General Hearing

Volume 1 - Part 7

Chapters 1, 2, 3, 7, 8, 10, 11, 14, 18 and Schedules F, G and I

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7.1 Introduction

This is the decision of the General Hearing Panel (Panel) on the submissions and further submissions received on Chapters 1, 2, 3, 7, 8, 10, 11, 14, 18 and Schedules F, G and I.

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 7 of Volume 2, which sets out the summary of submissions and further submissions and our decision in respect of each; and
- Chapters 1, 2, 3, 7, 8, 10, 11, 14, 18 (excluding the indigenous biological diversity and heritage provisions of Chapter 7), the relevant Glossary definitions, and Schedule F, G and I shown in the marked-up version of the POP in Volume 3 (clean version in Volume 4).

The General Hearing Panel comprised:

- Jill White (Chairperson);
- Annette Main;
- Lindsay Burnell; and
- Rob van Voorthuysen.

The General hearing was held on 4, 8, 11, 19, 22 and 29 June 2009 and 1, 2, 9, 13, 16, 17, 20 and 28 July 2009 and 4, 5 and 10 August 2009. A Chairperson's Minute[1] was issued on 29 June 2009 setting out the Panel's preliminary views on a number of matters and asking questions of the reporting officers and submitters. Three submitters[2] 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.

7.2 Submissions and Further Submissions Received

The submitters and further submitters are listed below, showing what topics were submitted. Further submission numbers are those above number 473.

Submission No	Submitter	Topics Submitted[3]				
		A&F	AIR	NH	IEW	LNC
397	Adrian L Cookson	✓				✓
50	Affco New Zealand Ltd - Manawatu		✓			
166 and 486	AgResearch Limited		✓		✓	
36 and 485	Airways Corporation of New Zealand		✓	✓	✓	✓

1 Chairperson's Minute #8, General Hearing Queries, 29 June 2009.
2 Environment Network Manawatu, AQA and NZ Fire Service Commission.
3 Administration & Finance = A&F, Air = AIR, Natural Hazards = NH, Infrastructure Energy & Waste = IEW, Landscapes & Natural Character = LNC.

Submission No	Submitter	Topics Submitted[3]				
		A&F	AIR	NH	IEW	LNC
387	Alfred James Sivyer					✓
401	Alison Margaret Mildon	✓			✓	✓
521	Allco Wind Energy NZ Ltd	✓		✓	✓	✓
350	Almadale Produce Ltd		✓			
421	Andrew Edward Day	✓				✓
318	Anne Judith Milne				✓	
391	Arbor Management Limited				✓	
449	B S Young Ltd		✓			
454	Ballance Agri-Nutrients Ltd	✓				
96	Bert Judd			✓		
6	Brian Booth				✓	
237	Bruce & Marilyn Bulloch	✓	✓	✓		✓
360	Bruce Dennis & Elizabeth Gay Kinloch		✓			
252	Byford's Quarries Ltd	✓				
287	CPG New Zealand (formerly known as Duffill Watts Consulting Group)				✓	
181	Chris Teo-Sherrell			✓	✓	
239	Christopher Parker					✓
470	Colin Bond	✓		✓		
38	David Brice		✓			
225	David John Greenwood		✓			
382	David Leonard Hopkins	✓				
257	David Noel Argyle					✓
348	David Young		✓			
370	Denise Lorraine Stephens					✓
20 and 479	Department of Corrections		✓			
21	Desmond O'Brien		✓			
443	Diana Baird	✓			✓	
105	Eileen Mary Brown		✓			
118	Emergency Management Academy of New Zealand		✓			
356 and 529	Environment Network Manawatu	✓	✓	✓	✓	✓
385	Environment Waikato	✓		✓		
386	Environmental Working Party	✓	✓	✓	✓	✓
269 and 501	Ernslaw One Ltd	✓	✓	✓	✓	✓
426 and 533	Federated Farmers of New Zealand Inc (Federated Farmers)	✓	✓	✓	✓	✓
417 and 491	Fish & Game New Zealand - Wellington Region (Wellington Fish & Game)	✓			✓	✓
398 and 487	Fonterra Co-operative Group Limited (Fonterra)	✓	✓	✓	✓	
18	Foxton Bible Camp		✓			
224	G M & S M Deadman Partnership					✓
268 and 525	Genesis Power Ltd (Genesis)	✓		✓	✓	✓
313	George & Christina Paton	✓		✓	✓	✓
31	GNS Science			✓		
354	Gordon McKellar	✓	✓		✓	

Submission No	Submitter	Topics Submitted[3]				
		A&F	AIR	NH	IEW	LNC
14	Graeme Charles Palmer		✓			
369	Grant John Stephens	✓			✓	✓
314	Griffin Ag-Air Ltd		✓			
331	Hancock Forest Management (NZ) Ltd	✓	✓			✓
144	Heather Oliver					✓
153 and 504	Higgins Group		✓	✓	✓	
2	Hoane Titari John Wi	✓	✓		✓	
182	Horizons Regional Council (Horizons)	✓	✓	✓	✓	✓
280 and 515	Horowhenua District Council	✓	✓	✓	✓	✓
392	Horowhenua District Growers Association		✓			
232	Horowhenua Fruitgrowers Association		✓			
357 and 531	Horticulture New Zealand (Horticulture NZ)	✓	✓	✓	✓	✓
142	Ian Edward Roke					✓
59	ICHYTHUS Consulting			✓		
277 and 512	Inghams Enterprises (NZ) Pty Limited (Inghams)		✓			
371	J M & L C Whitelock & B J & C J Whitelock	✓		✓	✓	
497	James Bull Holdings Limited					✓
109	James Edmund Fahey				✓	
366	Jill Strugnell		✓			
222 and 273 and 474	Johannes Altenburg		✓		✓	✓
334	John & Judith Smith		✓			
32	John Abbott, Dean Butler, Nigel Pinn & Kerry Nixon		✓			
316	John Bent				✓	✓
28	John Francis Adams					✓
112	John Francis Fahey				✓	
108	John Percival Wooding		✓			
16	John Robert Gale		✓			
317	Kapiti Green Limited		✓			
364	Kelvin Douglas Lane	✓				
315	Kim Young and Sons Ltd		✓			
425	L M Terry		✓		✓	✓
440	Landlink Ltd	✓	✓	✓	✓	✓
388	Laura M Sivyer					✓
448	Linda Goldsmith				✓	✓
221	Lionel West					✓
220	Lionel West In Association With Property Rights in NZ				✓	
55 and 482	Livestock Improvement Corp Ltd (LIC)		✓		✓	
435	Local Forestry Industry Group		✓			
433 and 506	Manawatu Branch of NZ Green Party	✓	✓	✓	✓	✓
340 and 507	Manawatu District Council	✓	✓	✓	✓	✓
312	Manawatu Estuary Trust	✓		✓	✓	✓

Submission No	Submitter	Topics Submitted[3]				
		A&F	AIR	NH	IEW	LNC
107	Margaret & Alan Cooper				✓	
231	Mars Petcare Limited		✓			
110	Mary Gabrielle Fahey				✓	
394	Mason Stewart	✓			✓	✓
363 and 522	Meridian Energy Limited (Meridian)	✓	✓	✓	✓	✓
196	Michael John Shepherd					✓
444	Middle Districts Farm Forestry Association		✓			✓
359 and 519	Mighty River Power Limited	✓		✓	✓	✓
372 and 492	Minister of Conservation	✓	✓	✓	✓	✓
243	Ministry of Economic Development		✓			
43 and 478	Ministry of Education	✓	✓			
263	Ministry of Social Development - Central Region		✓			
122	Ministry of Social Development - Taranaki King Country & Wanganui Regions		✓			
179	Mountain Carrots NZ Ltd		✓			
226	New Zealand Archaeological Association Inc				✓	
458	New Zealand Contractors Federation	✓				
330 and 502	New Zealand Defence Force (NZDF)	✓	✓		✓	✓
415	New Zealand Fertiliser Manufacturers' Research Association Incorporated	✓				
149	New Zealand Fire Service Commission		✓			
353 and 518	New Zealand Historic Places Trust - Central Region (NZHPT)	✓			✓	
419	New Zealand Institute of Forestry	✓	✓			✓
274	New Zealand Pharmaceuticals Limited	✓			✓	
25 and 510	New Zealand Police	✓	✓			
409 and 503	New Zealand Pork Industry Board	✓	✓			
427	Ngā Pae o Rangitikei	✓	✓	✓	✓	✓
513	Ngamatea Station Ltd					✓
180	Ngati Kahungunu Iwi Incorporated (NKII)	✓	✓		✓	✓
228	Ngāti Pareraukawa	✓				
227	Noel Olsson				✓	
30	Nyree Dawn Parker					✓
19	NZ Agricultural Aviation Association		✓			
319 and 520	NZ Forest Managers Ltd	✓	✓			✓

Submission No	Submitter	Topics Submitted[3]				
		A&F	AIR	NH	IEW	LNC
306	NZ Recreational Canoeing Association				✓	
301	NZ Sawn Products		✓			
8	NZ Transport Agency (NZTA) (formerly known as Land Transport New Zealand)				✓	
336 and 498	NZ Transport Agency (NZTA) (formerly known as Transit New Zealand)		✓	✓	✓	
308	NZ Windfarms Ltd				✓	✓
285 and 476	Palmerston North Airport Ltd		✓	✓	✓	✓
241 and 481	Palmerston North City Council (PNCC)	✓	✓	✓	✓	✓
452	Paul & Monica Stichbury	✓			✓	✓
420	Pauline Joan Webb				✓	
438	Pescini Brothers		✓			
111	Peter Graham Fahey				✓	
305	PF Olsen Limited		✓			
207	Phil & Wilma Staples		✓			
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	✓	✓	✓		
251 and 526	Poultry Industry of NZ; Tegel Foods Ltd; Turks Poultry & Mainland Poultry Group	✓	✓			
272 and 528	Powerco Limited	✓		✓	✓	✓
477	Pritchard Group Limited					✓
393	Property Rights in New Zealand Inc	✓				
174	Public Health Services - MidCentral Health		✓		✓	
365	Queen Elizabeth II National Trust (QEII Trust)					✓
430	Rachel Cvitanovich	✓				
279 and 494	Rangitikei Aggregates Ltd	✓	✓	✓		
346 and 517	Rangitikei District Council	✓	✓	✓	✓	✓
379	Ravensdown Fertiliser Co-operative Limited (Ravensdown)	✓	✓			
310	Rayonier NZ Ltd	✓			✓	✓
416 and 508	Richard George Mildon				✓	✓
258 and 489	River City Port Ltd				✓	
442	Robert Leendert Schraders	✓			✓	✓
165	Robyn Phipps					✓
326	Roebyna Ann Bradfield		✓			

Submission No	Submitter	Topics Submitted[3]				
		A&F	AIR	NH	IEW	LNC
460	Royal Forest & Bird Protection Society of New Zealand Inc (Forest & Bird)	✓				✓
261	Ruahine White Water Club	✓			✓	
151 and 495	Ruapehu District Council	✓	✓	✓	✓	✓
246	Ruapehu Federated Farmers of New Zealand Inc				✓	✓
9	RunningOnEmptyNZ				✓	
380	Rural Women New Zealand				✓	
140	S G McAleese		✓			
116	Sharn Hainsworth			✓		
516	Shell NZ Ltd (Shell), BP Oil NZ Ltd (BP) & Mobil Oil NZ Ltd (Mobil)				✓	
267	Shell NZ Ltd, BP Oil NZ Ltd, Mobil NZ Ltd & Chevron NZ (Chevron)		✓		✓	
467	Shona Paewai	✓			✓	✓
10	Silver Fern Farms Ltd (formerly known as PPCS Limited)		✓			
198	Stuart McNie					✓
396	Sue Stewart	✓			✓	✓
37	Susan Mary Parker Bergo					✓
176	Sustainable Whanganui	✓	✓	✓	✓	✓
238	Tanenuiarangi Manawatu Inc	✓				
374 and 490	Taranaki / Whanganui Conservation Board	✓			✓	✓
406 and 488	Taranaki Fish & Game Council	✓				
172 and 500	Tararua District Council	✓	✓	✓	✓	✓
395 and 527	Tararua-Aokautere Guardians Inc (TAG)	✓		✓	✓	✓
461	Te Iwi o Ngäti Tükorehe Trust	✓				
230	The Aggregate & Quarry Association of New Zealand Ltd (AQA)				✓	
307	The Energy Efficiency & Conservation Authority (EECA)				✓	✓
27	The Trustees of Huatau Marae					✓
163	Tom & Linda Shannon					✓
468	Tony Paewai	✓			✓	✓
265 and 523	Transpower New Zealand Ltd (Transpower)	✓	✓		✓	✓
358 and 511	TrustPower Limited	✓	✓	✓	✓	✓
63	Tui Kay Fazakerley		✓			
115	Vector Gas Limited			✓	✓	
514	Velma June Siemonek	✓				✓
152	Visit Ruapehu	✓			✓	✓
463	W McNiven		✓			

Submission No	Submitter	Topics Submitted[3]				
		A&F	AIR	NH	IEW	LNC
12	Waikato District Health Board - Public Health Unit		✓	✓	✓	
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)				✓	✓
469	Warren Davidson	✓				
311	Water and Environmental Care Assn Inc	✓		✓	✓	✓
375	Wellington Conservation Board					✓
294	William Pehi Snr					✓
145	Winston Oliver					✓
288 and 480	Winstone Pulp International Limited (WPI)	✓	✓	✓	✓	
347	Woodhaven Gardens Ltd		✓			

7.3 Reports, Evidence and Other Material

We received Section 42A reports, evidence and submissions from:

- external consultants Dave Armour, Clare Barton, Christine Foster and Phillip Percy (planners), Andrew Curtis (air quality engineer), Clive Anstey (landscape planner);
- Council staff Peter Blackwood, Barry Gilliland, Fiona Gordon and Natasha James; and
- legal counsel John Maassen.

With regard to the submitters we heard in person from:

- Dr Terry Kelly (Chairperson) and Sally Pearce for Environment Network Manawatu (1 July 2008);
- Amber Brown (Planner with Harrison Grierson Consultants Ltd) and Cobus van Vuuren for the AQA (1 July 2008);
- Charlotte Crack (Planner with Beca Carter Hollings & Ferner Ltd), Kerry Stewart (Risk Management Coordinator) and Mitchell Brown (Assistant Fire Region Commander) for NZ Fire Service Commission (1 July 2008);
- Joan Leckie for Forest & Bird;
- Renata Apatu for Ngamatea Station Ltd;
- Rob Owen (Manager Environmental Services) and Emily Grace (Resource Management Consultant with Tonkin & Taylor) for NZDF;
- Andrew Day;
- Richard Turner (Planning Manager - Natural Resources) and Catherine Clarke (Planner and Senior Principal with Boffa Miskell) for Meridian;
- Judy Milne and Professor Vince Neall for Anne Judith Milne;
- Matt Gardner for Ruahine White Water Club ;
- Pauline Webb;
- Margaret Cooper for Alan Cooper;

- Andrew Green (Legal Counsel), David Forrest (Planner Principal with Good Earth Matters), Richard Kirby (Assets Group Manager with Manawatu and Rangitikei District Councils) and Braden Austin (Manager Community Assets with Horowhenua District Council) for Territorial Authority Collective (TA Collective);
- Pauline Love (Team Leader Strategic Development), Anne-Marie Westcott (Team Leader Environment) and Liezel Jahnke (Policy Planner) for Ruapehu District Council;
- Alison Mildon supported by Adrian Cookson, Detlef Klein, Richard Mildon, David Argyle and Rosemary Adams for TAG and others (as listed in evidence);
- Nathan Baker (Planner with Boffa Miskell), Cobus van Vuuren (Aggregates General Manager) and Richard Barton (Environmental Manager) for Higgins Group;
- Chris Keenan (Manager Resource Management and Environment), Lynette Wharfe (Consultant with Agribusiness Group) John Maber (Principal John Maber & Assoc) supported by George Sue, Chris Pescini and Gordon Sue for Horticulture New Zealand;
- John Blaikie for River City Port Ltd;
- Dr Michael Shepherd;
- Graeme Keeley (Technical Manager) supported by Stuart Sorenson (Technical/ Environmental Officer) for Silver Fern Farms formerly known as PPCS Limited;
- Winston Oliver;
- Nikola Ekdahl (Policy Analyst), Lyn Neeson (President Ruapehu Federated Farmers), Tim Matthews (Vice-President Wanganui Federated Farmers), Gordon McKellar (President Manawatu Rangitikei Federated Farmers) and Brian Doughty (President Wanganui Federated Farmers) for Federated Farmers of NZ, Ruapehu Federated Farmers of New Zealand Inc and Wanganui Federated Farmers;
- Matt Conway (Legal Counsel), David Murphy (Senior Policy Planner), Jonathan Ferguson-Pye (Senior Policy Planner) for PNCC;
- Richard Matthews (Resource Management Advisor with Mitchell Partnerships) and Sally Bagley (Environmental Co-ordinator) for Genesis;
- Lara Burkhardt (Legal Counsel), Robert Schofield (Director of Boffa Miskell), supported by Matt Park (Senior Planner) and Laura Peddie (Environmental Officer) for TrustPower;
- Elizabeth McGruddy for New Zealand Pork Industry Board;
- Libby Bayley (Planner) and John Philpott (Consulting Engineer) for Landlink;
- Jackie Egan (NZ Forest Managers Ltd), John Hura (NZ Forest Managers Ltd) and Steve Cooper (Ernslaw One) for NZ Forest Managers, PF Olsen Ltd, Hancock Forest Management (NZ) Ltd and Ernslaw One Ltd;
- Sean Newland (Sustainability Strategist) for Fonterra Co-operative Group Limited;
- John Bent;
- James Hardy (Legal Counsel), Damien Coutts (Conservator), Julian Watts (Planner) and Katy Newton (Community Relations Officer) for Minister of Conservation;
- Rose Feary (Renewable Energy Advisor) for EECA;
- David le Marquand (Director of Burton Planning Consultants Ltd) and Nicola Lawrence for Transpower;

- David le Marquand (Director of Burton Planning Consultants Ltd) for Shell, BP, Mobil and Chevron; and
- Ian Cowper (Legal Counsel), Rob Hunter (Manager Environmental Strategy & Policy), Trevor Nash (Wind Generation Development Manager), Richard Peterson (Associate and Wellington Planning Manager of Harrison Grierson Consultants Ltd), Brad Coombs (Associate, Senior Landscape Architect, and the Tauranga Manager of Isthmus Group Ltd) and supported by Michael Moodie (Assistant Legal Counsel) and Stephen Colson (Planning Manager) for Mighty River Power.

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

- Dr Alan Palmer for Anne Judith Milne;
- Graeme Mathieson (Environmental Consultant with Environmental Management Services) for AgResearch Limited;
- Lisa Hooker (Planner with Opus International Consultants) for Airways Corporation of New Zealand;
- Lisa Hooker (Planner with Opus International Consultants) for Department of Corrections;
- Corina Jordan (Environmental Officer) for Wellington Fish & Game;
- Graeme Mathieson (Environmental Consultant with Environmental Management Services) for AgResearch Ltd and LIC;
- Martin Inness (Commercial Manager) for Mars Petcare Limited;
- Lisa Hooker (Planner with Opus International Consultants) for Ministry of Education;
- Chris Freear (CEO) and John McEwing (Programme Manager) for NZ Windfarms Ltd;
- Lisa Hooker (Planner with Opus International Consultants) for New Zealand Police;
- Maurice Black (Resource Management Consultant) for NKII;
- Gemma Moleta (Planner with Harrison Grierson Consultants Ltd) for Poultry Industry of NZ; Tegel Foods Ltd; Turks Poultry & Mainland Poultry Group;
- Catherine Ross and Rachel Devine (Legal Counsel) for Powerco;
- Chris Hansen (Planning Manager with Sinclair Knight Merz) for Ravensdown;
- Darryl McMillan for Vector Gas; and
- Rob Hart (Legal Counsel) for WPI.

The evidence presented is not summarised in this decision. However, specific matters are referred to as appropriate.

7.4 Evaluation and Reasons

The following parts of this decision set out our evaluation of the submissions and our reasons for accepting or rejecting them. We have split the "General Hearing" decision into a series of sub-parts, based initially on the sequence of relevant chapters in the POP and their associated schedules. However we have grouped all of the Administration and Finance chapters[4] together, and the RPS and regional plan air chapters[5] together.

[4] Chapters 1, 2, 10A, 11, 11A and 18.
[5] Chapters 8 and 14 and Schedule G.

The evidence presented is not summarised in this decision. However, specific matters are referred to as appropriate.

Within each sub-part we firstly deal with any legal matters. This includes identifying which components of Part 2 of the RMA (ss 6, 7 and 8) we find to be relevant to that particular sub-part. We then list and evaluate what we consider to be the principal issues of contention. Thereafter, within each sub-part, we deal with remaining issues of contention, using the same section headings as were used in the respective POP chapters.

For some submissions we have concluded that no further evaluation is necessary. That situation arises for one of two reasons. Either we have already dealt with the issues raised in the submissions in our evaluation of the principal issues of contention (or under earlier chapter headings) or we have accepted the evaluation contained in the officers' reports with regard to those submissions. We state where that applies under each heading as appropriate.

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.

7.5 Administration and Finance (Chapters 1, 2, 10A, 11, 11A and 18)

7.5.1 Legal Matters

The National Policy Statement on Electricity Transmission 2008 is relevant and we have given effect to it.

In terms of Part 2 of the RMA, other than for s 5, no parts of ss 6 or 7 have specific relevance to this decision and no one drew our attention to any. We have taken into account the principles of the Treaty of Waitangi (s 8 of the RMA).

7.5.2 Principal Issues of Contention

The principal issues of contention for the Administration and Finance chapters were:

(a) Should Chapter 2 be amended?
(b) Should the POP use common catchment expiry dates?
(c) Should the POP enable financial contributions?

7.5.2.1 Should Chapter 2 be amended?

While not strictly a matter of contention, we record that Chapter 2 as notified has been amended and partially relocated. The first part of the chapter (sections 2 to 2.3 and 2.7) has been retained in the RPS part of the POP as sections 10A to 10A.4. The remaining part of Chapter 2 has been moved to a new Chapter 11A, which resides in the Regional Plan part of the POP. This reflects the fact that those latter provisions relate to matters more properly included in the Regional Plan, such as consent durations and reviews.

7.5.2.2 Should the POP use common catchment expiry dates?

Policy 2-2 as notified (now Policy 11A-5) sought to establish the Regional Council's position on consent durations. However, it was ambiguous as it purported to support durations sought by applicants (Policy 2-2(a)) and yet it also stated that expiry and review dates would be set to common catchment expiry dates listed in Table 11.2 (Policy 2-2(b)). The policy then went on to state that shorter or longer durations than those requested by an applicant would be set subject to a number of criteria (Policy 2-2(c)).

There were a number of submissions on Policy 2-2. Some submitters[6] supported the approach in whole or in part. Energy generators[7] and territorial authorities sought to be excluded from the common catchment expiry dates. Some submitters[8] were concerned that the use of common expiry dates could result in very short durations if an application were made close to the occurrence of the next date.

We reject the submissions[9] seeking the abandonment or exclusion of certain infrastructure activities from common catchment expiry dates. We find that the use of common catchment expiry dates is a sound resource management approach that is used by a number of councils. It enables cumulative effects to be assessed in an integrated manner and assists with resource allocation issues. We do not accept that common catchment expiry dates will place undue pressure on applicants with many consents in a single catchment (such as some territorial authorities) or on the consulting community[10]. We find that conversely, the use of common catchment expiry dates will promote the robust assessment of potential adverse environmental effects. Applicants will have at least ten years to prepare for the expiry of consents and the investigations required to support their renewal. Given that lead time, applicants will have no reason for being unprepared for the necessary investigations and consent renewal processes. There will also be the opportunity to undertake combined

6 Warren Davidson, NZDF, Environment Network Manawatu, Federated Farmers.
7 TrustPower and Mighty River Power.
8 Horticulture NZ.
9 Including Fonterra and some Territorial Authorities.
10 Kirby, Statement of Evidence, 17 April 2009, page 2.

investigations with other consent holders or even with the Regional Council. This has the potential to introduce economies of scale, avoid duplication of effort, and result in cost efficiencies all round.[11]

We also reject submissions that the policy unduly fetters the discretion of future decision-makers. The approach to the use of common catchment expiry dates is not mandatory and we agree that nor can it be. To clarify this fact we have inserted the word "generally" into the first line of Policy 11A-5(b). However, there is a strong presumption towards the use of common catchment expiry dates which we find to be appropriate. Notwithstanding, applicants are free to make a case for an alternative duration, including the maximum 35 years provided for under the RMA, and further policy amendments we discuss below will clarify that such an option is available.

We have deleted the term "or review date" from Policy 11A-5(b).

In terms of matters of detail, we identified that an element of Policy 11A-5(c) was *ultra vires* as notified, as in our view longer durations than those applied for cannot be granted. This was confirmed by Mr Maassen who advised[12] "... a hearing committee does not have jurisdiction to grant a term of consent longer than that applied for in the application where consent is notified" and that this "... could also be applied to a non-notified consent application". We have accordingly deleted the reference to "longer" durations.

We have amended Policy 11A-5(a) such that it applies "other than as provided for under (b)" to remove the ambiguity between the clauses described above. We also enquired of officers what the intended scope of the policy was and they advised[13] that it related only to consents granted under ss 13, 14 and 15 of the RMA and so we have included that reference in Policy 11A-5(b).

We also accepted the submission of Horticulture NZ regarding applications made within a short time of the next expiry date. We have therefore clarified that if an application is made within three years of the next common catchment expiry date then a consent duration may be granted to the next date (namely a duration of up to 13 years as opposed to three or fewer years).

We also accept that in some circumstances, where a significant investment in infrastructure has occurred (eg., hydro dams, community sewage treatment plants and municipal landfills) or where the authorised use provides a wider public benefit (eg., community water supply takes), then consent durations longer than 10 years may well be appropriate. For that reason we have amended the policy to clarify that consent durations can be extended in increments of ten years after a number of criteria have been considered, including the investment of the applicant and if the activity comprises infrastructure (as defined in the RMA) or other commonly recognised community physical resources such as sewage treatment plants and transfer stations. We find that adequately deals with the concerns of the energy generators and the territorial authorities.

[11] See also a list of advantages in the General Hearing - Preliminary Questions to Officers, undated, second page, which we accept and adopt.
[12] Maassen and Pearse, Memorandum, dated 22 July 2009.
[13] Barton and Gilliland, End of Hearing Statement, 5 August 2009, page 2.

We have amended Policy 11A-5(c) such that it provides a list of criteria that would lead a decision-maker to impose a duration shorter than that applied for. Consistent with that amended approach we moved criteria (ii) and (v) to the new list of criteria for the consideration of extended durations ((b)(i) and (ii) respectively).

Finally, we have moved Table 11.2 (now Table 11A.1) to reside directly under the amended Policy 11A-5. We deleted the fourth column of the Table as it served no useful purpose that we could discern[14].

7.5.2.3 Should the POP enable financial contributions?

We reject the submissions[15] seeking the deletion of the financial contribution provisions.

We note that Federated Farmers[16] (one of the parties which sought the deletion of the provisions) told us: "We agree that financial contributions could be considered in those rare cases where environmental effects cannot be offset, but this needs to be made very clear in the Plan that these are the circumstances where financial contributions would be used."

In that regard, we find that it is sensible to ensure that the Regional Council has the ability to use financial contributions if the circumstances of a particular situation dictate that to be a sound resource management approach. They need to be part of the available "tool box". Financial contributions are not mandatory and they can only be used for a legitimate resource management purpose. Policy 18-3(a) makes it clear that for most consent applications financial contributions are a secondary measure to be used after an assessment of whether the potential adverse effects of an activity are able to be avoided, remedied or mitigated (the routine approach). As stated in Policy 18-3(c) this may enable Council to better achieve the purpose of the RMA by granting applications that may otherwise have been declined (in the absence of an option to impose a financial contribution).

We accept that the provisions would benefit from some relatively minor refinements.

We find that in relation to infrastructure (Policy 18-1(a)) the financial contributions are to be used to fund positive effects on the environment of an equivalent scale to the adverse effects being addressed[17]. This "like for like" approach will avoid the potential for infrastructure applicants to be seen as a ready source of funding due to their perceived "deep pockets". In a similar vein, we find that Policy 18-1(e) should be deleted. Financial contributions should not be construed as "general environmental compensation". They should be linked to specific adverse effects that cannot be avoided, remedied or mitigated through the more traditional approach of imposing consent conditions requiring works or services.

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[14] Gilliland, oral advice that it was originally designed to cater for the expiry of existing consents in the Upper Manawatu River catchment.
[15] Including Ballance Agri-Nutrients, Pirie Consultants and others, Meridian and Federated Farmers.
[16] Federated Farmers, Evidence, 9 July 2009, page 9.
[17] Addressing the concerns of TrustPower.

We find that Policy 18-2 should be amended to enable the positive effects of an activity to be considered insofar as those positive effects may offset adverse effects (new Policy 18-2(b)).

We also find that Policy 18-3 should be amended to clarify that the Regional Council will not take contributions that duplicate the purpose for which a Territorial Authority may have already taken a contribution (or a development levy) (new Policy 18-3(da)).

These changes all assist with clarifying the nature and amount of contributions that may arise[18].

We note that a number of submitters[19] accepted the above amendments as they were portrayed in the Officers' Reports.

7.5.3 Other Issues

The following parts of this decision deal with matters that have not already been canvassed in the evaluation of the principal issues of contention above.

7.5.3.1 1.1 Scope and Introduction

We have amended the reference to "Horizons" to "Regional Council" as Horizons is a trade name. We have also added an explanatory note regarding the status of the Māori translations of the objectives. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports[20].

7.5.3.2 1.2 What is the One Plan?

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.3 1.3 Our Region's Challenges - the Big Four

In response to the concern of some submitters[21], we have added a sentence to indicate that, notwithstanding the focus of the POP on the Big Four issues, other resource management issues are also important and are dealt with. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.4 Issue 1: Surface Water Quality Degradation

In response to submissions[22] we have listed the rivers and catchments where water quality degradation due to the effects of intensive land use is an issue. For the other matters raised in submissions we adopt the evaluation contained

[18] As sought by WPI for example.
[19] Clarke, Supplementary Evidence, 29 June 2009, page 12, for example.
[20] Barton and Gilliland, Planning Evidence and Recommendations Report, March 2009; General Hearing - Preliminary Questions to Officers, undated; Barton and Gilliland, Supplementary Recommendations, 21 May 2009; Barton and Gilliland, Speaking Notes, 19 June 2009; Barton and Gilliland, End of Hearing Statement, 5 August 2009.
[21] Including Environmental Working Party, submission 386-2.
[22] Including Ravensdown, submission 379-4.

in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.5 Issue 2: Increasing Water Demand

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.6 Issue 3: Unsustainable Hill Country Land Use

We have amended the description of the problem to refer to "soil structure" and erosion "causing" muddy rivers in response to submissions[23]. We find that better describes the issue of concern. We have also made minor amendments to reflect wording changes made to Chapter 5 (the use of the term "risk of accelerated erosion" in preference to the term "highly erodible hill country"). For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.7 Issue 4: Threatened Native Habitats

We have amended the term "native habitats" to the term "indigenous biological diversity" to more closely align with the wording used in Chapter 7. This is a consequential change to promote consistency. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.8 1.4 Adapting to Climate Change

A number of submitters[24] considered that climate change was the most significant resource management issue facing the Region and that it should have its own section in the POP or be the fifth Big issue. We have decided that, while climate change is undoubtedly an important matter, it is not a separate resource management issue in the context of the POP. Instead, climate change may impact on a number of existing issues such as natural hazard management and water allocation. Climate change should therefore be dealt with in the context of those other resource management issues as appropriate. However, we do accept[25] that the focus should be on "planning for climate change" as opposed to "adapting to climate change" and we have reworded the section title accordingly. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.9 1.5 Working Towards a Better Future

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

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[23] Federated Farmers, submission 426-4.
[24] Including Environment Network Manawatu, Manawatu District Council, Ruapehu District Council.
[25] Manawatu District Council.

7.5.3.10 1.6 Codes of Practice and Other Good Practice Initiatives

We have amended the provisions to refer to standards produced by Standards New Zealand[26], reflecting the fact that subsequent chapters refer to some of those NZS documents. We also refer to codes of practice produced by industry groups[27], recognising that those documents can at times be usefully reflected in policies or rules. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.11 2.1 (now 10A.1) Cross-boundary Issues

In response to submissions[28], we have added several organisations to the list of organisations that the Regional Council will work with, reflecting the active role that those additional organisations currently play in resource management. We have also added a clause to the list of specific approaches that relates to working with adjoining regional councils to deal with cross-boundary issues, again to reflect existing practice[29]. In response to submissions[30] we added a further example of a cross-boundary issue, namely where developments such as a wind farm are visible across local authority boundaries. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.12 2.2 (now 10A.2) Plan Monitoring

We have made some minor amendments to more correctly refer to the LTCCP. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.13 2.3 (now 10A.3) Plan Review

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.14 11.1 to 11.1.3

There were no submissions on these provisions. However, we have made minor amendments to insert or delete text consequential to earlier decisions. We note that Table 11.1 has been updated to refer to the amended sequence of rules resulting from decisions on the rules chapters.

7.5.3.15 11.2.1 (now 11A.1) Scope and Background

We have made minor amendments to insert or delete text consequential to earlier decisions. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

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[26] As sought by Horticulture NZ.
[27] As sought by the NZ Pork Industry Board.
[28] Including NZHPT, Forest & Bird, Kelvin Lane.
[29] As sought by Environment Waikato.
[30] Grant John Stephens, Tony Paewai and others.

7.5.3.16 Objectives 11-1 (now 11A-1) and 2-1 (now 11A-2)

With regard to former Objective 2-1 (now 11A-2) we have inserted[31] the term "affected parties and submitters". We also accept[32] that the wording should not portray an assumption of long duration consents, particularly when the POP promotes the concept of common catchment expiry dates. We have reworded the second sentence of the objective accordingly. For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.17 Policy 11-1 (now 11A-1) Regional rules for restricted activities

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.18 Policies 11-2 (now 11A-2) and 11-3 (now 11A-3)

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.19 Policy 2-1 (now 11A-4) Consent conditions

We have amended the policy to include the provision[33] "the conditions are enforceable". While it is commonly understood that conditions need to be drafted so that they are enforceable (requiring a precision of language) it does not hurt to state that as a requirement. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.20 Policy 2-2 (now 11A-5) Consent durations

We have discussed this policy under the principal issues of contention.

7.5.3.21 Policy 2-3 (now 11A-6): Consent review

We reject submissions[34] to delete this policy. We find that the policy serves a useful resource management purpose by indicating that the Regional Council will generally impose s 128 review conditions on consents. This will come as no surprise to consent holders in the Region and indeed to the submitters who sought the deletion of the policy. It is common practice for Regional Councils to impose s 128 review opportunities on consents at yearly to five-yearly intervals. However, we note this is not a mandatory requirement and we have clarified this by inserting the word "generally" into the policy. This means the policy does not fetter the discretion of future decision-makers and nor should it.

We also note that the inclusion of a s 128 review condition on a resource consent does not mean that a review will actually be undertaken. It merely

[31] As sought by Wellington Fish & Game.
[32] As sought by Environmental Working Party.
[33] As sought by Horizons.
[34] Including Pirie Consultants et al, WPI, TrustPower and Mighty River Power.

provides the opportunity for a review to be undertaken if the circumstances warrant that occurring. This is indicated by the last sentence of the policy.

For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.22 Policy 2-4 (now 11A-7) Sites with multiple activities, and activities covering multiple sites

We accept that the policy should be amended to state that bundling (in terms of applying the harshest consent category across all consents) need not necessarily always apply to the individual activities. This should be considered on a case by case basis. Bundling will only generally apply when activities are not severable, such that the overall activity (or bundle of consents) cannot proceed if one of the sub-activities (or single consents) were declined. This is extremely unlikely to be the case for multiple similar activities (such as gravel extraction) undertaken at geographically disparate sites. We have amended the policy accordingly[35]. For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.23 Policy 2-5 (now 11A-8) Enforcement procedures

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.3.24 Chapter 18 Financial Contributions

We have discussed the issue of financial contributions as one of the principal issue of contention above. For the other matters raised in submissions in relation to that chapter we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.5.4 Conclusion

See Part 1 of this Volume.

7.6 Infrastructure, Energy and Waste (Chapter 3)

7.6.1 Legal Matters

There is one national policy statement relevant to this decision, namely the National Policy Statement on Electricity Transmission gazetted on 13 March 2008. The NPS makes the "need to operate, maintain, develop and upgrade the electricity transmission network" a matter of national significance.

In terms of Part 2 of the RMA, in addition to s 5, ss 7(ba), (i) and (j) have specific relevance to this decision. We have had particular regard to those matters when evaluating the submissions. We have taken into account the principles of the Treaty of Waitangi (s 8 of the RMA).

[35] As sought by Horizons.

7.6.1.1 Introducing material by reference into the RPS

A legal matter arose as to whether it was permissible to incorporate material by reference into the RPS. Part 3 of Schedule 1 to the RMA deals explicitly with incorporating material by reference into plans and proposed plans, but it is silent with regards to the RPS. Mr Maassen advised[36] that documents may not be incorporated by reference into the RPS. Therefore, we have used wording suggested by Mr le Marquand[37] and where we wish to refer to external documents (as in Policy 3-2) we refer to how giving effect to the document is an example of how the policy requirement can be met. In other parts of the chapter (as in Policy 3-9) we list guideline documents that "... may be considered appropriate" when decision-makers are dealing with specific activities (landfills in that case).

7.6.2 Principal Issues of Contention

The principal issues of contention for the Infrastructure, Energy and Waste chapter were:

(a) How should Government policy documents be referred to?
(b) How should energy be dealt with?
(c) How should potential renewable energy development be dealt with?
(d) What should the definition of infrastructure be?
(e) How should the benefits of infrastructure be addressed?
(f) How should adverse effects on infrastructure be dealt with?
(g) How should adverse effects of infrastructure be dealt with?
(h) Should the integration of infrastructure with land use be addressed?
(i) Should the protection of versatile soils be addressed?
(j) What should be the definition of operation?

7.6.2.1 How should Government policy documents be referred to?

Government has promulgated several policy documents relevant to the matters covered by Chapter 3. These include the National Policy Statement on Electricity Transmission (2008), the New Zealand Energy Strategy to 2050 (2007), the New Zealand Energy Efficiency and Conservation Strategy (2007), the New Zealand Waste Strategy (2002), and the Proposed National Policy Statement for Renewable Energy (2008). Only the first document is a NPS in terms of s 45 of the RMA.

We are aware that under s 55 of the RMA we are required to give effect to the NPS on Electricity Transmission and we have done so. However, it was pointed out to us that the other Government strategy documents may well be amended over the life of the POP. Ms Feary[38] for EECA advised "The council may therefore wish to delete reference to the specific documents but maintain reference to the underlying concepts including the 90% renewable electricity target". We accept that advice and so rather than listing the particular documents in section 3.1, we have outlined the themes they cover and the outcomes they promote (such as producing 90% of New Zealand's electricity from renewable resources by 2025).

[36] Maassen, Supplementary S42A Report, 3 July 2008, advice to the Overall Hearing.
[37] le Marquand, Statement of Supplementary Evidence, 20 July 2009.
[38] Feary, Supplementary Statement, undated, page 10.

7.6.2.2 How should energy be dealt with?

We accept the evidence of the energy sector submitters that electricity and gas are important resources whose use and development enables community well-being. That view was expressed many times by energy sector witnesses, for example Mr Turner[39] for Meridian stated "... reliable and cost-effective access to electricity is fundamental to the ongoing growth of both New Zealand and its economy".

The POP as notified combined energy and infrastructure under a single issue[40]. Having considered the submissions, we decided that energy should have its own issue description[41], highlighting a need to increase the use of renewable energy resources and enable their development[42]. This was consistent with the focus of the Government strategy documents listed above. This led to a new objective[43] focusing on the efficient end use of energy and an increase in the use of renewable energy resources. We are grateful to Mr Schofield[44] for TrustPower who recommended wording for the new Objective 3-1A which we have largely adopted.

We find that the revised issue and objective framework also gives better support to Policy 3-4 dealing exclusively with renewable energy and Policy 3-5 dealing exclusively with energy efficiency. We accept the advice of Mr Gilliland[45] that a definition of the term "energy efficiency" is required and find his recommended wording to be appropriate.

7.6.2.3 How should potential renewable energy development be dealt with?

We heard that the Region has significant potential for renewable energy development. Mr Cowper[46] for Mighty River Power submitted that he "... would go so far as to say that the Horizons Region is one of the most important regions in New Zealand in terms of the significant potential and opportunity for the development of renewable energy projects". The importance of renewable energy was commented on by a large number of submitters, in particular the energy generators. In relation to the Government's target for renewable energy generation, Ms Feary[47] for EECA advised "... for the foreseeable future all new generation will need to be renewable. Accordingly, renewable electricity projects will need to proceed in order for New Zealand to achieve the target, and a supportive central and local government regulatory framework is a crucial component to that development".

Accordingly, we find that section 3.1 of the POP should recognise the importance of renewable energy. Therefore, we have inserted Issue 3-1A and find that it should refer to the increase in renewable energy required if the use of non-renewable energy resources is to be reduced. We accept the submissions that energy efficiency and energy conservation alone are

[39] Turner, Statement of Evidence, 17 April 2009, page 4.
[40] Issue 3-1.
[41] Issue 3-1A.
[42] EECA.
[43] Objective 3-1A.
[44] Schofield, Supplementary Statement of Evidence, 16 July 2009, page 4.
[45] Gilliland, Addendum to Planning Evidence and Recommendations Report, January 2009, page 13.
[46] Cowper, Legal Submissions, 28 July 2009, pages 4-5.
[47] Feary, Evidence, undated, page 8.

insufficient to meet the Government's policy goal regarding renewable energy[48]. We also accept that the establishment of new renewable energy facilities is constrained by a number of functional, operational and technical factors[49].

We find that those themes should in turn be reflected in the issues, objectives and policies that follow. We are grateful to Ms Feary[50] for outlining the benefits from renewable energy. New Policy 3-4(a) is largely based on her advice.

7.6.2.4 What should the definition of infrastructure be?

The POP provides policy guidance on the benefits of infrastructure. Policy 3-1 as notified listed regionally specific items of infrastructure and defined them as being physical resources of regional and national importance. This raised a number of issues for submitters. Firstly there was the issue of the use of the term "infrastructure", as that term is defined in the RMA and it is not desirable for the POP to formulate a different definition. Secondly, some submitters were concerned that items of important infrastructure had been left off the list of items provided in Policy 3-1 (such as elements of the national power grid[51], gas distribution networks[52], public water supply plants[53], drainage and stormwater systems[54], and Wanganui airport[55]). Thirdly, some submitters were concerned that other physical resources of importance to local communities were not included in Policy 3-1 as notified and nor did they fit within the RMA definition of infrastructure[56].

In response to these submissions we have widened the focus of Policy 3-1 so that it includes "infrastructure" together with other physical resources of regional or national importance. We have expanded the list of specific infrastructure items to include facilities that provide wide community benefit, such as water supply and stormwater systems. These items fall within the RMA definition of "infrastructure". Additionally, we have inserted a new provision (Policy 3-1(aa)) that lists identified physical resources of regional or national importance that are not explicitly included in the RMA definition of "infrastructure". In that regard we accept the evidence of Ms Grace[57] that "...an appropriate way for the One Plan to provide for them is by treating them in the same way as infrastructure".

This approach allows us to retain the definition of "infrastructure" as it occurs in the RMA. We find that this revised approach will provide appropriate policy guidance to those making decisions on plans and consents dealing with infrastructure and the other listed physical resources.

48 For example, Meridian, submission 363-23.
49 Turner, Statement of Evidence, 17 April, pages 8-9.
50 Feary, Evidence, undated, pages 12-13.
51 Powerco, submission 272-2.
52 Powerco, submission 272-2; Vector Gas, submission 115-4.
53 Territorial authorities.
54 Some territorial authorities.
55 Sustainable Whanganui, Wanganui Federated Farmers.
56 NZDF, Some territorial authorities.
57 Grace, Speaking Notes, 29 June 2009, page 7.

7.6.2.5 How should the benefits of infrastructure be addressed?

Policy 3-1(b) as notified required the benefits of infrastructure to be taken into account. As pointed out by submitters, this was problematic as Policy 3-1(a) listed specific items of infrastructure but then defined them as being physical resources of regional and national importance (and not infrastructure). To remedy this deficiency we have widened the scope of Policy 3-1(aa) to include infrastructure and physical resources of regional and national importance.

We further amended the provisions to require decision-makers (the Regional Council and territorial authorities) to "have regard to" the benefits of those activities. The words "have particular regard to" were recommended to us by Mr Gilliland[58], but we received later advice from Mr Maassen that the phrase "have regard to" was more appropriate.

7.6.2.6 How should adverse effects on infrastructure be dealt with?

Policy 3-2 as notified sought to ensure that the adverse effects of other activities on infrastructure were avoided through the use of an exclusive list of mechanisms. Having considered the submissions[59] on this provision we find that it needs to be clarified that the policy is directed at decision-makers, namely the Regional Council and territorial authorities. The policy also needs to be amended so that the list of mechanisms is a non-exclusive list[60].

Consistent with the NPS on Electricity Transmission and our findings on the definition of infrastructure, we conclude that the policy should focus on the "operation, maintenance and upgrading" of infrastructure and other physical resources of regional or national importance. We accept the submission of Meridian[61] that this should include such physical resources that have been consented but not yet constructed. It is important that the rights granted by unimplemented consents are not derogated. We also accept the view of Transit NZ that the policy should deal with the issue of reverse sensitivity. We have inserted new clause (ba) to deal with that matter.

As a consequence of the above amendments we have inserted definitions of "maintenance" and "upgrade" in the Glossary. We derived the definitions from other regional plans and invited comments on them in our Provisional Determination. We are grateful to Mr Gilliland[62] and the TA Collective[63] in particular for their helpful comments on our definitions, which we have largely adopted.

7.6.2.7 How should adverse effects of infrastructure be dealt with?

As noted by Mr Gilliland[64], a number of submitters "vigorously opposed" Policy 3-3 as notified "... consistent with a common view that the adverse effects of infrastructure should not be dealt with in Chapter 3 because they were already considered in the resource-based chapters of the POP".

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58 Gilliland, End of Hearing Statement, August 2009, page 9.
59 Such as le Marquand for TransPower, Statement of Evidence, 5 August, 2008, pages 5-6.
60 Genesis, submission 268-3.
61 Meridian, submission 363-33.
62 Gilliland, Responses to the General Hearing Panel on the Preliminary Determination for Infrastructure and Administration, undated.
63 TA Collective, Memorandum, 29 January 2010.
64 Gilliland, Speaking Notes, 22 June 2009, page 9.

Having considered the overall theme of the submissions and the evidence we find that Policy 3-3 needs to be redrafted so that it provides clearer guidance to decision-makers, namely the Regional Council and territorial authorities. In particular, consistent with the theme of general Government policy statements on energy and infrastructure issues, we find that a more directive and enabling policy direction is appropriate.

We find that the thrust of the appropriate policy approach was captured by Mr Turner[65] for Meridian where he stated "... compromises may need to be made between local adverse effects and regional and national benefits in order to allow new development to occur". In that regard we also found the evidence of Ms Bell[66] to be of particular assistance. We concur with her advice that retaining a policy dealing with the adverse effects of infrastructure will "... enable a clear statement that the adverse effects of infrastructure may be treated a little more leniently than the adverse effects of other activities, in recognition of the importance of infrastructure" and that it would grease "... the rails for the treatment of adverse effects arising from infrastructure while ensuring there are no unacceptable effects".

We find that the revised policy should direct decision makers to allow the operation, maintenance and upgrading of existing infrastructure and physical resources of regional and national importance (Policy 3-3(a))[67]. The policy should also direct decision-makers to allow minor adverse effects from new such activities (clause (b))[68] and avoid, remedy or mitigate more than minor effects of new such activities taking into account specified criteria (clause (c))[69]. We have accordingly taken the wording suggested by Ms Bell[70] and adopted it with some minor refinements.

We are satisfied that the submissions of TrustPower and Mighty River Power in particular provide the scope for the amendments.

7.6.2.8 Should the integration of infrastructure with land use be addressed?

Transit NZ and some territorial authorities, PNCC in particular, were concerned that unplanned urban development (such as that initiated by private plan changes to district plans) could result in the piecemeal and inefficient provision of infrastructure such as roading, water supply and stormwater and wastewater services. We accept the evidence of Mr Murphy[71] for PNCC who advised "... one of the biggest issues when rezoning land, in particular greenfield sites, is the need to ensure the strategic integration of infrastructure with land use".

Accordingly, we added an additional issue[72], objective[73] and policy[74] dealing with this matter. We accept Mr Gilliland's[75] advice that this is appropriate in terms of the Regional Council's functions under s 30(1)(gb) of the RMA. Mr

65 Turner, Statement of Evidence, 17 April 2009, page 9.
66 Bell, S42A Report, 20 May 2009, page 3.
67 TrustPower.
68 TrustPower.
69 EECA, Mighty River Power.
70 Bell, S42A Report, 20 May 2009, page 4.
71 Murphy, Statement of Evidence, 30 June 2008, page 12.
72 Issue 3-1B.
73 Objective 3-1B.
74 Policy 3-3A.
75 Gilliland, Speaking Notes, 22 June 2009, page 9.

Gilliland[76] advised that "... the appropriate response by the Regional Council is to provide policy direction to territorial authorities in growth areas to recognise the need to adequately plan for infrastructure needs and to ensure that other activities that would impede the establishment of such infrastructure are not allowed".

We note that no party opposed the introduction of such provisions.

7.6.2.9 Should the protection of versatile soils be addressed?

Several submitters[77] sought that the POP provide protection to versatile soils, namely the protection of Class I and II soils, particularly but not only, from urban growth. Prof. Neall[78] advised "... these soils cover less than 6% of the Horizons region and will be essential to the prosperity of future populations of the region". Dr Palmer summarised the case for including provisions in the POP in his PowerPoint presentation[79]. He advised, "Versatile soils are scarce in NZ. In almost every case, planning could be applied so that poorer quality soils are subdivided in preference. The natural attributes of versatile soils cannot be replaced by technology without considerable cost and energy. Versatile soils grow better food more cheaply and with fewer environmental consequences. Retaining versatile soils close to urban areas lowers produce transport costs, creates local economy".

Federated Farmers supported the above submitters. Ms Ekdahl[80] advised "This [urban areas] spread needs to be managed in future to prevent our most versatile soils being buried under concrete, roads and taken out of production".

This view was not supported by the officers as they considered that[81] "... although loss of Class I and II land due to urban encroachment is a potential resource management issue, it is not currently a regional issue and is best dealt with at a territorial authority level". Other submitters[82] also opposed the insertion of Class I and II soil provisions into the POP.

We firstly note that, as identified by Mr Maassen[83], the operative RPS contains issues, objectives and policies[84] dealing with the irreversible loss of the productive capability of Class I and II land. Therefore, the question we asked ourselves was whether or not there was an evidential basis to depart from the status-quo policy position.

Mr Gilliland[85] advised us that "... data for the five year period (2003-08) indicate there appears to be a low level of loss of this land, there is low or no population growth in most of the Region and that all Territorial Authorities in the Region, except Ruapehu District Council which has very little Class I and II

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76 Gilliland, Introductory Statement and Supplementary Recommendations, 20 May 2009, page 18.
77 For example, Gordon McKellar, Pauline Webb, Prof. Vince Neall, Dr Alan Palmer, Judy Milne, Margaret and Alan Cooper.
78 Neall, Oral Submission to the One Plan, 1 July 2009, page 1.
79 Palmer, Evidence (PowerPoint), undated, slide 11.
80 Ekdahl, Evidence, 9 July 2009, page 12.
81 Gilliland, Speaking Notes, 22 June 2009, 12.
82 Including Horticulture NZ and PNCC.
83 Maassen, S42A Report Concerning the Inclusion of Provisions In Part I POP Regarding Versatile Soils, 9 March 2009.
84 Part 5, Issue L6, Objective 5, Policy 5.1.
85 Gilliland, Speaking Notes, 22 June 2009, page 12.

land, currently have appropriate policy provisions in district plans relating to Class I and II soils". We find Mr Gilliland's advice to be telling in that nearly all of the Region's territorial authorities have identified the protection of Class I and II soils as an issue to be addressed in their district plans suggesting that it is a regionally significant issue.

We note that under s 75(3)(c) of the RMA a district plan must give effect to the RPS. The absence of the existing RPS provisions relating to Class I and II soils would therefore remove an important regional policy platform underpinning the region's district plans. It would also deprive the Regional Council of necessary policy support given that Mr Gilliland[86] advised that "... the Regional Council is monitoring district plan reviews and can make submissions on this matter in the future if necessary".

In overall terms with regard to this issue, we found in, the evidence of the submitters to be more compelling than the advice of the officers. Accordingly, we find that Chapter 3 should have an issue, objective and policy framework that deals with the potential adverse effects of urban growth in particular on versatile soils. Prof. Neall[87] helpfully provided us with a list of versatile soils in the Region. We have included that list as Footnote [2] to new Objective 3-1C.

We have decided that the new provisions should be based on the current wording of the operative RPS. Territorial authorities and land use developers will be well versed in dealing with those provisions. We are satisfied that we have ample scope within the submissions to make such changes to the POP as notified and in that regard we note that the relief sought by Mrs Milne was very specific in terms of seeking the reinstatement of wording from the operative RPS.[88]

7.6.2.10 What should be the definition of operation?

Policy 3-1(b) as amended refers to the "operation" of infrastructure and physical resources of regional and national importance. There were differing views on what the term "operation" included. Some submitters sought to have it include the use of resources (such as the damming and diversion of water by hydro dams). Mr Gilliland[89] advised us "Although I consider some resource use activities can be included in the definition of operation, I do not consider it appropriate to include abstraction of water, discharge of contaminants or occupation of the Coastal Marine Area. These activities are subject to management by allocation and it is not appropriate for policy provisions to give infrastructure priority status as this could result in infrastructure "trumping" the resource uses of other activities during resource allocation and decision making processes".

With respect, we do not accept Mr Gilliland's advice. For example, water allocation occurs within the core allocations set in Schedule B or as a supplementary take above median flows. However, the Schedule B core allocations were set once existing hydro takes had been allowed for. We also note that Policy 6-19 affords priority to takes associated with public water supply and other institutional and industrial activities. Therefore, we consider

[86] Gilliland, Addendum, January 2009, page 10.
[87] Neall, Submission (evidence), 1 July 2009, page 2.
[88] Milne, submissions 318-1, 318-2, 318-3 and 318-4.
[89] Gilliland, End of Hearing Statement, August 2009, page 6.

that the theme of the POP is designed to afford priority to infrastructure in recognition of its wider public benefits and that priority extends to resource use activities associated with infrastructure.

We accepted the evidence of the energy company witnesses, for example Ms Clarke[90] for Meridian, who advised "The inclusion of this definition and limiting the scope of Chapter 3 to only "structures" associated with infrastructure and renewable energy generation facilities means the provisions in Chapter 3 do not apply to a range of resource activities that are integral to renewable energy generation facilities". Mr Peterson[91] for Mighty River Power similarly advised "In relation to electricity generation from renewable energy sources, the act of extracting and using the renewable energy resource is critical to realising the benefits from such resources. The infrastructure itself is of little value without the ability to undertake this extraction".

We find that the definition of "operation" should include resource use activities. Those activities will still be subject to the constraints of Chapters 13, 15 and 16. We also find that, given the wide scope of Chapter 3, the definition of "operation" should not be limited to structures. It should additionally include a "system, facility or installation".

7.6.3 Other Issues

The following parts of this decision deal with matters that have not already been canvassed in the evaluation of the principal issues of contention above.

7.6.3.1 3.1 Scope and Background

We have discussed a number of the matters raised in the submissions under the principal issues of contention above. For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report dated July 2008, as amended and updated by the subsequent officers' reports listed in the footnotes to this decision.[92]

7.6.3.2 Issue 3-1: Infrastructure and energy

We note that, as discussed in our evaluation of the principal issues of contention, we have amended Issue 3-1 so that there are now separate issues dealing with infrastructure and other physical resources of regional or national importance, energy, the strategic integration of infrastructure with land use, and adverse effects of urban growth on versatile soils.

We reject submissions asking for Issue 3-1 as notified to be deleted. The provision of infrastructure and the use of energy resources are clearly issues of regional if not national significance. We find that the issue should be amended to differentiate between the establishment of infrastructure and the subsequent potential for activities to constrain the operation, maintenance or upgrading[93] of that infrastructure and we accept submissions[94] to that effect.

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90 Clarke, Supplementary Evidence, 29 June 2009, page 6.
91 Peterson, Statement of Evidence, 28 July 2009, page 2.
92 Armour and Gilliland, Planning Evidence and Recommendations Report, July 2008; Gilliland, Addendum to Planning Evidence and Recommendations Report, January 2009; Gilliland, Introductory Statement and Supplementary Recommendations, 20 May 2009; Bell, S42A Report, 20 May 2009; Gilliland, Speaking Notes for Presentation to the Hearing Panel, 22 June 2009; Gilliland, End of Hearing Statement, August 2009.
93 Transpower, submission 265-3.
94 Including Meridian, submission 363-21.

For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report dated July 2008, as amended and updated by the subsequent officers' reports listed in the footnotes to this decision.

7.6.3.3 Issue 3-2: Waste, hazardous substances and contaminated sites

Several territorial authority submitters requested that the issue be recast in terms of the "potential" for land to become contaminated. We agree that the issue relates to potential contamination and that it should be reworded accordingly.

7.6.3.4 3.3 Objectives

As noted above, we accept the advice of Mr Gilliland[95] that there should be separate objectives for infrastructure and energy. The infrastructure and energy issues are distinct and they merit separate policy direction. We also accept Mr Gilliland's advice that a separate objective for energy efficiency is not necessary. As noted above, we have inserted new objectives for integrating infrastructure with land use[96], and urban growth and versatile soils.

7.6.3.5 Objective 3-1: Infrastructure and energy

As we have noted, Objective 3-1 has been split into two objectives dealing with infrastructure (Objective 3-1) and energy (Objective 3-1A). This reflects the earlier separation of those issues.

We reject submissions[97] asking for infrastructure and energy development to be subject to no special level of consideration, due to the regional and national significance of those matters.

We also reject submissions[98] asking for a specific objective on large-scale gravel extraction. We find that gravel is not a form of infrastructure, although we accept that gravel is used in building infrastructure. The issue of gravel extraction is therefore appropriately dealt with in Chapters 6 (particularly what was Policy 6-32 in the POP as notified) and 16.

7.6.3.6 Objective 3-2: Waste, hazardous substances and contaminated sites

We find that Objective 3-2(i) should be clarified so that it relates to waste generated in the region. This would avoid the unintended consequence of precluding inter-regional waste disposal facilities such as the Bonny Glen landfill in Marton. For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report dated July 2008, as amended and updated by the subsequent officers' reports listed in the footnotes to this decision.

7.6.3.7 Policy 3-1: Benefits of infrastructure

We have discussed a number of the matters raised in the submissions under the principal issues of contention above. We were unclear what Policy 3-1(c)

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95 Gilliland, Speaking Notes, 22 June 2009, page7.
96 LTNZ, PNCC.
97 Including NZ Recreational Canoeing Association, Ruahine White Water Club, TAG and others.
98 Including Higgins Group.

sought to achieve. Mr Gilliland[99] clarified this for us and he recommended some rewording. We have adopted his recommendation. For other matters raised in submissions we generally adopt the evaluation contained in the Planning Evidence and Recommendations Report dated July 2008, as amended and updated by the subsequent officers' reports listed in the footnotes to this decision.

7.6.3.8 Policy 3-2: Adverse effects of other activities on infrastructure

We have discussed a number of the matters raised in the submissions under the principal issues of contention above. For other matters raised in submissions we generally adopt the evaluation contained in the Planning Evidence and Recommendations Report dated July 2008, as amended and updated by the subsequent officers' reports listed in the footnotes to this decision.

7.6.3.9 Policy 3-3: Adverse effects of infrastructure on the environment

We have discussed a number of the matters raised in the submissions under the principal issues of contention above. For other matters raised in submissions we generally adopt the evaluation contained in the Planning Evidence and Recommendations Report dated July 2008, as amended and updated by the subsequent officers' reports listed in the footnotes to this decision.

7.6.3.10 Policy 3-4: Renewable energy

We have discussed a number of the matters raised in the submissions under the principal issues of contention above. We accept the submission of Genesis that the promotion of renewable energy over non-renewable energy should not preclude providing surety of supply in "hydro dry" years.

For other matters raised in submissions we generally adopt the evaluation contained in the Planning Evidence and Recommendations Report dated July 2008, as amended and updated by the subsequent officers' reports listed in the footnotes to this decision.

7.6.3.11 Policy 3-5: Energy efficiency

We find that the policy focus in Policy 3-5(a) should be on the efficient end use of energy. This is consistent with s 7(ba) of the RMA. For other matters raised in submissions we generally adopt the evaluation contained in the Planning Evidence and Recommendations Report dated July 2008, as amended and updated by the subsequent officers' reports listed in the footnotes to this decision.

7.6.3.12 Policy 3-6: Waste policy hierarchy

We reject submissions[100] seeking the deletion of the particular types of waste. We find the notified level of specificity provides useful guidance to decision-makers.

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[99] Gilliland, Responses to the General Hearing Panel on the Preliminary Determination for Infrastructure and Administration, undated, page 1.

[100] Various territorial authorities.

7.6.3.13 Policy 3-7: Consent information requirements - waste policy hierarchy and hazardous substances

We accept that the policy should be prefaced by a statement such that it applies where there are significant potential environmental effects[101]. However, we reject submissions[102] seeking the policy to focus on solid waste only. We received no evidential basis for narrowing the policy in that manner. Other forms of waste also have potential adverse effects if they are discharged inappropriately.

7.6.3.14 Policy 3-8: Cleanfills, composting and other waste-reduction activities

For the matters raised in submissions we generally adopt the evaluation contained in the Planning Evidence and Recommendations Report dated July 2008, as amended and updated by the subsequent officers' reports listed in the footnotes to this decision.

7.6.3.15 Policy 3-9: Landfill management

We accept the submissions[103] that the use of the listed guidelines should not be mandatory and that additional guidelines could usefully be included in the list. In that regard we found the recommended[104] qualifying wording "taking into account the applicability of these guidelines and standards in relation to the type and scale of activity proposed" to be helpful and have largely inserted that wording into the policy. We find that this qualifying wording adequately deals with the concerns of some submitters[105] that the listed guidelines should not be applied to farm dumps and offal pits.

7.6.3.16 Policy 3-10: Responsibilities for the management of hazardous substances

We find the notified split of responsibilities to be appropriate and consistent with ss 30 and 31 of the RMA.

7.6.3.17 Policy 3-11: Regulation of hazardous substances

We do not consider it appropriate to enable[106] the establishment of wood treatment plants. Such facilities should be required to seek approval on their merits, based on their actual and potential effects.

7.6.3.18 Policy 3-12: Identification of priority contaminated land

Consistent with submissions[107] to improve POP clarity, we find that Policy 3-12 should be amended to state that the responsibility for the identification of priority contaminated land is shared between the Regional Council and the territorial authorities. For land to be considered priority contaminated land the existence of contamination should be verified by site investigations[108].

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101 PNCC, submission 241-32.
102 Various territorial authorities.
103 Various territorial authorities.
104 Tararua District Council, Rangitikei District Council, Manawatu District Council, Ruapehu District Council.
105 Federated Farmers, submission 426-18.
106 Federated Farmers.
107 PNCC.
108 Manawatu District Council.

We agree that the intent of Policy 3-12(c) needs to be clarified[109]. We find that it should apply where land use change is "expected" as opposed to being "likely". An example of that would be where land is identified for future residential zoning or where a specific development is proposed[110]. We have amended the provisions accordingly.

7.6.3.19 Policy 3-13: Management of priority contaminated land

We accept Mr Gilliland's advice that the Regional Council has[111] "... functions for the investigation of land for the purposes of identifying or monitoring contaminated land under s 30(1)(ca) RMA". Therefore, we do not accept that this policy should be deleted[112]. We do accept the submission of oil companies[113] that the policy direction should focus on making sure land is suitable for its intended use through remediation or management methods, and that thereafter it remains so as checked by monitoring and controls on the activities undertaken on the land. We appreciated Mr le Marquand's evidence which expanded on the oil company submissions and provided some policy rewording suggestions.

7.6.3.20 3.5 Methods

We do not accept that a new method[114] is required to enable the Regional Council to identify where rural subdivision is likely in the next 10 years. That is a territorial authority role. The review of the Land Transport Strategy[115] is outside the scope of the POP. We were provided with no evidential basis for a suggested[116] new method regarding the Regional Council enabling a low emissions system. Meridian sought the inclusion of four new methods. We considered that the scope of those methods was either encapsulated in existing mandatory functions[117] or otherwise[118] lay outside the role of the Regional Council and so no further changes to the provisions were necessary in that regard.

For the other matters raised in submissions we generally adopt the evaluation contained in the Planning Evidence and Recommendations Report dated July 2008, as amended and updated by the subsequent officers' reports listed in the footnotes to this decision.

7.6.3.21 3.6 Anticipated Environmental Results

We accept submissions[119] asking for the first Anticipated Environmental Result (AER) to be deleted. We find that the AERs should relate to the objectives of the chapter. Consequently, we accept the submissions[120] that the AERs deal with the end use of energy and renewable energy generation. In that regard

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109 PNCC.
110 Shell, BP, Mobil and Chevron.
111 Gilliland, Introductory Statement and Supplementary Recommendations, 20 May 2009, page 18.
112 As sought by Horticulture NZ.
113 Shell, BP, Mobil and Chevron.
114 As sought by the oil companies.
115 LTNZ.
116 Powerco.
117 Having due regard to RPS policies.
118 Increasing awareness on climate change and greenhouse gas emissions.
119 Mighty River Power, Grant John Stephens and others.
120 Mighty River Power and Meridian.

we found the recommended wording provided by Ms Clarke[121] for Meridian to be helpful and have largely adopted it for insertion into the POP.

The AER relating to hill country and coastal wind erosion has been deleted as a consequence of changes made to the issues, objectives and policies.

Additional AERs are required to deal with the new issues of strategically planning urban growth, and urban growth and versatile soils, and we have inserted additional wording accordingly.

7.6.3.22 3.7 Explanations and Principal Reasons

We have inserted new text to deal with the issue of urban growth and versatile soils. The text is derived from the operative RPS. For the other matters raised in submissions we generally adopt the evaluation contained in the Planning Evidence and Recommendations Report dated July 2008, as amended and updated by the subsequent officers' reports listed in the footnotes to this decision.

7.6.4 Conclusion

See Part 1 of this Volume.

7.7 Landscapes and Natural Character (Chapter 7 and Schedule F)

7.7.1 Legal Matters

The National Policy Statement on Electricity Transmission 2008 is relevant and we have given effect to it.

In terms of Part 2 of the RMA, in addition to s 5, ss 6(a), 6(b), 6(d) and 6(e) have specific relevance to this decision. We have recognised and provided for those matters when evaluating the submissions. Section 7(c) also has specific relevance to this decision. We have had particular regard to that matter when evaluating the submissions. We have taken into account the principles of the Treaty of Waitangi (s 8 of the RMA).

7.7.2 Principal Issues of Contention

The principal issues of contention for the Landscape and Living Heritage chapter were:

(a) Should the provisions relate to outstanding natural features?
(b) Is guidance required on assessing outstanding natural features and landscapes?
(c) Should references to natural character be expanded?
(d) Should the overlap with Chapter 9 be addressed?
(e) How should adverse effects be managed?
(f) Should the Schedule F maps be retained?
(g) Should the Whanganui River and National Park be included in Schedule F?
(h) Should the Puketoi Ranges be included in Schedule F?

[121] Clarke, Statement of Evidence, 5 August 2008, page 17.

(i) Should the skyline of the Ruahine and Tararua Ranges be included in Schedule F?
(j) Should additional areas be added to Schedule F?

7.7.2.1 Should the provisions relate to outstanding natural features?

The relevant part of Chapter 7 as notified focused on landscapes and natural character. This was inconsistent with s 6(b) of the RMA which requires us to recognise and provide for "the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development".

Not surprisingly then, the issue of natural features was raised by many submitters. For example, TAG[122] sought the scope of Chapter 7 to be amended to read "... the protection of outstanding natural features and landscapes ...". We accept the many submissions which sought that the scope of the chapter should be widened to include "outstanding natural features".

This has led us to amend section 7.1.1(2), section 7.1.3, Issue 7-2, Objective 7-2, Policy 7-7 and section 7.7 Explanations and Principal Reasons, so that those provisions all refer to natural features. Interestingly, only section 7.6 Anticipated Environmental Results as notified already referred to natural features.

We also accepted the submission of Dr Shepherd that the title of the chapter should include reference to "landscapes".

7.7.2.2 Is guidance required on assessing outstanding natural features and landscapes?

Some submitters commented on the imprecise way in which Schedule F had been compiled. We understand from the officers that Schedule F was initially based on Policy 8.3 of the operative RPS which listed a number of features which were described as being both outstanding and regionally significant. The Policy 8.3 features were discussed in a Council workshop and some were inserted into Schedule F. There was no professional landscape assessment used to guide that decision-making process. The Schedule F maps were then compiled as a desktop exercise by council staff. There was no professional landscape assessment used to guide that process and no fieldwork undertaken to assess the boundaries of the features.

We find that the methodology used to develop Schedule F was deficient and it can at best be described as simplistic. The lack of robustness underpinning Schedule F was a constant source of frustration to submitters and us.

The approach we have taken to address that deficiency is to develop a new Policy 7-7A which lists criteria that will guide decision makers assessing outstanding natural features and landscapes within the Region in the future. Such specific guidance was sought by some submitters, including Federated Farmers. The policy will apply to individual developments and to the Regional Council when it considers adding features to Schedule F and to territorial authorities when they consider inserting outstanding natural features and landscapes into district plans. Policy 7-7A is accompanied by a new Table 7.2

[122] TAG, submission 395-24.

which lists natural feature and landscape assessment factors. Table 7.2 is based on the criteria established by the Environment Court in *Pigeon Bay Aquaculture Ltd and Ors v Canterbury Regional Council (C32/99),* more commonly known as the Pigeon Bay criteria. Table 7.2 was developed by Mr Clive Anstey and was generally supported by the expert witnesses we heard from.

We note, for example, that Mr Schofield[123] for Trustpower advised us "In the absence of a Region-wide landscape assessment, the application of these Environment Court recognised assessment criteria would provide much needed consistency to landscape assessments for resource consent applications and for district plan development".

7.7.2.3 Should references to natural character be expanded?

The relevant parts of Chapter 7 as notified dealt with natural character in a piecemeal fashion that was inconsistent with s 6(a) of the RMA. We accept the advice of Mrs Foster[124] who stated "... Policy 7-8 confuses the clear intention of section 6(a) of the Act that policy statements and plans should recognise and provide for two distinct matters. Firstly, *the preservation of the natural character of* the coastal environment, wetlands, lakes and rivers and their margins. Secondly (and separately), the *protection of them* (ie., the specified resources being the coastal environment, wetlands, lakes and rivers and their margins) from inappropriate subdivision, use and development. The requirement of preservation applies to natural character. The resources themselves are to be protected from inappropriate subdivision, use and development".

Accordingly, we inserted additional natural character provisions into section 7.1.3, Objective 7-2(a)(ii), Objective 7-2(c)[125] and Policy 7-8. In particular we split Policy 7-8 into two components. The residual Policy 7-8 deals with the separate RMA s 6(a) matters identified by Mrs Foster. A new Policy 7-8A deals with managing natural character by providing policy guidance to decision-makers on when subdivision, use and development is to be generally considered appropriate.

Finally, we accepted the submission of the Minister of Conservation that the provisions should include a requirement to restore and rehabilitate natural character. We understand that to be consistent with the provisions of the New Zealand Coastal Policy Statement 1994 (NZCPS). Policy 1.1.5 of the NZCPS states "It is a national priority to restore and rehabilitate the natural character of the coastal environment where appropriate". In our view restoration and rehabilitation should occur where it is appropriate and reasonably practicable. This is reflected in new Objective 7-2(c) and new Policy 7-8A(g).

7.7.2.4 Should the overlap with Chapter 9 be addressed?

Upon reading the submissions and the POP itself it became clear to us that both Chapter 7 and Chapter 9 of the POP as notified dealt with natural character in a somewhat overlapping manner. We find that Chapter 7 should explicitly deal with natural character outside of the coastal marine area.

[123] Schofield, Supplementary Statement of Evidence, 16 July 2009, page 8.
[124] Foster, End of Hearing Report, 10 August 2009, page 4.
[125] Based on the wording sought by the Minister of Conservation.

Chapter 9 should deal with natural character within the coastal marine area. Obviously, the relevant provisions need to be consistent and we have endeavoured to make them so. We worded new Policy 7-8A(a) so that the above demarcation is clear.

7.7.2.5 How should adverse effects be managed?

Several provisions within Chapter 7 as notified dealt variously with avoiding, remedying, mitigating or minimising adverse effects on natural features, landscapes and natural character.

The energy sector submitters were concerned about these provisions. They saw a directive to avoid effects in the first instance as being inconsistent with s 6 of the RMA, or as being too absolute[126], or that opportunities needed to be provided for mitigation[127]. They considered that cumulative effects did not need to be singled out as they were a subset of all effects[128]. We prefer the evidence of the officers[129] who advised "... it is open to a council to determine which mix of avoidance, remediation or mitigation it wants to adopt in exercising its functions under Part 5 of the RMA through developing RMA policy statements and plans ...". We also accept the Officer's [130] advice that "... cumulative effects that are significantly adverse can be distinguished from other effects that are non-cumulative and not significant".

We decided that any significant adverse cumulative effects on outstanding natural features and landscapes should be avoided[131]. In that regard we have inserted a new Policy 7-7(aa). We accept in principle the evidence of Ms Mildon[132] that a precautionary approach should be taken to cumulative adverse effects, but we also accept the evidence of Mrs Foster[133] who advised "I agree that the Plan should take a 'cautionary approach'. I do not agree that absolute avoidance of all cumulative adverse effects is called for on the basis of a 'precautionary approach'. I support the recommendation to set the bar at "significant adverse cumulative effects".

We decided that adverse effects in areas with a high degree of natural character should be avoided as far as is reasonably practicable[134].

We consider that where it is not reasonably practicable to avoid those effects, then the effects should be remedied or mitigated.

7.7.2.6 Should the Schedule F maps be retained?

There are no maps of outstanding natural features in the operative RPS. We have already outlined our understanding of how the Schedule F maps were developed. Mrs Foster[135] advised us "Mr Anstey acknowledges that the boundaries [of the Schedule F maps] have not been fixed following any on-

[126] Peterson, Statement of Evidence, 16 April 2009, pages 16-17.
[127] Clarke, Statement of Evidence, 20 April 2009, pages 8-10.
[128] Matthews, Statement of Evidence, July 2009, page 15.
[129] Gordon, Supplementary Officer's Report and Recommendations, Regarding Submissions on Chapter 7 and Schedule F, undated, page 32.
[130] Ibid, page 32.
[131] New Policy 7-7(aa).
[132] Mildon, Witness Statement Prepared on Behalf of TAG, undated, pages 24, 25, 40-43.
[133] Foster, End of Hearing Report, 10 August 2009, page 20.
[134] Amended Objective 7-2(b)(i).
[135] Ibid, page 29.

the-ground survey and that they are a best approximation for each feature or landscape".

A number of submitters[136] were concerned about the accuracy of the maps and whether or not they adequately delineated the identified features. Maps F:11, F:12 and F:13 dealing with the coastline of the Region were of particular concern. In some cases pre-hearing consultation had led the officers to recommend changes to the maps, particularly in regard to the Manawatu Gorge[137] and Manganui o te Ao River[138].

We queried some of the planning and landscape witnesses about whether they found the maps helpful or not. The consensus view was that the lack of robustness underpinning the delineation of the map boundaries was a distinct disadvantage. For example, Mr Murphy[139] for PNCC advised "In my opinion, the regional landscapes can stand alone as described in Table F1 and the maps could be removed if they continue to cause debate though the hearings process". Mr Watts[140] advised us orally that he would be satisfied if the maps were deleted provided the wording in Schedule F was robust.
We therefore find that the Schedule F maps should be deleted[141]. There were several submitters[142] who sought the deletion of Schedule F in whole or in part, so we are comfortable that there is scope to delete the maps.

New Policy 7-7A and its accompanying Table 7.2 can be used to map the Schedule F areas in the future should that prove to be necessary. In that regard we note that new Policy 7-7A is consistent with the view of some submitters[143] that the provisions should provide strong signals to territorial authorities on how to deal with outstanding natural features and landscapes.

7.7.2.7 Should the Whanganui River and National Park be included in Schedule F?

The Whanganui River and its river valley upstream of Aramoana was included as an outstanding and regionally significant feature in Policy 8.3(c) of the operative RPS. We also note that, as advised by the officers[144], "The Whanganui River and river valley upstream of Aramoana are also listed in the Ruapehu District Plan as an outstanding natural feature or landscape and in the Wanganui District Plan as an area of significance to be protected ...".

However, that area was not included in Schedule F as notified. We were provided with no satisfactory evidential basis for that exclusion. The officers[145] advised "I am not aware of any particular reason for the explicit exclusion of the Whanganui River from Aramoana upstream and certainly parts of the river lie within the mapped area of Figure F:3. Ms Newton's [for the Minister of Conservation] evidence provides relatively extensive and well documented

[136] For example, Ernslaw One, TAG, submission 395-22 and Ruapehu District Council submission 151-110.
[137] PNCC, submission 241-114.
[138] Winston Oliver, Ian Roke, Philipa Roke, William Pehi Snr, Heather Oliver, Stuart Mc Nie.
[139] Murphy, Statement of Evidence Chapter 7 and Schedule F, 17 April 2009, page 9.
[140] Watts, oral advice to Panel.
[141] Schofield, Statement of Evidence, 17 April 2009, page 14.
[142] Including TrustPower.
[143] Manawatu District Council, Ruapehu District Council.
[144] Gordon, Supplementary Officer's Report and Recommendations, Regarding Submissions on Chapter 7 and Schedule F, undated, page 21.
[145] Ibid.

detail regarding the various values of the Whanganui River as a landscape. Mr Anstey agrees that the Whanganui River is an outstanding landscape".

Several submitters[146] specifically requested that the Whanganui River and its river valley be inserted into Schedule F.

We find that it is appropriate to include the Whanganui River and its river valley, upstream of Aramoana, in Schedule F. The operative RPS lists the appropriate values and characteristics of that area for inclusion in Schedule F.

7.7.2.8 Should the Puketoi Ranges be included in Schedule F?

The skyline of the Puketoi Ranges was included as an outstanding and regionally significant feature in Policy 8.3(y) of the operative RPS. However, the skyline of the Puketoi Ranges was not included in Schedule F as notified. We were provided with no satisfactory evidential basis for that exclusion. Submitters[147] requested that the skyline of the Puketoi Ranges be inserted into Schedule F. Dr Shepherd presented us with evidence regarding the Puketoi Range. He called it a "textbook example of an asymmetrical landform termed a cuesta, with steep scarp and extensive dip slopes", and karst, dolines and bogaz landforms. He concluded[148] "There can be no doubt that the Puketoi Range is a regionally outstanding landscape, possibly one of national significance, but it is not included in Schedule F". We heard no evidence to the contrary.

We find that it is appropriate to include the skyline of the Puketoi Ranges in Schedule F. The operative RPS lists the appropriate values and characteristics of that area for inclusion in Schedule F.

7.7.2.9 Should the skyline of the Ruahine and Tararua Ranges be included in Schedule F?

Schedule F as notified included the skyline of the Ruahine Ranges (item (h)) and the Tararua Ranges (item (i)). This was of concern to energy sector submitters who feared that the inclusion of these features could preclude future wind farm developments.

Mr Anstey recommended that the features be limited to the respective Forest Park areas. This would be consistent with Policies 8.3(o) and 8.3(q) of the operative RPS. We find that to be appropriate in part. However, Policies 8.3(n) and 8.3(p) of the operative RPS additionally refer to the skylines of the Ruahine and Tararua Ranges respectively and so we do not consider it appropriate to delete reference to those skylines.

We queried the officers regarding the fact that a number of wind farms already existed on the skylines of those ranges and whether that would compromise the listing of the skylines in Schedule F. Mr Anstey[149] advised "The presence of the turbines does not mean the whole entity of the skyline no longer qualifies for inclusion in Schedule F. Indeed, it adds to the significance of what is left undeveloped and would probably limit further development where

[146] Including the Minister of Conservation, Newton, Statement of Evidence, undated, pages 6-7.
[147] Including Michael Shepherd and Grant John Stephens.
[148] Shepherd, Submission (evidence), undated, pages 23.
[149] Foster, End of Hearing Report, 10 August 2009, page 34.

there are turbines". We note that when we put that issue to Brad Coombs[150], he orally agreed that an area can still comprise an outstanding natural feature or landscape even if it has wind turbines within it. Therefore, we accept Mr Anstey's opinion and in terms of managing cumulative effects, we find it imperative that the skylines of the Ruahine and Tararua Ranges be listed in Schedule F.

Mr Anstey[151] also advised us "Mr Coombs was of the view that 'sufficient distance', as used in the definition of 'skyline', was open to a wide range of interpretations. We were unable to agree an alternative means by which the intent of the policy might be achieved. In my view, the policy is clear: when you are seeing one of the highest ridges in the Tararua-Ruahine ranges, you are clearly at a 'sufficient distance'. The test is what is seen, rather than the distance from which it is seen." We prefer the evidence of Mr Anstey on this matter to that of the various energy sector witnesses.

Therefore, we reject the submissions asking for the skylines of the Ruahine and Tararua Ranges to be excluded from Schedule F. We also reject submissions[152] seeking that the reference in Schedule F be limited to "the very highest skyline". We prefer the evidence of Mr Anstey[153] who advised us "Importantly, the skyline is not limited to the highest ridge. The implication is that any ridgeline when seen against the sky becomes a feature to be protected from inappropriate subdivision, use and development. I support this more inclusive and flexible approach to skylines, an approach which acknowledges that the skyline moves with the viewer and many ridgelines in an outstanding landscape can assume prominence when viewed against the sky".

We find that it is appropriate to include the skyline of the Ruahine and Tararua Ranges in Schedule F. The operative RPS lists the appropriate values and characteristics of those areas to use in Schedule F.

7.7.2.10 Should additional areas be added to Schedule F?

Some submitters, particularly the Minister of Conservation, sought the addition of areas or features to Schedule F. In that regard we note that Policy 8.3 of the operative RPS included 27 features. Schedule F as notified had only 13 features. Based on the evidence we heard we consider it likely that a large number of the omitted Policy 8.3 features are likely to be regionally, if not nationally, outstanding natural features and landscapes.

Unfortunately, we did not feel that we had sufficient scope or evidential certainty to add all of those operative RPS features to Schedule F. Mr Anstey[154] advised that many of the omitted features could not be listed without further consultation with the respective landowners and iwi, without the gathering of further information, or without further detailed mapping. Also, when the Minister of Conservation's representatives appeared at the hearing they generally supported the officers' position in that regard. Counsel[155] for the Minister advised "... the Department now accepts that, for the submission

[150] For Mighty River Power.
[151] Anstey, Supplementary Report and Recommendations, 15 May 2009, page 11.
[152] Including Catherine Clarke for Meridian Energy, Supplementary Evidence, 29 June 2009, page 11.
[153] Anstey, S42A Report, undated, page 14 para 34.
[154] Anstey, Supplementary Report and Recommendations, 15 May 2009, page 11.
[155] Hardy, Outline of Submissions, 17 July 2009, page 7.

points not accepted, further consultation with affected parties (including landowners and iwi) would be desirable before identifying such features/landscapes as 'outstanding'".

Consequently, we have added a Note to the end of Schedule F that lists the features we consider most likely to be regionally, if not nationally, outstanding. We trust that the Regional Council will either consult with affected landowners or undertake further studies of those areas and include them in Schedule F by way of a Plan Change as soon as possible.

7.7.3 Other Issues

The following parts of this decision deal with matters that have not already been canvassed in the evaluation of the principal issues of contention above.

7.7.3.1 7.1.1 Scope

We have amended the provisions to more accurately recognise and provide for the matters in ss 6(a) and 6(b) of the RMA. The changes made are consistent in part with those sought by Meridian. For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Reports and subsequent officers' reports listed in the footnotes to this decision.[156]

7.7.3.2 7.1.3 Landscapes and natural character

We accept that an expanded description of outstanding natural features and landscapes is desirable, consistent with the views of some submitters[157]. As sought by the Minister of Conservation, we have added provisions describing how Schedule F was developed, as that will be important to the future implementation of the POP. Similarly we have also added text describing natural character[158] so that decision-makers can more properly assess potential adverse effects on it.

7.7.3.3 Issue 7-2: Landscapes and natural character

We have amended the provisions to delete the specific reference to the Tararua and Ruahine Ranges[159] and to include a reference to cumulative effects[160]. We did not feel it was appropriate to single out one feature in that way. We find that cumulative effects are an important aspect of the overall consideration of adverse effects on natural features. For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Reports and subsequent officers' reports listed in the footnotes to this decision.

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[156] Gordon, Planning Evidence and Recommendations Report with Summary of Submissions, February 2009; Maassen, Section 42A Report, 27 February 2009; Maassen Supplementary Section 42A Report, 18 May 2009; Anstey, Section 42A Report, undated; Gordon, Supplementary Officer's Report and Recommendations, undated; Anstey, Supplementary Report and Recommendations, 15 May 2009; Gordon, Preliminary Questions from Hearing Panel, 4 June 2009; Gordon, Officer's Response to the Hearing Panel Q4, 16 July 2009; Gordon, Summary of Key Points: Presentation Notes, 4 June 2009; Foster, End of Hearing Report, undated.

[157] Including Grant John Stephens and others.

[158] As also sought by the Minister of Conservation.

[159] Manawatu District Council.

[160] As sought by Manawatu Branch of NZ Green Party.

7.7.3.4 Objective 7-2: Landscapes and natural character

For the matters raised in submissions and not dealt with in the principal issues of contention we adopt the evaluation contained in the Planning Evidence and Recommendations Reports and subsequent officers' reports listed in the footnotes to this decision.

7.7.3.5 Policy 7-7: Outstanding landscapes

We have amended Policy 7-7 so that it refers to regionally outstanding features. This was sought by a number of submitters[161]. We have deleted Policy 7-7(b) as notified as the matter of cumulative effects is now dealt with in new Policy 7-7(aa). We have also deleted Policy 7-7(c). We note that Genesis sought the deletion of Policy 7-7 in its entirety and, while we do not consider that to be appropriate, we find that Policy 7-7(c) should be deleted as we accept the advice of Mrs Foster[162] who stated "It is my opinion that no reference to the policies in Chapter 3 is required in Policy 7-7 either as a note or as a matter specified within the policy .... The provisions of Chapter 3 stand alongside those of Chapter 7. I am in no doubt that they would be referred to and fully canvassed in an application and in evidence in any hearing of a proposal involving infrastructure in or near any of the features that are the focus of Chapter 7". We note that Mr le Marquand[163] echoed Mrs Foster's opinion when we queried him orally on that same matter, as did Mr Peterson[164]. We therefore reject the submissions[165] calling for additional cross-referencing to Chapter 3.

For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Reports and subsequent officers' reports listed in the footnotes to this decision.

7.7.3.6 Policy 7-8: Natural character

We have inserted a new Policy 7-8A to provide guidance on when subdivision, use and development should be generally considered appropriate. In doing so we have largely accepted the advice of Mr Peterson[166] for Mighty River Power who suggested splitting Policy 7-8 into two parts. In his view the first part should deal with encouraging restoration and the second part should deal with "inappropriate" development. However, we note that we found it more useful to include criteria for what would constitute "appropriate" development.

We have deleted the reference to solely making decisions on resource consents as sought by Palmerston North City Council. We accept that the scope of the POP is wider than that and extends to regional and district plan-making.

We have amended the former Policy 7-8(e) (now 7-8A(b)) to refer to "functional necessity" so as to be consistent with the provisions of Chapter 9[167]

[161] Including Federated Farmers.
[162] Foster, End of Hearing Report, 10 August 2009, page 9, paras 24-25.
[163] le Marquand, oral response to Panel.
[164] For Mighty River Power.
[165] Transpower, Mighty River Power, Trustpower, Powerco, Meridian.
[166] Peterson, Statement of Evidence, 16 April 2009, page 19, para 89.
[167] For example, Policy 9-4(a).

as notified. We also accept the evidence of Mrs Foster[168] who advised "I also suggest that the assessment of 'need' for the location proposed should deliberately inquire into the question of whether reasonable alternatives exist".

For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Reports and subsequent officers' reports listed in the footnotes to this decision.

7.7.3.7 Policy 7-9: Public access

We accept the submissions that asked for Policy 7-9(a) to recognise that public access may be restricted over private land[169] or as necessary to provide security[170] for consented activities. We find that it is only reasonable that access be restricted in those circumstances.

7.7.3.8 7.5 Methods

We have inserted a new Method 7-7A, titled "Consistent Landscape Assessment". This is consequential to developing new Policy 7-7A and Table 7.2. For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Reports and subsequent officers' reports listed in the footnotes to this decision.

7.7.3.9 7.6 Anticipated Environmental Results

We have amended the AER to refer to changes authorised by resource consents, as a consequential change and also to be consistent with other chapters. For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Reports and subsequent officers' reports listed in the footnotes to this decision.

7.7.3.10 7.7 Explanations and Principal Reasons

We have made consequential amendments to the provisions to align them with changes made to the objectives and policies. For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Reports and subsequent officers' reports listed in the footnotes to this decision.

7.7.3.11 Schedule F

We have deleted the third column of Schedule F as notified that was labelled "Other Values". We found that column to be confusing. We note that Mrs Foster[171] advised us "It appears that the text in columns 2 and 3 of Table F1 has been achieved by splitting the description of characteristics and values from the operative RPS and assigning that to either column 2 or 3. Mr Anstey agrees that there is no need for the distinction. I support the combining of columns 2 and 3".

[168] Foster, End of Hearing Report, 10 August 2009, page 13.
[169] QE II Trust, Sivyer, Day.
[170] Landlink.
[171] Foster, End of Hearing Report, 10 August 2009, page 28.

It was not clear to us if Schedule F formed part of the RPS or part of the Regional Plan. Ms Gordon[172] advised us "I understand that Schedule F ... is considered to form part of the RPS (not the plan) ...". We agree that Schedule F should form part of the RPS as that is consistent with the operative RPS, which lists regionally significant features in Policy 8.3.

7.7.4 Conclusion

See Part 1 of this Volume.

7.8 Air (Chapters 8 and 14 and Schedule G)

7.8.1 Legal Matters

The National Policy Statement on Electricity Transmission 2008 is relevant and we have given effect to it.

The Resource Management (National Environmental Standards Relating to Certain Air Pollutants, Dioxins, and Other Toxics) Regulations 2004 (NESAQ) are relevant pursuant to s 66(1) of the RMA.

There are no national policy statements relevant to this decision.

In terms of Part 2 of the RMA, in addition to s 5, ss 7(b), (c) and (f) have specific relevance to this decision. We have had particular regard to those matters when evaluating the submissions. We have taken into account the principles of the Treaty of Waitangi (s 8 of the RMA).

7.8.2 Principal Issues of Contention

The principal issues of contention for the Air chapters were:

(a) How should the provisions be amended to be consistent with the NESAQ?
(b) What should the description of sensitive areas include?
(c) How should the agrichemical rules relate to GROWSAFE® requirements?
(d) How should 1080 discharges be dealt with?
(e) How should at-risk habitats be dealt with?
(f) How should asphalt plants be dealt with?

7.8.2.1 How should the provisions be amended to be consistent with the NESAQ?

Fonterra submitted that the provisions should be revised to be consistent with the NESAQ and in particular that they be revised to incorporate the "significance test". We accept that submission. We therefore examined the NESAQ and made enquires about them from the officers and various submitters.

We concluded that Policy 8-5(a) and (b) required minor rewording to refer to situations that were in breach of the NESAQ. In terms of the "significance test" highlighted by Fonterra, we decided that (c) required amending to refer to

[172] Gordon, Preliminary Questions from Hearing Panel to be Addressed During Officer Report Presentation, 4 June 2009, page 5.

discharges of fine particles that "... are likely to increase significantly the concentration of fine particles [PM_{10}] in those [gazetted] airsheds...". This accurately reflects the wording of the NESAQ.

We also considered that the provisions as notified were inconsistent with regulations 18 and 19 of the NESAQ. We therefore inserted new Policy 8-7 which implements those particular provisions.

We are grateful to Fonterra for bringing the matter of the NESAQ to our attention.

7.8.2.2 What should the description of sensitive areas include?

Policies 14-1(e) and 14-2(d) as notified referred to "sensitive areas". The Ministry of Education sought that "education facilities" be added to the list of areas, which we decided was appropriate. Horticulture NZ sought that the list of sensitive areas be amended to include those listed in NZS 8409:2004 Management of Agrichemicals, Appendix G4 (NZS 8409:2004). Horticulture NZ also sought that Policy 14-2(d) refer to horticultural crops.

We find it appropriate to align Policy 14-1 with the provisions of NZS 8409:2004. That New Zealand Standard is a primary source of control over agrichemical spraying operations. We accept the advice of Mr Keenan[173] that the New Zealand Standard (NZS) "... represents best practice, which all agrichemical users should be implementing". Therefore, we decided to amend the terms in Policy 14-1(e) so that they used the same wording as is found in Appendix G4 of NZS 8409:2004.

Various territorial authorities had sought that solid waste and roading activities were not deemed to be sensitive areas. To partially accommodate that concern we amended Policy 14-1(e)(ii) and 14-2(d)(ii) to refer to public places "... where people congregate". This is consistent with NZS 8409:2004. However, we do not accept that public roads should be exempted from the list of sensitive areas. We note[174] that the Operative Regional Air Plan includes public roads in its definition of sensitive receiving environments. Public roads, catering as they do to pedestrians and cyclists, are prime examples of sensitive areas where the adverse effects of discharges to air should be avoided. We also note that roads are included in Appendix G4 of NZS 8409:2004 and that Horticulture NZ specifically sought that the term "public road" be added to Policy 14-1(e).

Horticulture NZ, in its evidence[175] to the Hearing, provided alternative wording for the term "horticultural crops", having considered further what sort of crops were actually the most sensitive to spray drift. We have adopted the Horticulture NZ wording in Policy 14-2(d)(vii).

For the sake of consistency we amended Policy 14-2(d) to use the same terminology as 14-1(e).

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[173] Keenan, Submission (evidence) - Air, 9 July 2009, page 5.
[174] Barton and James, Responses to the General Hearing Panel on the Preliminary Determination for Air, undated, page 1.
[175] Keenan, Submission (evidence) - Air, 9 July 2009, page 9.

7.8.2.3 How should the agrichemical rules relate to GROWSAFE® requirements?

Rule 14-2 as notified referred to the GROWSAFE® Certificate and the National Certificate in Agrichemical Application. Several submitters[176] suggested that those references were incorrect. The officers caucused with Ms Wharfe for Horticulture NZ and as a result we were provided with suggested revised wording[177]. We are grateful for that assistance and have reworded the provisions accordingly.

We note that Federated Farmers opposed the reference to GROWSAFE® and sought that the provisions allow that[178] "An equivalent qualification from an accredited provider is also acceptable". However, when we verbally queried the Federated Farmers representatives they advised that there currently was no such equivalent qualification.

7.8.2.4 How should 1080 discharges be dealt with?

Rules 14-1 and 14-2 as notified dealt respectively with the small scale and widespread application of agrichemicals into air, onto land and into water. However, the rules included conditions that required compliance with various sections of NZS 8409:2004 Management of Agrichemicals. In response to submissions[179] we amended the definition of agrichemical to be consistent with that used in NZS 8409:2004 and that definition specifically excludes vertebrate pest control products and oral nutrition compounds.

We decided to amend the definition of agrichemical as it seemed incongruous to require compliance with NZS 8409:2004 in terms of avoiding, remedying or mitigating the potential adverse effects of discharges of agrichemicals, but to then use a definition of agrichemical that differed from that in the NZS.

We were aware that amending the definition of agrichemical in this manner would mean that the discharge of sodium monofluoroacetate (1080), which is a vertebrate pest control product, would not be permitted under Rules 14-1 and 14-2. It would require a discretionary activity consent under Rules 14-13 (discharge to air) and 13-27 (discharge into water or onto or into land).

Well after the close of the General Hearing and the release of the Provisional Determination on Chapters 8 and 14 we received a memorandum[180] from the officers, supported by the Department of Conservation, which advocated the introduction of a new permitted activity rule to expressly allow the discharge of vertebrate pest control products into air and onto land. The view of the officers and the Department of Conservation officials was that Rules 14-1 and 14-2 as notified were always intended to cover the discharge of 1080 and there were no submissions seeking a change to that permitted activity status. The rationale for that view was that the definition of agrichemical as notified did not exclude vertebrate pest control products.

We are not convinced by that argument.

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[176] Including NZ Agricultural Aviation Association and Horticulture NZ.
[177] Barton and James, End of Hearing Statement for the General Hearing - Air (undated), pages 3 and 4.
[178] Federated Farmers, Evidence, 9 July 2009, page 19.
[179] Horticulture NZ.
[180] Barton and James, Note to the General Hearing Panel Regarding Rules 14-1, 14-2 and 14-3, undated.

Firstly, we note that in the operative regional plans the discharge of 1080 impregnated bait to land is expressly permitted by DL Rule 11[181] which is titled "aerial application of sodium monofluoroacetate (1080)". This is despite the fact that the operative Regional Air Plan (RAP) contains two rules (RAP Rules 14 and 15) that are very similar to POP Rules 14-1 and 14-2. The POP contains no rule that is equivalent to, or even similar to, DL Rule 11. We also note that Rules 14-1 and 14-2 as notified did not contain any 1080 specific conditions such as were included in DL Rule 11.

Secondly, we note that in their May 2010 memorandum the officers advised how Rules 14-1 and 14-2 would need to be amended and restructured if they were to properly accommodate the discharge of vertebrate pest control products. The need for such changes does not lend weight to an argument that the rules were always intended to cover those products.

We also note that the DOC[182] was concerned that the limitation of Rules 14-1 and 14-2 to animal pests contained in the Council's Regional Pest Animal Management Strategy would, should the rules be amended to include vertebrate pest control products, prevent the use of those rules for the spreading of poisons designed to target rats, mice, hares, hedgehogs and deer. The new rule recommended to us by the officers in their May memorandum was silent on that matter and the alternative suggested amendments to Rules 14-1 and 14-2 (which we acknowledge was not the officers' preferred option) did not address the DOC's concern. Neither option proposed by the officers encapsulated the 1080 specific conditions from operative DL Rule 11.

We record that in a letter dated 12 May 2010, Mr Keenan[183] for Horticulture NZ advised "... that it was not the intent of Horticulture New Zealand's submission to the Proposed One Plan to have vertebrate pest control products controlled by a consenting regime.... We support the approach of creating a new permitted activity rule which retains a number of conditions from Rules 14-1 and 14-2 relevant to the discharge of vertebrate pest control products and has an associated footnote describing the need to comply with HSNO regulations". In that regard we note that Rules 14-1 and 14-2 as notified made no reference to the Hazardous Substances and New Organisms (HSNO) regulations 1996, which again does not lend weight to an argument that the rules were always intended to cover vertebrate pest control products.

We are also very mindful that, in terms of natural justice, had the POP contained a permitted activity rule that expressly dealt with the discharge of vertebrate pest control products along the lines belatedly advocated to us by the officers in their May 2010 memorandum then it is highly likely that a number of interested parties (other than the Council, the DOC and Horticulture NZ) would have submitted on that rule.

We have therefore decided to retain the definition of agrichemical set out in our Provisional Determination which uses, properly in our view, the definition from NZS 8409:2004.

[181] Contained in the Land and Water Regional Plan.
[182] Ongley, letter, 7 May 2010.
[183] Keenan, letter, 12 May 2010.

This means that once the POP becomes operative the discharge of 1080 and other vertebrate pest control products will be a discretionary activity. However, in the meantime those discharges will remain permitted activities under Regional Air Plan Rules 14 and 15 and DL Rule 11. This is as a consequence of the provisions of s 86F of the RMA, which provides that the existing rules cease to be operative only once any appeals on the new Rules 14-1 and 14-2 have been determined. This will give the Regional Council, if it so desires, ample time to promulgate by way of Plan variation a properly considered permitted activity rule for the discharge of vertebrate pest control products that meets the concerns of the DOC, Horticulture NZ and other interested parties.

7.8.2.5 How should at-risk habitats be dealt with?

Rule 14-2 as notified required all reasonable measures be taken to avoid aerial agrichemical discharges within 50 m of a rare habitat, threatened habitat or at-risk habitat. This provision received a large number of submissions asking that the setback not apply to at-risk habitats. Some submitters[184] also sought reduced setbacks or the use of specific measures to avoid adverse effects on those areas.

We find that a setback of 10 m is appropriate for the types of rivers that the rules in Chapter 12 apply to. We consider that consistency between the POP chapters is important in that regard. We also find that the provisions should require reasonable measures to be taken to prevent adverse effects on the Schedule E habitats and that the reasonable measures suggested by the NZ Institute of Forestry are appropriate.

We note that Miss Egan[185] of NZ Forest Managers provided us with helpful evidence showing how the reasonable measures recommended by the NZ Institute of Forestry submission (now included at the end of Rule 14-2) had been implemented in the field and how successful they had been. We are grateful for that assistance.

7.8.2.6 How should asphalt plants be dealt with?

Higgins Group sought that the provisions of the Operative Regional Air Plan should be retained in the POP in so far as the Operative Plan provided for certain mobile sources of contaminants, including asphalt plants, to be permitted activities. The officers agreed with that request and we accept their advice.

Therefore, we have included new Rule 14-13B permitting discharges from specified mobile sources, as was recommended to us by the officers. The new rule includes mobile asphalt plants. It was agreed between the officers and Tonkin and Taylor personnel (on behalf of Higgins Group) that an asphalt plant should not be located at any one site or property for more than 24 continuous months in order for it to be considered mobile. We accept that consensus view and condition (d) reflects that agreement.

We note that Rule 14-12 has been amended to include fixed asphalt plants, in activity (v).

[184] Including NZ Institute of Forestry, PF Olsen, Federated Farmers.
[185] Egan, Statement of Evidence, undated, pages 6-7 and 13.

A related issue arose as to what the appropriate particulate discharge standards should be for asphalt plants. Mrs Barton[186] summarised the position as follows "The main issue that has not been agreed is that Council Officers are recommending a limit of 50mg/m^3 for new mobile asphalt plants and Higgins wants to see 150mg/m^3 as the limit .... The letter from Tonkin and Taylor states that whilst 50mg/m^3 is a design standard to aspire to and may be seen as best practice, 150mg/m^3 is acceptable in terms of environmental effects. Further Tonkin and Taylor state that if 150mg/m^3 is acceptable for existing plant it must be acceptable for new plant".

Having considered the views of the officers and Higgins Group representatives, we have decided that fixed asphalt plants should achieve industry best standards and a level of 50mg/m^3 (Rule 14-12 condition (h)). This is appropriate as fixed plants are a relatively constant source of particulate contaminants. New mobile plants (those established after the notification of the POP) should achieve that same standard (Rule 14-13B condition (f)(i)). However, older mobile plants (those established before the notification of the POP) will be allowed to operate to the standard of 150mg/m^3 as sought by Higgins group (Rule 14-13B condition (f)(ii)). We find that to be an appropriate compromise between the avoidance of adverse effects and practical reality.

In that regard we note that Higgins Group witnesses[187] informed us that "Monitoring data from their existing mobile plant that (sic) shows levels between 85 - 113 mg/m^3 are achieved". In our view this demonstrates that the existing mobile plants will be able to comply with amended Rule 14-13B(f)(ii).

7.8.3 Other Issues

The following parts of this decision deal with matters that have not already been canvassed in the evaluation of the principal issues of contention above.

7.8.3.1 8.1 Scope and Background

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports. [188].

7.8.3.2 Issue 8-1: Ambient air quality

We find that amenity effects should be qualified as being "localised" as sought by Horticulture NZ. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

[186] Barton and James, End of Hearing Statement, undated, page 16.
[187] Breese, for Tonkin and Taylor, letter, 31 July 2009, page 2.
[188] Barton and James, Planning Evidence and Recommendations Report - Air, February 2009; Barton, Supplementary Recommendations, 21 May 2009; Barton, Preliminary Questions from Hearing Panel to be addressed during the Officer Report Presentations, undated; Barton and James (with Andrew Curtis), End of Hearing Statement, undated; Barton and James, Response to End of Hearing Questions, undated.

7.8.3.3 Objective 8-1: Ambient Air Quality and Objective 8-2 Fine Particle (PM_{10}) levels

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.4 Policy 8-1: National Environmental Standards

We have discussed the matter of the NESAQ above. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.5 Policy 8-2: Regional Standards for ambient air quality

We do not consider that the regional air quality standards should be deleted[189]. They provide useful guidance to decision makers in terms of the potential adverse effects that they address. However, we do find that the term "... to the extent that causes an adverse effect ..." should be deleted from each standard in Table 8.3. That qualifying text is unnecessary as the regional standards already encapsulate the concept of the discharges not being noxious, offensive or objectionable. In response to the submissions of the territorial authorities we have deleted the term "public land" from the standards. We decided that it is sufficient that the discharges should not give rise to the listed adverse effects beyond the property boundary from which the discharges are sourced. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.6 Policy 8-3: Regulation of discharges to air

We have discussed the matter of the NESAQ above. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.7 Policy 8-4: Incompatible land uses

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.8 Policy 8-5: Fine particles in Taihape, Taumarunui and other unacceptable airsheds

We have discussed the matter of the NESAQ above. We note that the date in the notified Policy 8-5(b) was 2008 as raised by Ruapehu District Council in their submission. On Mrs Barton's advice we amended that date to 2011[190]. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

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[189] As sought by Inghams.
[190] Barton and James, End of Hearing Statement - Air, undated, page 14.

7.8.3.9 Policy 8-6: Fine particles in Ohakune, Feilding, Dannevirke and Pahiatua and other degraded areas

We have discussed the matter of the NESAQ above. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.10 Methods

We have made minor wording changes to the methods to reflect the preceding amendments to the policy provisions, to correct grammatical errors, or to ensure consistency with other chapters of the POP. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.11 Anticipated Environmental Results

There were no submissions on these provisions; however, we have amended them to provide consistency of wording with other chapters.

7.8.3.12 Objective 14-1 Air quality

We have inserted a new Objective 14-1 to be consistent with other Regional Plan chapters in the POP. We have used the wording recommended by the officers.

7.8.3.13 Policy 14-1: Consent decision-making for agrichemicals

We have dealt with Policy 14-1(e) above. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.14 Policy 14-2: Consent decision-making for other discharges into air

We have dealt with Policy 14-2(d) above.

We note that Airways Corporation had raised the issue of the adverse effects of high velocity discharges on aircraft. We find that to be a potential adverse effect that should be avoided and so we have added it as Policy 14-2(h).

We note that the amendments we have made to Rule 14-2 condition (i) are based on the wording provided by Miss Egan[191] for NZ Forest Managers Ltd. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.15 Rule 14-1 Small-scale application of agrichemicals

We amended condition (b) to refer to the "adverse effects from off-target spray drift" as sought by Horticulture NZ. We find that better defines the adverse effect of concern and the revised wording will, we understand, be more easily understood by practitioners in the field. We amended condition (d) and

[191] Egan, Statement of Evidence, undated, pages 12-13.

Rule 14-1 to use the same wording as was developed for the rules in Chapter 12. We made the same change to Rule 14-2(b). We consider these changes to be necessary in terms of consistency.

For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.16 Rule 14-2 Widespread application of agrichemicals

We have discussed aspects Rule 14-2 above. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.17 Rule 14-3 Discharges of agrichemicals not complying with permitted activity rules

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.18 Rule 14-4 Small-scale fuel burning

We have amended conditions (e) and (f) to be consistent with our decisions on the provisions in Policy 8-2.

Airways Corporation sought that an additional condition be added to Rule 14-4 regarding a reduction in visibility on any designated commercial or military flight path. We consider that to be a sensible precaution and have added it to this, and other rules as required, as a consequential amendment and for the sake of consistency. We reject the submission of the NZ Defence Force who wanted the wording "cause any reduction in visibility" changed to "obstruct any". We agree with the advice of Mrs Barton[192] who stated "In my opinion obstruction could mean physically obstruct rather than the effects of visibility ...".

For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.19 Rule 14-5 Open burning

We have amended Rule 14-5 to refer to "outdoor burning" as sought by Horticulture NZ as that term is more commonly understood by laypeople. We accept the advice of Mr Keenan[193] that "This is particularly important to avoid any confusion with "open burning" in open fireplaces indoors". We have also clarified that the burning of animal carcasses on production land[194] is a permitted activity under the rule. In response to a concern of AgResearch and LIC the Panel is of the view that an agricultural research farm is covered under production land. We have amended condition (a)(i) to allow the outdoor burning of "untreated wood", where that wood has not been sourced from the

[192] Barton and James, End of Hearing Statement - Air, undated, page 15.
[193] Keenan, Submission (evidence) - Air, 9 July 2009, page 18.
[194] As sought by submitters including AgResearch and LIC.

subject property, as sought by many submitters[195]. We have also explicitly allowed for "barbeques, hangi, umu and outdoor fireplaces" to be fuelled by material which has not been sourced from the subject property, as also sought by submitters[196]. We find those amendments necessary to provide for everyday recreational occurrences that are unlikely to generate adverse effects.

For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.20 Rule 14-6 Burning activities regulated by RM Regulations 2004, including woodburners

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.21 Rule 14-7 Prohibited burning activities

We have amended the first sentence of the activity description to refer to outdoor burning as a consequence of earlier decisions. For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.22 Rule 14-8 Other burning activities

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.23 Rule 14-10 Wet abrasive blasting and water blasting

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.24 Rule 14-11 Dry abrasive blasting using a moveable source

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.25 Rule 14-12 Miscellaneous discharges into air from industrial and trade premises

We have amended item (n) in the activity description to include 'fertiliser mixing and the coating of existing fertiliser product' so that those activities are explicitly permitted under the rule. This addresses an issue raised by Ravensdown insofar as it did not wish those activities to default to a discretionary activity[197].

[195] Including Eileen Brown, Foxton Bible Camp, Local Forestry Industry Group and others.
[196] Including Horizons Regional Council and Ruapehu District Council.
[197] Hansen, letter, 18 June 2009.

We have amended conditions (b) and (c) to be consistent with our decisions on the provisions in Policy 8-2. We have inserted the additional conditions ((d) and (e)) sought by Airways Corporation for the reasons set out above.

New conditions (f) and (g) resulted from recommendations[198] from the officers following caucusing with representatives of Higgins Group. We are grateful for that assistance.

We queried the officers about condition (h) in Rule 14-12. We were advised that[199] "NTP is often used in engineering when discussing gas flows or concentrations and refers to normalised conditions at zero degrees Celsius, and normal atmospheric pressure. It is not necessarily on a dry gas basis. Therefore in this case it is probably more correct to make Rule 14-12(h) consistent with 14-4(h) as the discharge from an asphalt plant will be wet". We accepted that advice.

For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.26 Rule 14-13A Flaring of hydrocarbons

We have inserted a new rule, as recommended by the officers in response to submissions[200], to permit the flaring of hydrocarbons, subject to conditions. We have largely adopted the wording recommended by the Ministry of Economic Development.

7.8.3.27 Rule 14-13 Other discharges into air from industrial and trade premises

For the matters raised in submissions we generally adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.8.3.28 Rule Guide

We have amended the Rule Guide to be consistent with earlier decisions on the rules relating to asphalt plants. We have also expanded the reference to milk powder in Rule Guide (iv)(c) as sought by Fonterra.

7.8.3.29 Glossary

As discussed in section 7.8.2.4 we have amended the definition of agrichemical so that it excludes vertebrate pest control products and oral nutrition compounds. In that regard we accept the evidence of Horticulture NZ that the definition used in the POP should be the same as that in NZS 8409:2004. We accept the advice of Mr Keenan[201] who advised "Use and management of VTA's are not included in NZS 8409:2004 Management of Agrichemicals so it is not appropriate to apply the requirements of the Standard to their use". In that regard we record, as noted in section 7.8.2.4, that a subsequent letter[202] from Mr Keenan to the Council advised that

[198] Barton, Supplementary Recommendations - Air and Discharges to Air, 21 May 2009, Recommendation Air 21A, page 6.
[199] Barton and James, End of Hearing Statement - Air, undated, pages 10 and 11.
[200] Ministry of Economic Development.
[201] Keenan, Submission (evidence) - Air, 9 July 2009, page 7.
[202] Keenan, letter, 12 May 2010.

Horticulture NZ did not intend that vertebrate toxic agents (VTAs) be subject to a consenting regime.

We amended the definition of "hand-held appliance" generally in line with wording suggested by Horticulture NZ. We find that the amended wording more clearly describes the type of activity to which Rule 14-1 was intended to apply.

We amended the definition of "ambient air" in line with wording suggested by Horticulture NZ. We find that the amended wording more clearly describes the necessary exclusions that apply to ambient air (and hence ambient air standards), particularly discharges of contaminants authorised by resource consents. As Horticulture NZ advised, the amended definition is also more consistent with that used in the Ministry for the Environment's Ambient Air Quality Guidelines (2002).

We added a definition of "biofuels" as we amended Rule 14-4 condition (a)(ii) to include biofuels as sought by Silver Fern Farms. We based the wording on Mrs Barton's[203] recommendation.

We added a definition of "public road" to provide guidance on the application of amended Policies 14-1(e) and 14-2(d). We used the definition provided by the TA Collective in its memo to the General Hearing dated 29 January 2010.

7.8.4 Conclusion

See Part 1 of this Volume.

7.9 Natural Hazards (Chapter 10 and Schedule I)

7.9.1 Legal Matters

The National Policy Statement on Electricity Transmission 2008 is relevant and we have given effect to it.

In terms of Part 2 of the RMA, we find no parts of s 6 are specifically relevant to this decision and no one drew our attention to any. We find that RMA ss 7(b), 7(f) and 7(i) have some limited relevance to this decision and we have had particular regard to those matters when evaluating the submissions. We have decided that the Treaty principles (RMA s 8) are not specifically relevant to this decision.

7.9.2 Principal Issues of Contention

The principal issues of contention for the Natural Hazards chapter were:
(a) How should development in areas prone to flooding be managed?
(b) How should the Taonui Basin be mapped?

7.9.2.1 How should development in areas prone to flooding be managed?

Policy 10-2 as notified sought to preclude new development, and any increase in the scale of existing development, in "floodways". In other areas prone to flooding in a 1 in 200 year return period event (0.5% annual exceedance

[203] Barton and James, End of Hearing Statement - Air, undated, page 13.

probability (AEP)), new development and any increase in the scale of existing development, was to be avoided unless it met four conjunctive criteria.

There was a level of support for the policy approach from submitters[204], with some parties suggesting alternative flood standards such as a standard based on the 100 year return period event[205]. However, Landlink Ltd considered Policy 10-2(b) to be unworkable as it did not allow for the mitigation of flood hazards. PNCC also sought an amendment to Policy 10-2(b) to better reflect the operative RPS, to allow for mitigation, and to allow for case by case decisions justified by cost benefit considerations.

The officers undertook protracted caucusing with these two submitters which resulted in a significant recommended rewording of Policy 10-2[206]. Further caucusing resulted in even more changes being recommended[207] at a later stage, but prior to the Hearing. We were concerned that the recommended wording changes went well beyond the scope of submissions, however we received planning and legal advice from PNCC that the changes fell within the scope of their submission[208].

The Hearings Panel was of the view that recommended wording[209] was convoluted and difficult to interpret and so we issued a Minute with suggested amended wording (reflecting the Regional Council officers' recommended wording) and invited the officers and submitters to comment on it. Having received comments we then issued a Provisional Determination on Chapter 10 and asked officers and relevant submitters to further comment on the wording of Policy 10-2. We received and considered comments from PNCC and the officers.

PNCC was satisfied with the Provisional Determination other than for some very minor wording changes and a suggested rewording of the definition of "avoidance". PNCC advised[210] "The revised version of Policy 10-2 is generally supported and reflects the evidence presented by PNCC".

The Regional Council officer's comments[211] were extensive and while appearing to seek to relitigate matters of substance and advocate wording from their End of Hearing Report that we had already evaluated and rejected for lack of clarity and certainty, the officers did provide helpful comments on the definition of "avoidance" and the detailed wording of Policy 10-2 which we took into account in finalising the provisions. In particular, we decided that it was more appropriate to define the term "flood hazard avoidance" for the purposes of Policy 10-2 and we based the revised definition on the wording recommended by the officers.

The officer's advice included "If the Panel decides to retain policy 10-2(e), it would be most appropriate that the reference to '0.5% AEP' be changed to '0.2% AEP'."[212] This advice was accepted by us as it related to the extra

[204] Chris Teo-Sherrell, Bert Judd, GNS Science, PNCC in terms of Policy 10-2(a).
[205] Landlink.
[206] 'Yellow' track changes to provisions dated March 2009.
[207] 'Green' track changes to provisions dated May 2009.
[208] Conway, Legal Submissions, 13 July 2009 and Murphy, memorandum, 4 June 2009.
[209] 'Green' track changes to provisions dated May 2009.
[210] Murphy, memorandum, 13 January 2010, paragraph 12.
[211] Percy, Responses to the General Hearing Panel on the Preliminary Determination for Natural Hazards, undated.
[212] Percy, Responses to the General Hearing Panel on the Preliminary Determination for Natural Hazards, page 15.

protection that would be given to those parts of the city where the upgrade to 0.2% AEP had occurred.

The final wording of Policy 10-2 retains the direction of the notified version, but adds significant detail. We are satisfied that the additional detail, based as it is upon the input of officers and submitters (PNCC and Landlink personnel in particular), will be of assistance to future decision-makers.

7.9.2.2 How should the Taonui Basin be mapped?

Submitters sought that the Schedule I maps be made more definitive[213] or that they be clarified[214]. As a result of caucusing between officers and submitters a revised version of the map of the Taonui Basin (Figure I:3A) was produced. The revised map clearly delineates "floodways" and "floodable areas", which will allow a more consistent application of revised Policy 10-2 within that area. In that regard we note that Policy 10-2(b) would apply to the Figure I:3A "floodable areas".

We note that in their response to the Provisional Determination both the officers and PNCC personnel expressed support for the revised Figure I:3A.

7.9.3 Other Issues

The following parts of this decision deal with matters that have not already been canvassed in the evaluation of the principal issues of contention above.

7.9.3.1 10.1 Scope and Background

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports dated February 2009[215], March 2009[216], May 2009[217], June 2009[218] and August 2009[219].

7.9.3.2 Issue 10-1: Effects of natural hazard events

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.9.3.3 Objective 10-1: Effects of natural hazard events

The only submissions on the objective sought its retention. However, we have undertaken some minor grammatical corrections and deleted the reference to "economic" in terms of wellbeing to more correctly reflect the wider context of Part 2 of the RMA.

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213 Manawatu District Council.
214 Environment Network Manawatu.
215 Percy, Planning Evidence and Recommendations Report, February 2009.
216 Blackwood, Section 42A Report, 5 March 2009.
217 Percy, Supplementary Recommendations, 18 May 2009.
218 Percy, Speaking Notes, 8 June 2009.
219 Percy, End of Hearing Report - Natural Hazards, 4 August 2009.

7.9.3.4 Policy 10-1: Responsibilities for natural hazard management

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.9.3.5 Policy 10-2: Development in areas prone to flooding

We discussed the reformulation of Policy 10-2 under the principal issues of contention above. For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.9.3.6 Policy 10-3: Activities that need to be located in areas prone to flooding

We have deleted Policy 10-3 as it is now merged with Policy 10-2. We note that Landlink sought the removal of Policy 10-3.

7.9.3.7 Policy 10-4: Critical infrastructure

Vector Gas Limited suggested the addition of some text to Policy 10-4 which would serve the purpose of better explaining the exceptions that would enable critical infrastructure to be located in an area subject to flooding in a 1 in 200 year event. We found that additional wording to be helpful, and have adopted it subject to some further minor changes for the sake of consistency and clarity.

For other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.9.3.8 Policy 10-5: Other types of natural hazards

For the matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.9.3.9 Policy 10-6: Climate change

Landlink sought the redrafting of Policy 10-6. We find that their suggested wording provides useful clarification with regards to items (e), (f) and (g) of that Policy and we have either adopted their suggested wording or used alternative wording that captures the intent of their submission.

7.9.3.10 10.5 Methods

We have made minor amendments to the Methods to correct grammatical errors or provide consistency with other chapters. We have also incorporated a consideration of sea level rise and climate change into several of the Methods as sought by GNS Science. Those are important matters to consider when dealing with natural hazards. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.9 3.11 10.6 Anticipated Environmental Results

We have amended the AER to refer to district plans incorporating hazardous areas on planning maps as sought by GNS Science. We find that to be a desirable outcome as district plans are the primary land use regulation vehicles within the Region. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.9.3.12 10.7 Explanations and Principal Reasons

We have made minor amendments to the provisions to ensure consistency with the amended policies. For the other matters raised in submissions we adopt the evaluation contained in the Planning Evidence and Recommendations Report and subsequent officers' reports.

7.9.4 Conclusion

See Part 1 of this Volume.