Strugnell;
- Matt Bell;
- Grant Upchurch for ICHYTHUS Consulting;
- George Ross;
- John Forrest;

- John Whitelock for J M & L C Whitelock and B J & C J Whitelock;
- Christina Paton for George & Christina Paton, Manawatu Estuary Trust and Water and Environmental Care Assn; and
- John Martin for Ian Douglas McCoubrie.

We received written evidence, legal submissions or material that was not presented orally at the hearing from:

- Richard Kirby, Assets Group Manager, Manawatu and Rangitikei District Councils for the TA Collective;
- Robert Schofield (Senior Principal with Boffa Miskell Ltd) for TrustPower;
- Graeme Mathieson (Environmental Consultant with Environmental Management Services Ltd) for AgResearch;
- Graeme Mathieson (Environmental Consultant with Environmental Management Services Ltd) for LIC;
- Chris Hansen (Senior Planning Consultant with SKM) for Ravensdown; and
- Nathan Baker (Senior Resource Management Consultant with Tonkin & Taylor Ltd) for Higgins.

In relation to the reconvened hearing, we received written evidence or material that was not presented orally from:

- Rakesh Mistry (Heritage Advisor - Planning) for NZHPT;
- Lisa Hooker for Airways Corporation;
- David Murphy for PNCC;
- John Forrest;
- David le Marquand for Transpower; and
- Corina Jordan for Wellington Fish & Game.

In response to matters raised by the Panel, we also received additional evidence or material from Amber Brown, Ewen Robertson, Emily Grace, Geoff Burton, Sarah Ongley, Lisa Hooker, Matthew Mackay (PNCC), Andrew Green, Grant Upchurch, John Dobson and Sally Strang.

4.4 Evaluation and Reasons

The following sections of this Part set out our evaluation of the submissions and our reasons for accepting or rejecting them. The evidence and submissions are not summarised in any detail in this decision. However, specific matters are referred to as appropriate. Issues about versatile soils are dealt with in Part 7 (General Hearing) of this Volume in the reasons relating to Chapter 3 of the POP.

We deal first with legal matters and then the principal issues of contention. We then deal with remaining issues of contention, generally using the same headings as were used in the respective POP chapters. Where we have omitted a heading from the POP, it was because we concluded that no evaluation under that heading was needed.

Where we have dealt with a topic in principal issues of contention, we do not repeat the reasons in the remaining issues.

In some cases, submitters raised the same matter in their submissions on several different parts of the POP chapters. For the sake of brevity, we do not

repeat our evaluation of those matters under multiple POP chapter headings. Instead, we generally address the matter when it is first raised.

In addition:

- (a) some submissions may be coded under one heading in Volume 2 (or in some cases in a different Part of Volume 2 eg Part 2 Overall Plan Hearing) but the relevant reasoning may be dealt with here under a different heading; and
- (b) some matters dealt with under one heading may be relevant to other provisions or have general applicability across the chapters and so may have resulted in changes shown in Volume 3 in various provisions.

Submitters should therefore carefully read all components of the decision including this Part and Part 1 of this Volume, the relevant Parts of Volume 2 and the relevant POP provisions in Volume 3 (clean version in Volume 4) to see how their concerns have been dealt with.

General matters that cross all hearing topics, such as the adequacy of consultation in the POP process for all chapters, are dealt with in Part 2 (Overall Plan Hearing) of this Volume. We therefore do not deal with consultation issues, or the adequacy of consultation, in this decision.

4.5 Legal Matters

The National Policy Statement on Electricity Transmission 2008 is relevant and we have given effect to it. By way of example, we have provided that the maintenance or upgrade of structures or infrastructure is excluded from the definitions of vegetation clearance and land disturbance. In addition, Policy 12-1 provides cross-references to the Regional Policy Statement (RPS) and Chapter 3. Chapter 3 has a number of relevant provisions. Policy 3-1(a)(ia) provides that the Regional Council and territorial authorities must recognise the National Grid, among other things, as being a physical resource of regional or national importance.

In terms of Part 2 of the RMA, in addition to s 5, ss 6(a), (e) and (f), 7(aa), (b), (c) and (f) and 8 are potentially relevant.

Section 6(a) refers to the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development. However, the provisions in Chapters 5 and 12 are primarily directed at the effects of sediment run-off on water quality. Chapter 7 (biodiversity) and the biodiversity rules in Chapter 12, dealt with in the Biodiversity and Heritage hearing, deal with s 6(a) matters with regard to riparian vegetation.

In relation to s 6(e) and (f) and s 8 of the RMA, there were conditions relating to historic heritage in some of the rules in Chapter 12. The legal advice we received was that the Regional Council does not have the power to control land use to manage the effects on historic heritage (except in the coastal marine area). This is discussed further in Part 5 (Biodiversity and Heritage Hearing) of this Volume.

Sections 7(aa), (b), (c) and (f) of the RMA have specific relevance to this decision and we have had particular regard to those matters when evaluating the submissions.

4.6 Principal Issues of Contention

The principal issues of contention for the Land chapters were:

- (a) Is there a need for the provisions?
- (b) Should the Sustainable Land Use Initiative (SLUI) and Whole Farm Business Plans (WFBPs) be linked to the rules?
- (c) Is the delineation and definition of Highly Erodible Land (HEL) appropriate?
- (d) Is the delineation and definition of Coastal Highly Erodible Land (CHEL) appropriate?
- (e) Has there been an adequate cost-benefit analysis?
- (f) What activities should be regulated?
- (g) How should forestry be dealt with?
- (h) Are “per property” rules appropriate?
- (i) Is it appropriate for budgetary matters to be referred to in the POP?

4.6.1 Is there a need for the provisions?

Chapters 5 and 12 deal with the issue of accelerated erosion. Based on the evidence received, we are satisfied that accelerated erosion is occurring within the Region and that it is an issue that should be addressed under ss 62(1)(a) and 67(2) of the RMA. It is therefore not appropriate to delete Chapters 5 and 12 as sought by some submitters.

Chapter 5 includes non-regulatory matters which rely on the voluntary participation and cooperation of land users. This will vary over time and from place to place and therefore it is not appropriate to set definitive targets for non-regulatory outcomes.

4.6.2 Should the Sustainable Land Use Initiative (SLUI) and Whole Farm Business Plans (WFBPs) be linked to the rules?

SLUI is the Regional Council’s programme for achieving the sustainable land use of hill country production land, primarily through education, advice and financial assistance. The context and background for SLUI were described in the evidence of Greg Carlyon. He advised us that “SLUI is the Manawatu-Wanganui region’s response to the devastating storms of 2004 and the widespread issue of hill-country erosion and downstream impacts that result” and that “In December 2007 the Ministry of Agriculture announced its support for SLUI and funding of almost \$6 million over four years towards SLUI implementation.”³ We understand that a landowner participating in SLUI has a WFBP prepared for them by a person, from or engaged by the Regional Council, who prepares it in consultation with the landowner.

Mr Carlyon added that “... participation in SLUI is entirely voluntary - there is [sic] no rules or regulations”.⁴ Nevertheless, we note that WFBPs were

³ Carlyon, Section 42A Report, May 2008, paras 4 and 6.

⁴ Ibid, para 24.

referred to in Rules 12-1 and 12-4 as notified. The effect of those rules was to make vegetation clearance and land disturbance a permitted activity if it was undertaken in accordance with a WFBP. Many submitters expressed concerns about linking the voluntary WFBPs into the rules in this manner.

We are of the opinion that WFBPs have considerable merit in terms of promoting sustainable land use. We also accept that many landowners are already farming their land in a sustainable manner. This was highlighted to us by the evidence of Dr Liley and Mrs Bryant amongst others. We also note that there was some qualified support for the WFBPs from submitters. For example, Federated Farmers told us that it “supports, in principle, the voluntary farm plans concept”.⁵ Ruapehu District Council advised “RDC wishes to make it clear that it does not object to Farm Plans in principle as a tool for land management”.⁶

We were provided with three examples of WFBPs. We reached the conclusion that they were not drafted with sufficient precision and certainty to enable them to provide a general exemption from the need to obtain resource consents for land use activities.

As foreshadowed in our August 2008 Chairperson’s Minute #3, we have decided that the SLUI programme and WFBPs should not be linked to the rules on vegetation clearance and land disturbance. Maintaining such a linkage would be problematic as the Regional Council is targeting the preparation of WFBPs to priority areas within the Region. Submitters highlighted the potential inequity of this approach. For example, Horticulture NZ asked to ensure that “... landowners are not penalised by not being in a ‘priority target area’ for Whole Farm Plans”.⁷ We find it more appropriate to have effects-based rules dealing with vegetation clearance and land disturbance that treat all landowners equally. Consequently, there is no need to provide for rapid response or “24 hour consents” based on the contents of WFBPs.

We also note that WFBPs are one of a broader group of instruments, such as Whanganui Catchment Strategy farm plans, environmental management plans and strategies prepared by other organisations, and former Catchment Board-initiated soil conservation farm plans. Rather than using the term WFBPs in the POP objectives and policies, we find that it is more inclusive to refer to farm-wide sustainable land management practices.

The Glossary as notified defined a WFBP but, as a result of the changes made to the POP provisions, this definition is no longer required and has been deleted.

4.6.3 Is the delineation and definition of Highly Erodible Land (HEL) appropriate?

The POP as notified described⁸ accelerated erosion within the Region and the adverse effects it can have on landowners, the environment, and downstream infrastructure and communities. Figure 5.1 showed the distribution of land

⁵ Federated Farmers, Submissions (evidence), 17 July 2008, para 15.

⁶ Westcott, Verbal Submission (evidence), 14 July 2008, para 18.

⁷ Keenan, Submission (evidence), 18 July 2008, page 16.

⁸ Section 5.1.2.

with a high potential for accelerated erosion which was termed Highly Erodible Land or HEL. Schedule A mapped HEL and CHEL (Coastal HEL) and was titled "Properties Containing Highly Erodible Land".

The evidence of Dr Roygard explained how HEL had been defined and delineated. He described⁹ how the report of Page et al¹⁰ provided the scientific definition of HEL for the Region.¹¹ We note that the Page et al report identified Land Use Capability (LUC) units that met the HEL criteria. The slope threshold for the relevant LUC units varied from 24° to 28°, depending on the underlying geology.

Dr Roygard advised us of a report prepared by Dymond and Shepherd¹² that provided "... further reporting on the definition of HEL including by a catchment analysis (Table 3) of what areas are HEL, and also quantifying the areas that could be HEL but have protective cover and therefore fall outside the definition of Page et al (2005)."¹³ Table 1 of the Dymond and Shepherd report identified that the slope threshold for relevant LUC units varied from 22° to 32°, depending on the underlying geology.

Dr Roygard advised us how Schedule A was produced. He told us that "... Horizons had the information from the Dymond and Sheppard [sic] (2006) definition scaled up by overlaying property boundaries and shading the area within the property boundaries on all properties where Highly Erodible Land was mapped by Dymond and Sheppard [sic] (2006)".¹⁴ The consequence of the above approach was that Schedule A showed a large part of the Region shaded red and identified as HEL.

The written evidence presented by Dr Dymond himself was largely in the form of three scientific papers. They described how a computer model of landslide susceptibility had been produced and validated by comparison with the landslides that occurred during the February 2004 storm. They also described the nature of highly erodible land, including in relation to slope and vegetation cover.

Many submitters were critical of the approach taken by the Council to the definition and delineation of HEL. A group of submitters retained the services of Dr McConchie, a Principal Water Resources Scientist with Opus International Consultants Ltd, to advise them and present evidence on their behalf. Dr McConchie advised us that, in his view, erosion and deposition are natural events that "have occurred in the past and will occur in the future".¹⁵ He was critical of the Regional Council's technical work regarding the delineation of HEL. In reference to a change in the definition of hill country HEL suggested by Mr Percy¹⁶, Dr McConchie expressed his view that "... defining erosion susceptibility from existing shallow soil slips is illogical and scientifically incorrect".¹⁷ He stated "Much of the land classified as HEL is therefore some of the most resistant within the region rather than the most

⁹ Roygard, Section 42A Report, 3 June 2008, page 7.

¹⁰ Page, Shepherd, Dymond and Jessen (2005) "Defining Highly Erodible Land for Horizons Regional Council".

¹¹ This comprises the Land Use Capability (LUC) units with a potential for severe erosion or moderate erosion where sediment enters a watercourse (see Roygard, Section 42A Report, page 8).

¹² Dymond and Shepherd (2006) "Highly erodible land in the Manawatu-Wanganui Region".

¹³ Roygard, Section 42A Report, 3 June 2008, page 10.

¹⁴ Ibid, page 11.

¹⁵ McConchie, Statement of Evidence, 30 June 2008, page 3.

¹⁶ Percy, Planning Evidence and Recommendations Report, June 2008, pages 339-340.

¹⁷ McConchie, Statement of Evidence, 30 June 2008, page 3.

problematic. The most erodible lands are the flood plains and dunes not the Tertiary hill country in the upper Whanganui.”¹⁸

Dr McConchie’s view was shared by many lay submitters. For example, Mr Oliver told us that he had concluded that “HEL is impossible to clearly define” and “There is no need or credible basis for the definition of HEL.”¹⁹

Having reviewed the evidence, we are satisfied that there is an elevated risk of accelerated erosion on some steeper hill country land within the Region, particularly where that land is unvegetated or in pasture. In that regard, we do not accept the submissions and evidence of some parties that the major source of eroding sediment is the rivers and riverbanks. We acknowledge that there are a number of variables that contribute to an elevated risk of accelerated erosion including geology, soil type, slope, aspect, vegetation cover and wetness.

However, we find that the Regional Council’s definition and delineation of HEL is problematic and that there are also a number of problems with Schedule A. It was produced at a scale that made it very difficult for some individual landowners to determine whether or not their land was HEL. It shaded a property as being entirely comprised of HEL if any land within the property fitted the definition of HEL. Therefore, Schedule A over-represented the actual area of HEL in the Region. This was apparent from a comparison of Schedule A with Figure 5.1 in Chapter 5 which mapped only the land actually modelled as HEL and not the entire property within which the modelled HEL resided.

Other issues with the definition of HEL included:

- (a) The modelling of HEL reported by Dr Dymond assumed five terrain types and assigned a slope to each terrain above which land was deemed to be highly erodible. These slopes varied from 22° to 32° in one report²⁰ and from 24° to 28° in another report.²¹ Therefore there was no single hill slope which could be applied Region-wide from that modelling;
- (b) The background technical reports discussed whether land above those slopes was “connected” or “unconnected”. This meant whether or not that land was within two model pixels of a watercourse such that if a landslip occurred the debris might enter water. However, the map in Schedule A took no account of whether or not the land was connected or unconnected;
- (c) The technical evidence from Regional Council staff and consultants was that land that was not planted in mature woody vegetation was subject to an elevated risk of accelerated erosion. However, the map in Schedule A took no account of whether or not the land was planted in mature woody vegetation; and
- (d) Schedule A took no account of land that was currently planted in mature woody vegetation and likely to remain as such due to it being Conservation land or land covenanted under a QE II Trust or Ngā Whenua Rāhui covenant.

¹⁸ Ibid.

¹⁹ Oliver, Submissions (evidence), undated, para 4.

²⁰ Dymond and Shepherd (2006).

²¹ Dymond, Ausseil, Shepherd and Buettner (2005) “Validation of a region-wide model of landslide susceptibility in the Manawatu-Wanganui region of New Zealand” and Page et al (2005) cited earlier also identifies slopes from 24° to 28°.

As already noted, in his Planning Evidence and Recommendations Report, Mr Percy proposed an amended definition of HEL. We found that definition to be overly complicated.

Our preference is instead to define Hill Country Erosion Management Areas which comprise land subject to an elevated risk of accelerated erosion. In terms of delineating that land, we find it appropriate to use pre-existing slope as a simple regulatory threshold to encompass all of the variables that contribute to an elevated risk of accelerated erosion. The term “pre-existing” is used by Environment Waikato in its Regional Plan and we find that it usefully describes the relevant situation, namely the status of the land prior to any land disturbance activities commencing. This approach is simple to understand and implement in the field. We acknowledge that many submitters, and Dr McConchie, preferred the underlying geology to be part of any definition. However, we have concluded that to be impracticable, given the wide variation in geology that occurs in the field and the fact that the underlying geology of an area may not be apparent to lay people deciding whether or not the rules apply to a particular piece of land.

As noted above, various reports identified the LUC units comprising highly erodible land in the Region’s hill country as different slopes, with a range varying from 22° to 32°. We note that the consolidated sandstone hill country comprised a large number of LUC units and it equated to a slope threshold of 28°, consistently across all reports. When questioned about a suitable single slope threshold, Dr Dymond himself suggested 25°. Any single slope threshold we select will have a degree of arbitrariness about it. On balance, we have decided that a slope of 28° is appropriate as a slope threshold as it is towards the top end of the range described in the reports and it will capture land use activities of potential concern without being excessively constraining on production land activities. The appropriateness of the slope threshold can of course be monitored over time and amended by the Regional Council by way of a Plan variation or change if necessary.

We also note that in terms of applicability in the field, Mr Tim Matthews, a farming submitter, described to us how in his view land above 28° exhibited what some would call “sheep tracking” or small horizontal terracing. He also described 28° as being the limit for safe tractor operations and he accordingly recommended the use of that particular slope threshold. His view was supported by Federated Farmers. This gives us some comfort that the 28° slope threshold will prove to be a practical one that can be readily applied by land managers.

We do not accept the submissions²² that called for slope thresholds as high as 40° or 45°.

We find that it is inappropriate, as occurred in Schedule A as notified, to show the majority of the Region as HEL. We also find that the acronym HEL is insensitive (given its closeness to “hell”), a matter about which there was no dispute. If a slope threshold of 28° is used, we see no need to map the Hill Country Erosion Management Areas and so Schedule A can be dispensed with.

²² For example, Meryvn George and Michael Davis.

However, we do see merit in having a map in Chapter 5 (forming part of the RPS) to show the general distribution of hill country land subject to an elevated risk of accelerated erosion. Dr Roygard prepared a suitable map for us and, as described by him, it covers "... the full dataset of Erosion Management Areas identified by Dymond and Sheppard [sic] (2006) with the areas of DoC land, QEII covenants, Nga Whenua Rahui covenants and Defence Force land overlaid in a slightly transparent manner".²³ It also shows the SLUI priority catchments, the area covered by the Whanganui Catchment Strategy and land protected by mature woody vegetation. This revised map now forms Figure 5.1A.

4.6.4 Is the delineation and definition of Coastal Highly Erodible Land (CHEL) appropriate?

Rule 12-3 as notified dealt with land disturbance on "highly erodible land" which, as defined in the Glossary, included CHEL, although Rule 12-3 did not apply on a "coastal foredune". CHEL was mapped in Schedule A and it included "coastal foredunes" which were generally defined in the same manner as in the Operative Land and Water Regional Plan. Additionally, Rule 12-4(a) dealt with vegetation clearance and applied directly to CHEL and Rule 12-5(a) dealt directly with vegetation clearance and land disturbance in the "coastal foredune". Therefore, there was a potentially confusing overlap between the rules regarding activities undertaken in CHEL and the "coastal foredune".

We note that the Operative Land and Water Regional Plan contained LM Rule 1 which made vegetation clearance and soil disturbance on coastal foredunes a discretionary activity.

Schedule A was produced at a scale that made it very difficult to determine where the rules actually applied in terms of CHEL. Throughout the hearing, we had trouble discerning how CHEL had been delineated and precisely what activities within it needed to be regulated. The supplementary evidence of Mr Kirk²⁴ indicated that soils of the coastal sand divided into three distinct groups - dunes, dry sand plains and wet sand plains. Mr Kirk stated that the CHEL map needed to include "... all the dune areas and parts of the dry sand plains so as to include these at-risk soils, including Waitarere sand, Hokio series and Foxton series".²⁵ CHEL was derived from 1:50000 scale soil maps. Because all three groups of coastal sands can and often do appear in the same paddock, the 1:50000 map is problematic as the soils are lumped into whatever is the dominant soil type in the area.²⁶

Mr Kirk also advised us that "All these soils require control of all soil disturbance activities such as cultivation, re-contouring, developing house platforms, forestry, grazing and roading."²⁷

Conversely, some submitters opposed the delineation of CHEL and the widespread regulation of activities within it. For example, Horticulture NZ advised us that "... the reports by Horizons shed little light on why coastal land

²³ Roygard, Supplementary Section 42A Report, November 2008, page 11.

²⁴ Kirk, Supplementary Section 42A Report, November 2008, page 5.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

should be included as Highly Erodible Land within the framework of the One Plan”.²⁸ Horticulture NZ sought the deletion of the definition of CHEL and the removal of CHEL from Figure A:1 (Schedule A).

On balance, we have concluded that there is an insufficient evidential basis for the delineation of CHEL as notified in Schedule A and for the regulation of the activities within it as recommended to us by Mr Kirk. We find that instead it is appropriate to revert to the situation in the Operative Land and Water Regional Plan whereby some activities are regulated in the coastal foredune.

4.6.5 Has there been an adequate cost-benefit analysis?

Many submitters were concerned about the potential effect of the notified provisions on the financial viability of hill country farmers. They sought a further analysis of the costs and benefits of the approach. Mr Burton, for example, stated “Horizons has a responsibility to demonstrate the expected costs and benefits of the One Plan to ratepayers, individual farming families, rural communities and NZ as a whole.”²⁹

We are mindful of our obligations under s 32 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. We have addressed the perception given by the notified POP that HEL encompasses much of the Region.

There was a concern expressed about the effect of WFBPs, particularly that they might somehow force people off the land. However, WFBPs are voluntary instruments and landowners are under no obligation to prepare them. Under a WFBP, there is no provision for the compulsory retirement of land and so the issue of compensation is not relevant, despite many submitters considering that to be the case.

Consequently, we have concluded that a further formal Section 32 Report is not required.

4.6.6 What activities should be regulated?

We have given careful consideration, based on the evidence, to the activities to be regulated by the land use rules in Chapter 12. Firstly, we note that under s 9(2) of the RMA (post 2009 Amendment Act) the use of land can occur as of right unless a rule in a plan states otherwise. Therefore, rules expressly allowing the use of land are not needed unless we wish to control the way in which that use of land occurs.

We also heard from many submitters regarding the types of activities that should be allowed to occur as of right. For example, Federated Farmers told us “... Federated Farmers is concerned that the POP creates an impression that many routine farm activities - such as track maintenance, clearance of vegetation regrowth, maintenance of riparian strips, soil cultivation and

²⁸ Keenan, Submission (evidence), 18 July 2008, page 10.

²⁹ Burton, Submission (evidence) 17 July 2008, page 1.

pasture renewal - are unsustainable and increase erosion".³⁰ We agree that these types of production land activities should generally not require regulatory intervention from the Regional Council. To the extent that they do contribute to accelerated erosion and sediment run-off, they can be managed through voluntary initiatives such as the Council's SLUI.

Having considered the evidence, we have concluded that permitted activity rules are appropriate to expressly allow large-scale land disturbance (including earthworks), forestry, and cultivation occurring adjacent to certain water bodies. These rules are necessary so that conditions can be imposed to ensure that, as far as is practicable, those land use activities do not result in the degradation of surface water bodies as a result of sediment run-off.

We have concluded that stock grazing, fencing, track and structure maintenance and upgrading, shelter belt maintenance, clearing dead vegetation, activities undertaken on Conservation land and NZDF land, pest plant clearance and small-scale track linkages can all be allowed to occur without regulatory intervention. These activities are therefore excluded from the Glossary definitions of vegetation clearance and land disturbance or, in the case of small-scale track linkages, from the Glossary definition of new tracking.

We decided that certain activities on Conservation land and NZDF land at the Waiouru Military Training Area can be excluded from the land use rules because those landowners already implement formal vegetation and land disturbance controls in various ways.

We have also concluded that a resource consent is not generally required for the clearance of regenerating scrub on farm land. This was a matter of significant concern to a large number of submitters. As Mr Oliver informed us "If Council decline a resource consent to clear more than 1 ha per year of regrowth scrub, the properties would become uneconomic, forcing us off our land. To keep our country free of scrub, we have to clear more than the permitted 1 ha per year."³¹ Similarly Mrs Gower told us "Scrub regrowth clearance should not be included in the restrictions that the One Plan has put in place".³² We accept those submissions, and many similar ones, and note that the issue of environmental concern is the clearance of mature woody vegetation (in this case, woody vegetation with a canopy cover over 70%, the reasons for which are discussed later) which subsequently leads to slope instability and sediment run-off. We are not concerned with the maintenance of existing pasture.

We asked the Regional Council witnesses (Mr Grant, Dr Mackay and Mr Kirk) what activities they thought should be regulated on the steeper hill country. All three advised that the removal of mature woody vegetation and tracking should be regulated. Mr Grant and Dr Mackay thought there was no need to regulate anything else whereas Mr Kirk thought grazing and fertiliser application should be regulated on Class VII and above land, as well as other activities. The response of at least two of these senior and experienced personnel provides us with additional comfort that the scope of the amended rules is appropriate.

³⁰ Federated Farmers, Submissions (evidence), 17 July 2008, para 22.

³¹ Oliver, Submissions (evidence), undated, para 12.

³² Gower, Speaking to Our Submission, page 1, 15 July 2008.

We now discuss the rules.

New Rule 12-1 is a permitted activity rule designed primarily to address large-scale earthworks. We note that PNCC³³ supported such a rule based on Rule 12-1 as notified with a threshold of 1,000 m³ as in condition (a) as notified. However, when we put that matter to Mr Bevin, the Regional Council's Senior Investigator, he advised us that the rule would be easier to implement if it referred to an area and not a volume. In that regard, Mr Bevin was comfortable with a 2,500 m² area threshold. That is consistent with the Regional Council's submission³⁴ on Rule 12-1, equating 1,000 m³ with 2,500 m². We have accepted Mr Bevin's advice and used that threshold in new Rule 12-1.

New Rule 12-2 deals with forestry and is addressed in section 4.6.7 below.

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 NZ³⁵. We note that Horticulture NZ sought:

- (a) to exclude cultivation from the definition of land disturbance;
- (b) to include a definition of cultivation from the Operative Land and Water Regional Plan;
- (c) to amend Rule 12-1 (now Rule 12-3) to include cultivation as a permitted activity subject to 3 m or 5 m exclusions adjacent to some water bodies unless sediment control methods were employed;
- (d) a new restricted discretionary activity rule for cultivation that did not meet the permitted activity conditions.

In relation to the different distances sought in (c), we concluded that it was appropriate simply to refer to 5 m rather than distinguishing between different distances for Sites of Significance - Aquatic and other rivers. We did not adopt (d) as we decided that the general default rule (new Rule 12-5 which is a discretionary activity) was suitable for that purpose.

New Rule 12-4 requires resource consents for vegetation clearance and land disturbance occurring on land with a pre-existing slope of 28° or greater (defined as a Hill Country Erosion Management Area) within 5 m of the bed of a river that is permanently flowing or has an active bed width greater than 2 m, or within 5 m of the bed of a lake, or within 5 m of a wetland. Additionally, consent is required for the clearance of 1 ha or greater per property (the issue of per property is addressed later) per 12-month period of woody vegetation where the canopy cover of woody vegetation in the area to be cleared is greater than 70%. New tracking also requires consent. Many of these terms are now defined in the Glossary, as is discussed later.

The choice of 70% was based on not preventing the clearance of regenerating scrub up to a point but requiring consent for areas that had achieved a significant canopy cover and may therefore be, or soon become, areas that would assist in slope stability and erosion control.

³³ Murphy, Statement of Evidence, 30 June 2008, para 68.

³⁴ Horizons Regional Council, submission 182-24.

³⁵ Keenan, Submission (evidence), 18 July 2008, page 8.

In terms of the areas adjacent to water bodies, we had evidence about the extent of what might technically come within the RMA definition of river as intermittently flowing water bodies and decided that, from an effects-based perspective, it was appropriate to distinguish between permanently and intermittently flowing water bodies. The defined term “active bed”, discussed later, is an integral part of the distinction that we have drawn.

We note that a range of submitters supported the concept of riparian margins where land disturbance and vegetation clearance would be avoided, or actively managed. For example Wellington Fish & Game advised us that “... Fish and Game advocates for at absolute minimum a set back distance of 6meters [sic], for small streams, with wider margins for larger streams”.³⁶ We concluded that one distance of 5 m was appropriate as it would provide adequate protection.

We have allowed (without the need for a resource consent) landowners to link existing tracks or access ways provided the linkage tracking is less than 100 m long. This reflects in part the evidence provided to us by farmers and earthmoving contractors, including PETCO Contracts, although those submitters also asked us to provide for extensions (of around 100 m) to existing tracks as a permitted activity. However, that would allow those tracks to be incrementally increased by a significant amount over time. We decided that was inappropriate in areas prone to an accelerated risk of erosion.

The matters of discretion for the new Rule 12-4 were derived from those included in Rules 12-2 and 12-3 as notified. However, we have amended them to target the specific effects of concern and the principles of the Greater Wellington Regional Council’s “Erosion and Sediment Control Guidelines for the Wellington Region”. We note that some submitters³⁷ sought that Rule 12-5 as notified (which has, in relation to activities near water bodies, in part given rise to our amended Rule 12-4) be changed to a restricted discretionary activity. New Rule 12-4 is consistent with those submissions.

Leaving aside biodiversity issues that are dealt with in Part 5 of this Volume, we wish to make it clear that general vegetation clearance and land disturbance activities that are not specifically covered by the new Rules 12-1 and 12-4 (or Rule 12-5) are not regulated under the POP and so they do not need to comply with any permitted activity conditions and they do not require resource consents. Similarly, day-to-day activities such as the clearance of regenerating scrub (namely scrub that does not fall within the scope of Rule 12-4(d)) and the eradication of pest plants do not require resource consents.

Given the targeted nature of the new rules, it is not appropriate to exempt particular parties, such as territorial authorities, from the need for resource consents for the activities that are regulated. Similarly, it is not appropriate to preclude or prevent wind farm developments on highly erodible land. Any use and development upon such land should be assessed on the merits, based on the potential adverse effects.

Based on legal advice, references to the disturbance of archaeological sites have not been amended as sought by the NZHPT and land disturbance rules

³⁶ Jordan, Verbal Presentation, undated, last page.

³⁷ For example, O’Callahan, Brief of Evidence, 30 June 2008, page 16.

do not include rua kōiwi disturbance conditions. As already noted, and as discussed further in Part 5 (Biodiversity and Heritage Hearing) of this Volume, legal advice was that the Regional Council does not have the power to control land use to manage the effects on historic heritage (except in the coastal marine area).

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 the ancillary diversion activities to those that occur on the land subject to the earthworks or to cultivation.

We took this approach in order to avoid an overlap with Chapters 13, 15 and 16 which deal with general water-related activities.

4.6.7 How should forestry be dealt with?

In response to submissions and evidence, we have decided to make forestry operations a permitted activity (new Rule 12-2). This outcome was sought by a number of submitters. For example, Hancock Forest Management asked us to review and amend the approach of the POP to plantation forestry to manage it by way of a permitted activity rule specifying performance standards. Reverting forestry to permitted activity status also reflects what Mrs Strang told us, namely that "... the benefits of plantation forestry and the role that forestry plays in addressing some of the regions [sic] problems is well understood by this Council".³⁸ We note that permitted activity status retains the status quo of the Operative Land and Water Regional Plan.

The Biodiversity and Heritage hearing included conditions (b)(iii) and (c) in Rule 12-2 and the reasons for that are dealt with in Part 5 of this Volume. The remaining discussion here deals with the other aspects of the rule.

New Rule 12-2 does not include conditions based on a "per property" or "per hectare" basis as we have concluded that it is appropriate for the rule to apply Region-wide regardless of land slope. Forestry operations that fail to meet one or more of the conditions of new Rule 12-2 default to a new discretionary activity Rule 12-5.

The conditions of new Rule 12-2 were largely based on the material provided by Mrs Strang. We are aware that Mrs Strang sought input from Brenda Baillie from Scion, Denis Hocking (Farm Forestry Association) and Ian Moore (who manages a number of smaller forests in the Region). We were particularly mindful of the forestry industry's concerns with the Forestry Stewardship Council certification process and the linking of that to consent status³⁹. We are grateful to Mrs Strang and the other parties for their assistance.

To deal with potential adverse effects, Rule 12-2 has conditions that deal with the activity not occurring on a coastal foredune; planting or replanting adjacent to certain water bodies; planting or replanting generally; water run-off controls

³⁸ Strang, Statement of Evidence, 14 July 2008, para 2.4.

³⁹ Ibid, para 3.2.

for tracks and landing sites; methods that prevent slumping of batters, cuts and side castings; felling trees away from water bodies; slash management; and the need to undertake the activity in accordance with an Erosion and Sediment Control Plan to be submitted to the Regional Council upon request. In that regard, the rule is similar to LM Rule 2 in the Operative Land and Water Plan. We note that we asked for, and received, material from the forestry submitters on the workability of the conditions of LM Rule 2. After we issued our Provisional Determination on Land, we also received further comments on the conditions that we had included in Rule 12-2. We have amended some of the conditions accordingly.

As noted above, new Rule 12-2 includes reference to an Erosion and Sediment Control Plan (a defined term) which is a plan prepared in accordance with the “Erosion and Sediment Control Guidelines for the Wellington Region” dated September 2002. These guidelines prepared by the Greater Wellington Regional Council (GWRC) adequately address forestry activities and are already used by practitioners. Because they were developed with a regulatory purpose in mind, we found the GWRC guidelines to be more directly applicable than:

- (a) the New Zealand Environmental Code of Practice for Plantation Forestry Version 1; or
- (b) the Forestry Stewardship Council’s “Scientific Certification Systems (SCS) Draft Interim Standard for New Zealand Plantation Forest Management Certification” referenced by Council officers.

Rule 12-2 does not impose restrictions on forestry adjacent to infrastructure such as bridges, as sought by some submitters, and we have concluded that there is no evidential basis for generally restricting the establishment of forestry adjacent to rivers. However, we decided that it is appropriate, for water quality purposes, to avoid planting or replanting production trees within 5 m of certain water bodies.

4.6.8 Are “per property” rules appropriate?

The revised rule framework for Chapter 12 now only refers to activities on a “per property” basis in new Rule 12-1 and Rule 12-4(d). We concluded that all of the alternatives to the “per property” formulation that were suggested to us had difficulties and we could not develop a suitable alternative formulation. We have decided that the targeted nature of the remaining rules where the “per property” term is used will not result in inequities for landowners.

4.6.9 Is it appropriate for budgetary matters to be referred to in the POP?

Budgetary matters, including the provision of farm advisory services, funding support for WFBPs, funding of environmental and compliance monitoring, the allocation of the Regional Council’s financial resources to GIS mapping, and the content of Council’s website are dealt with in Council annual plans and long term council community plans (LTCCPs) prepared under the Local Government Act, and not in the POP.

We note that Objective 5.1 no longer refers to WFBPs and in any event it is not appropriate to set targets for these voluntary instruments in the POP. Such targets are best set in Council annual plans and LTCCPs.

4.7 Other Issues

4.7.1 5.1 Scope and Background

In relation to future practices, we have amended the term “agricultural practices” to “land management practices” as that recognises that other land use activities also require management. Otherwise, we adopt the evaluation in Mr Percy’s Planning Evidence and Recommendations Report dated June 2008.

4.7.2 5.1.1 Chapter Content

We agree that it is appropriate to delete the term “agricultural practices” and refer instead to the activities covered by the amended Chapter 12 rules (vegetation clearance, land disturbance, forestry and cultivation).

4.7.3 5.1.2 Accelerated Erosion

We understand that the 2004 storm was influential in highlighting the extent of erosion that can arise on hill country land within the Region. That storm was not, however, used as a basis for formulating the amended rules in Chapter 12. The qualification to the discussion of accelerated erosion sought by Ms Baird is appropriate as erosion is in part a natural occurrence, as was highlighted to us by Dr McConchie.

The Minister of Conservation’s suggested additional wording regarding the Manawatu dune field is overly detailed and we are of the view that there was an insufficient evidential basis for the wording sought. We note that dune restoration issues are dealt with in Chapter 9 through the facilitation of coast care groups.

For other matters raised in submissions, we adopt the evaluation contained in Mr Percy’s Planning Evidence and Recommendations Report dated June 2008, except for matters covered in our evaluation of the principal issues of contention.

4.7.4 5.1.3 Land and Soil Management

We were advised that the Regional Council does not intend to form catchment groups and assign trained facilitators to them.

We have made consequential amendments to 5.1.3. In response to deleting the reference to WFBPs, we have instead inserted a reference to SLUI and the Whanganui Catchment Strategy. We have also amended the description of the activities regulated, and the order, to reflect the amended rule framework in Chapter 12. This includes a description of the permissive nature of s 9 of the RMA.

For other matters raised in submissions, we adopt the evaluation contained in Mr Percy’s Planning Evidence and Recommendations Report dated June

2008, except for matters covered in our evaluation of the principal issues of contention.

4.7.5 Issue 5-1 Accelerated Erosion

Monitoring both the state of land resources within the Region and the effectiveness of policies, rules or other methods of the POP are duties of the Council under s 35 of the RMA. The methods of implementation in Chapter 5 recognise that fact (see what is now Method 5.5 - Land Research, Monitoring and Reporting Programme).

For reasons already noted, we have accepted Ms Baird's qualification.

A refinement of the urban development issue is appropriate, particularly as adverse effects generally only arise if industry standard sediment control measures are poorly designed or implemented. In that regard, we have concluded that a permitted activity rule for large-scale land disturbance, including earthworks, is appropriate (new Rule 12-1) to include conditions that need to be complied with.

As a further consequential amendment, Issue 5-1 explicitly refers to forestry and cultivation as these are two activities that are specifically identified in the amended Chapter 12 rules. We have made other minor wording changes including amending "waterways" to "water bodies" and amending clause (b) to focus on coastal foredunes.

For other matters raised in submissions, we adopt the evaluation contained in Mr Percy's Planning Evidence and Recommendations Report dated June 2008, except for matters covered in our evaluation of the principal issues of contention.

4.7.6 Objective 5-1 Accelerated erosion and New Objective 5-2 Regulating potential causes of accelerated erosion

We have deleted clauses (b) to (e) of Objective 5-1 as notified as we decided it was more appropriate to have a single objective relating to the Regional Council's non-regulatory initiatives including SLUI. Clause (a) has been retained, but we have replaced the reference to "Highly Erodible Land" with a reference to "hill country land subject to an elevated risk of accelerated erosion". We have also replaced the reference to a "whole farm business plan" with a reference to "farm-wide sustainable land management practices to minimise accelerated erosion". The simplification of the objective was consistent with the submissions of parties such as Federated Farmers.

To complement our simplification of Objective 5-1, we have inserted a new Objective 5-2 that identifies the land use activities that are regulated by new Chapter 12 rules and the effects that are to be managed. Reference to effects on infrastructure is included there. Under the amended Chapter 12 rules, WFBPs will not exempt landowners from the need for resource consents.

For other matters raised in submissions, we adopt the evaluation contained in Mr Percy's Planning Evidence and Recommendations Report dated June

2008, except for matters covered in our evaluation of the principal issues of contention.

4.7.7 Policy 5-1 Sustainable management of Highly Erodible Land - whole farm business plans

We have taken the text from the opening paragraph of the policy as notified and recast it as a new clause (a). This part of the policy has been reworded to be consistent with amended Objective 5-1. Similarly, we have amended (b) by replacing the reference to “Highly Erodible Land” with a reference to “hill country land subject to an elevated risk of accelerated erosion”.

Policy 5-1(c) as notified indicated that “other methods” would be used if the non-regulatory approach (essentially WFBCPs) did not achieve sustainable land use (namely arrest accelerated erosion in hill country HEL). Many submitters perceived this part of the policy as the threat of future regulation. In light of the concerns expressed by submitters, we have concluded that it is not appropriate that the POP signal the potential for future regulation in this manner. Any such change of approach would need to be decided at the time based on an evaluation of alternatives under s 32 of the RMA. Accordingly, Policy 5-1(c) as notified has been deleted.

We have inserted a new clause (c) which essentially comprises the former Policy 5-2 as notified, with wording amendments to align it with the amended Objective 5-1. The amended wording for Objective 5-1 refers to “farm-wide sustainable land management practices to minimise accelerated erosion”, which does not necessarily preclude pastoral land use. However, it is acknowledged that WFBCPs may appropriately result in the voluntary retirement of some very steep land.

For other matters raised in submissions, we adopt the evaluation contained in Mr Percy’s Planning Evidence and Recommendations Report dated June 2008, except for matters covered in our evaluation of the principal issues of contention.

4.7.8 Policy 5-2 Sustainable management of other land - whole farm business plans

We have deleted Policy 5-2 and merged it, in an amended form, with Policy 5-1. It now comprises Policy 5-1(c).

For other matters raised in submissions, we adopt the evaluation contained in Mr Percy’s Planning Evidence and Recommendations Report dated June 2008, except for matters covered in our evaluation of the principal issues of contention.

4.7.9 Policies 5-3 Regulation of vegetation clearance and land disturbance on Highly Erodible Land and 5-4 Regulation of significant disturbance on land that is not Highly Erodible Land

Policy 5-3 and Policy 5-4 as notified have been deleted and we have inserted a new Policy 5-2A that addresses the respective roles of the Regional Council and territorial authorities. The wording of the first two clauses of that revised

policy were discussed and agreed between Regional Council officers and Mr Murphy representing PNCC. We are grateful for that assistance.

We have decided that it is not appropriate to single out renewable energy developments in the new Policy 5-2A. Such developments, along with other infrastructure, will require resource consents if they breach the permitted activity conditions (new Rules 12-1 to 12-3) or exceed the new consent thresholds (new Rule 12-4). The maintenance and upgrade of infrastructure will not be regulated by the Chapter 12 rules.

The matter of carbon credits is one for Government policy to deal with. The stocking rate of land is not controlled by the Chapter 12 rules. Whether or not the Regional Council operates tree nurseries is a decision to be made under the Local Government Act.

For other matters raised in submissions, we adopt the evaluation contained in Mr Percy's Planning Evidence and Recommendations Report dated June 2008, except for matters covered in our evaluation of the principal issues of contention.

4.7.10 Policy 5-5 Codes of practice and best management practices

Based on the evidence of various experts⁴⁰, we have broadened the heading of the policy to refer to standards, guidelines and environmental management plans. Clauses (a) and (b) of the policy are similarly broadened.

Given the amended rules in Chapter 12, which include making cultivation adjacent to certain water bodies a permitted activity (and not regulating it elsewhere), there is no need to refer to the "Soil and Water Management Waimarino District - Better Management Practice Guidelines" and NZGAP - Horticulture NZ's approved Supplier Programme in the rules. Similarly, as the maintenance and upgrade of infrastructure no longer requires a resource consent, there is no need to refer to NZ Transport Agency's various codes of practice and best management practices.

We have decided that it would be inappropriate to delete Policy 5-5(b). The reference to "appropriately developed and administered codes of practice" has been expanded to include standards, guidelines and environmental management plans. This facilitates the development of permissive rules, such as the revised permitted activity Rule 12-2 for forestry now included in Chapter 12 and the exclusion of certain activities on NZDF land at the Waiouru Military Training Area from the definition of land disturbance and vegetation clearance.

However, it is not appropriate to insert a new policy requiring Council to adopt "accepted COP in a timely manner" or to indicate that COP will "be recognised in the regulatory framework". The incorporation of new COPs into the rule framework can only occur by way of variations to the POP⁴¹ or, when the document is operative, by Plan changes⁴² or Plan reviews⁴³. The RMA sets out the process to be adopted for these.

⁴⁰ Including Schofield, Grace and O'Callahan.

⁴¹ Clause 16A of Schedule 1 to the RMA.

⁴² Section 65(5) of the RMA.

⁴³ Section 79(1) of the RMA.

It is not appropriate to deal with compliance matters in this part of the POP. New Chapter 11A outlines the range of enforcement options available to the Council. Compliance matters will follow their course under the provisions of Part 12 of the RMA as specific circumstances dictate.

For other matters raised in submissions, we adopt the evaluation contained in Mr Percy's Planning Evidence and Recommendations Report dated June 2008, except for matters covered in our evaluation of the principal issues of contention.

4.7.11 Method 5-1 Sustainable Land Use Initiative - Hill Country Erosion

We have numbered the methods in the POP for ease of reference and have called them methods, rather than projects, for consistency with RMA terminology.

It is not appropriate to include additional detail regarding the non-regulatory methods of implementation in the POP. The existing descriptions and the link with Policy 5-1 adequately describe the intent of the methods and this enables readers to see how the objectives and policies will be implemented. Any further detail is more appropriately dealt with in the Regional Council's annual plans and LTCCP.

We note that general farming activities are to be permitted and the Regional Council does not normally monitor the effect of permitted activities. If farming activities (namely vegetation clearance and land disturbance) do require resource consents under new Rules 12-4 or 12-5 then the need for monitoring will be decided on a case-by-case basis.

Government departments are already listed in the "Who" row of the method. We have expanded that "Who" to refer to landowners and occupiers and organisations representing farmers. The last part of the "Who" row has been deleted as it specified an outcome (as opposed to a list of participants).

We have made consequential changes to the method to refer to accelerated erosion and to remove the term HEL. We have also replaced the term "whole farm business plans" with "voluntary management plans".

4.7.12 Method 5-2 Whanganui Catchment Strategy

The actual erosion control methods implemented under the Whanganui Catchment Strategy will be determined by Regional Council staff in discussion with the partners for the method. Those methods may change from year to year and from place to place. It is not appropriate to include that level of detail in the POP.

The role the Wanganui District Council will play in implementing the method is more appropriately dealt with through discussions between the staff of the respective Councils, subject to annual plan and LTCCP processes. That role may well vary from year to year. Similarly, specific outcomes for the method will be determined through annual plan and LTCCP processes.

As the Department of Conservation (as a landowner) is a significantly interested party in this particular catchment, it is appropriate to add it to the “Who” row. We have expanded the list to refer to landowners and occupiers, relevant hapū (with iwi already being included) and “recognised organisations representing farmers, and farm consultants”. The last part of the “Who” row has been deleted as it specified an outcome (as opposed to a list of participants).

We have made consequential changes to the method to refer to accelerated erosion and to remove the term HEL. We have also replaced the term “whole farm business plans” with a “voluntary management plan”.

4.7.13 Method 5-3 Sustainable Land Use Initiative - Soil Health

It is not appropriate to delete the method as soil health is a relevant sustainable land use matter for Regional Council to be involved with, but it is envisaged that Council staff will consult with the listed “Who” parties regarding the method. The reference to “VegFed” has been amended to “Horticulture New Zealand” and the list has been expanded to include “landowners or occupiers”, consistent with the wording in other methods.

It is not appropriate to include a list of farm advisors in the POP, which is a long-term policy document. WFBCPs will remain as a voluntary instrument and farmers who elect to have them completed for their land can choose whether or not to disclose their financial information.

4.7.14 Method 5-4 Sustainable Land Use Codes of Practice and Best Management Practices

It is not appropriate to include numerical targets for the use of “sector-based best management practice[s]” in this method, which is concerned with stating Regional Council support for the development of Codes of Practice (COPs). The target of integrating COPs into the regulatory framework has been deleted as to do so requires a process to be followed under Part 3 of Schedule 1 to the RMA.

4.7.15 Method 5-5 Land Research, Monitoring and Reporting Programme

We note that ONTRACK sought to be included in several Methods including this one, but we decided that its involvement in those Methods was not necessary, given ONTRACK’s limited focus on land use issues associated with railway corridors.

4.7.16 Method 5-6 Infrastructure Protection

Some submitters sought the “Who” to include electricity and gas distribution owners and renewable energy development. Others sought that they be individually listed, such as Transit NZ and ONTRACK. Instead, we have decided to use the more encompassing term “owners of major infrastructure”.

No link to Policy 5-3 is required as that policy has been deleted.

The management and use of paper roads to control off-road vehicle use is an important matter in terms of dune protection. However, the issue of vehicles on dunes and beaches is addressed in Chapter 9 of the POP which deals with the Coast.

The description has been amended to delete the reference to infrastructure being a contributor to erosion as we conclude that to be subjective text that is unhelpful in terms of a method description.

4.7.17 Method 5-7 Education in Schools - Land

The issue of the Council's "Green Rig" project is outside the scope of the POP. It would be beneficial to include a general reference to "youth organisations" in the "Who" row as youth are the target of the method but we have also expanded the list to refer to landowners and occupiers. The last part of the "Who" row has been deleted as it specified an outcome (as opposed to a list of participants).

4.7.18 5.6 Anticipated Environmental Results

The appropriateness of the use of "hard structures on a prograding coast" as an AER indicator is relevant to Chapter 9 of the POP.

We have amended the reference to "property" to "people" and "buildings" as it is a more inclusive terminology. We have expanded the reference to "critical infrastructure" to include all infrastructure for the same reason. The references to wind erosion in the coastal environment in the AER and Indicator columns, and Schedule A in the Indicator column, have been deleted as a consequence of removing CHEL provisions and Schedule A from the POP.

We agree that the term "damage" is not appropriate and it has been deleted and replaced with other terminology.

For other matters raised in submissions, we adopt the evaluation contained in Mr Percy's Planning Evidence and Recommendations Report dated June 2008.

4.7.19 5.7 Explanations and Principal Reasons

The amended Chapter 12 rules, together with retaining the voluntary WFBPs and undertaking research, education and advocacy, provide an appropriate mix of measures. It is not appropriate to single out wind farms for specific mention. The reasons for the policies are deliberately high level and the explanation and reasons for Policy 5-1 already mention particular measures that can be used to minimise erosion.

We have added a description of Policy 5-5 as that was missing from the POP as notified. We have also made minor wording changes to reflect changes made to the preceding provisions.

4.7.20 New Objective 12-1, New Policy 12-1A and Policy 12-1

In response to the submissions of the territorial authorities (amongst others), a new Objective 12-1 has been inserted into Chapter 12. This new objective deals with the regulation of land use activities. Policy 12-1 has been retained, subject to the amendments discussed below. However, we have inserted a new Policy 12-1A which specifies the land use activities that are regulated. This is required to implement the new Objective 12-1 and provides a policy framework for the Chapter 12 rules.

We concluded that it is appropriate to remove clause (b) from Policy 12-1 because, as voluntary instruments, WFBPs should not be required as a condition of consent. Policy 12-1(f) as notified provided for effects on dwellings and sites of significance to iwi to be considered. In the context of Chapters 5 and 12, we agree with the Regional Council's submission that the relevant effects relate to sediment or erosion risk and so clause (f) has been deleted.

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 the 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.

Activities unable to comply with the permitted activity conditions default to a new discretionary activity rule (Rule 12-5). We have therefore redrafted Policy 12-1 to provide specific guidance to decision-makers exercising their discretion under Rule 12-5. In that regard, we have added clauses (fa), (fb) and (fc) to the policy. These provisions relate respectively to the new permitted activity Rules 12-1 through to 12-3, in the event that conditions of those permitted activity rules are not complied with.

We have also added a new clause (fi) to Policy 12-1 that refers to codes of practice, standards, guidelines or environmental management plans, making notified clause (c) redundant and so it has been deleted.

There is no need to specifically refer to renewable energy generation facilities in the policy as any activity requiring resource consent under the revised rule framework will be assessed on its merits. However, the appropriateness of establishing certain infrastructure or physical resources is now included in new clause (fd) of Policy 12-1. This makes the notified clause (d) redundant and so it has been deleted.

We have added clauses (fe) to (fh) to Policy 12-1 to provide guidance to decision-makers regarding the types of activities that should generally be granted consent. The clearance of regenerating scrub (new clause (fe)) was a

matter of particular concern to a number of submitters and so we have included a specific provision to deal with it.

There is no need to refer to the general “ability to remedy or mitigate adverse effects” in a new clause as that requirement is a fundamental obligation imposed on consent authorities by ss 104 and 5 of the RMA.

As is discussed next, Policy 12-1(fi), (fd) and (hi) are based on notified Policies 12-2, 12-3, and 12-4 respectively, which have been deleted.

4.7.21 Policy 12-2 Recognition of industry standards

Policy 12-2 has been deleted and the matters it referred to have been incorporated into revised Policy 12-1(fi). However, in terms of the submissions lodged, we note that the Environmental Code of Practice for River Works is a Regional Council document that is tailored to the river management activities undertaken by or on behalf of the Regional Council and it is not appropriate for it to include works undertaken by or on behalf of someone else.

4.7.22 Policy 12-3 Important and essential activities

Policy 12-3 has been deleted. We decided that the first sentence as notified was too vague. The specific matters Policy 12-3 referred to have been incorporated into revised Policy 12-1(fd) and (ff). However, in terms of the submissions lodged, we note that the maintenance and upgrade of infrastructure generally does not now require resource consent. Consequently, there is no need to provide an exemption for, or make special mention of, specific types of use and development.

4.7.23 Policy 12-4 Large-scale consents

Policy 12-4 has been deleted but the matters it referred to have been incorporated into revised Policy 12-1(hi) and certain infrastructure and physical resources are also referred to in (fd). The term “large-scale consents” is unclear and Policy 12-1(hi) now refers to “consents that are Region-wide or cover large areas for activities that are widespread and undertaken by or on behalf of a single consent holder” as that more accurately denotes the intent of the policy. We have decided that there is no need to add a new clause dealing with agricultural land use activities as the activities referred to are just examples and additional examples are not needed.

Roadside spraying is not dealt with in this part of the POP - that is a discharge to air issue covered in Chapter 14.

4.7.24 Rule 12-1 Vegetation clearance and land disturbance not covered by other rules.

Rule 12-1 as notified has been deleted.

However, in terms of submissions received, it is not appropriate to refer to numerical receiving water quality standards in a permitted activity rule dealing

with rural land use activities. This was discussed in 4.7.20 above. To provide greater clarity and certainty, the reference to “effective erosion and sediment control measures” has been amended in the new rules to refer to guidelines produced by the Greater Wellington Regional Council.

4.7.25 Rule 12-2 Production forestry

Forestry operations are now a permitted activity Region-wide. See section 4.6.6 for a discussion of the new rule framework and section 4.6.7 for a discussion of the permitted activity rule for forestry.

4.7.26 Rule 12-3 Land disturbance

Rules 12-3 and 12-4 as notified have been deleted.

The deleted rules have been replaced by new Rule 12-3, which is a permitted activity rule for cultivation, and new Rule 12-4, a restricted discretionary rule relating to Hill Country Erosion Management Areas. See section 4.6.6 for a discussion of the new rule framework.

4.7.27 Rule 12-4 Vegetation clearance

See section 4.7.26 above.

4.7.28 Rule 12-5 Vegetation clearance and land disturbance on coastal foredunes and near water bodies

Rule 12-5 as notified has been deleted. As notified, Rule 12-5 dealt with two issues:

- (a) vegetation clearance and land disturbance (including cultivation) adjacent to certain water bodies; and
- (b) vegetation clearance and land disturbance (including cultivation) on coastal foredunes.

The first of these issues is captured under the new Rules 12-1 to 12-3 (permitted activities) and Rule 12-4 (restricted discretionary activity). In terms of issue (b) above, vegetation clearance and land disturbance activities, forestry and cultivation cannot occur on the coastal foredune without a resource consent obtained under new Rule 12-5.

See section 4.6.6 for a discussion of the new rule framework.

4.7.29 Rule 12-6 Vegetation clearance and land disturbance that do not comply with permitted and controlled activity rules

Rule 12-6 as notified has been deleted. Rule 12-6 as notified was the default rule for vegetation clearance and land disturbance activities unable to comply with Rules 12-1 to 12-3 as notified. Activities unable to comply with new Rules 12-1, 12-2, 12-3 and 12-4 will default to new discretionary activity Rule 12-5.

4.7.30 12.3 Rule Guide

We have deleted the Rule Guide that had been included in the Provisional Determination for the amended rule framework as the rules are relatively self-explanatory compared to those contained in other chapters.

4.7.31 Schedule A

Schedule A has been deleted as discussed in section 4.6.3.

4.7.32 Glossary Terms - Land

The definition of HEL was discussed in section 4.6.3.

The following definitions from the Glossary as notified have been deleted:

- (a) Coastal Highly Erodible Land
- (b) Highly Erodible Land
- (c) Hillcountry Highly Erodible Land
- (d) Land disturbance
- (e) Vegetation clearance
- (f) Whole Farm Business Plan.

We have developed new or amended definitions for the following terms:

- (a) Accelerated erosion
- (b) Active bed
- (c) Cultivation
- (d) Erosion and Sediment Control Plan
- (e) Forestry
- (f) Hill Country Erosion Management Area
- (g) Land disturbance
- (h) New tracking
- (i) Slash
- (j) Track
- (k) Vegetation clearance
- (l) Woody vegetation.

We needed to define the term “active bed” of a river as we use that term in the amended rules for rivers that are not permanently flowing. We based our definition on the evidence of farmer submitters who differentiated between small streams with gravel or sandy beds and small streams with grassy beds. The submitters considered that the former could be captured by the rules but the latter did not need to be. We accept their reasoning in relation to water bodies that are not permanently flowing.

In general terms, the definition of vegetation clearance and land disturbance excludes forestry; cultivation; grazing; fencing; the maintenance and upgrade of existing infrastructure, tracks, and structures; maintaining shelterbelts; activities to protect Schedule E habitats (discussed in Part 5 (Biodiversity and Heritage Hearing) of this Volume); firewood gathering if the wood is fallen or dead and not in a Schedule E habitat; pest plant control; and certain activities on Conservation land and NZDF Force land at the Waiouru Military Training Area. We decided that these excluded activities would have effects that were

less than minor (either because of the small scale of the activities or due to the fact that they were managed under existing management regimes and management plan-style documents in the case of Conservation and NZDF lands) and so they did not need to be covered within the ambit of the rules.

Horticulture NZ⁴⁴ wanted to have the definition of vegetation clearance exclude the clearance and harvesting of agricultural and horticultural crops. We can understand that concern in the context of the rules as notified. However, under the amended rules “cultivation” is a permitted activity and vegetation clearance (which excludes cultivation) is otherwise only restricted on steep land (Hill Country Erosion Management Areas) adjacent to certain water bodies and on steep land for the clearing of certain woody vegetation. Therefore, we have concluded that the activities of concern to Horticulture NZ are no longer captured by the amended rules.

Given the amended rule structure, which has forestry and cultivation being subject to their own permitted activity rules, we found it necessary to define cultivation and we used the Horticulture NZ definition as an appropriate starting point. We also needed to define the term “forestry” and so we developed wording based on the evidence of the forestry submitters.

The definition of Whole Farm Business Plan (WFBP) has been deleted as that term is no longer used in Chapter 5. However, we note in passing that there would be no need to mandate the location of network utilities on WFBP maps, although farmers may choose to do so if they wish.

We agree that it is appropriate to denote terms defined in the Glossary with an * symbol.

There is no need to duplicate definitions from the RMA in the POP as any changes to the legislative definitions would require a Schedule 1 change to the POP to provide consistency. However, for the benefit of readers, the terms defined in the RMA have been denoted with a ^ symbol where they are used in objectives, policies, rules, the Glossary or schedules.

4.8 Conclusion

See Part 1 of this Volume.

⁴⁴ Keenan, Submission (evidence), 18 July 2008, page 5.