IN THE ENVIRONMENT COURT **ENV-2010-WLG-000145**

IN THE MATTER OF	The Resource Management Act 1991
AND	
IN THE MATTER OF	appeals under clause 14 of the First Schedule to the Resource Management Act 1991 concerning proposed One Plan (Combined Regional Policy Statement and Regional Plan) for the Manawatu-Wanganui Region.
BETWEEN	**TRUSTPOWER LIMITED** ENV-2010-WLG-000145
AND	**MERIDIAN ENERGY LIMITED** ENV-2010-WLG-000149
AND	**OTHER PARTIES** Appellants
AND	**MANAWATU-WANGANUI (HORIZONS) REGIONAL COUNCIL** Respondent

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STATEMENT OF EVIDENCE OF ROBERT JOHN SCHOFIELD ON BEHALF OF MERIDIAN ENERGY LIMITED AND TRUSTPOWER LIMITED RELATING TO THE PROPOSED ONE PLAN BIODIVERSITY PROVISIONS

17 February 2012

Introduction

i. My name is Robert John Schofield, and I am a Director of Boffa Miskell Limited, a national firm of consulting planners, ecologists and landscape architects. I hold the qualifications of BA (Hons) and Master of Regional and Resource Planning (Otago). I am a Member of the New Zealand Planning Institute, and a Past President (1998-2000). I have been a planning consultant based in Wellington for over 27 years, providing consultancy services for a wide range of clients around New Zealand, including local authorities, land developers, and the infrastructure and power sectors.

ii. My experience includes the writing and preparation of Plan Changes for Councils and private clients, as well as work on the preparation of District and Regional Plans, including formulating provisions for infrastructure and energy development and distribution. I have also worked for several generators, including TrustPower Limited ('TrustPower'), on analysing district and regional plans and policy statements in respect of consistency with the RMA and relevant planning instruments. As an editor for the Quality Planning website, I have also authored a number of guidance documents for the Ministry for the Environment, including, recently, guidance on the implementation of the National Policy Statement on Renewable Electricity Generation.

iii. In this matter, I was commissioned by TrustPower in 2007 to prepare its submissions on the Manawatu-Wanganui Regional Council's (the 'Regional Council' or 'Council') Proposed One Plan, and to present planning evidence on its submission points to the Council hearings in 2008-2009. I subsequently assisted TrustPower in its appeal and s274 notices on a range of issues arising from the Council's decisions, and have been involved with a number of mediation meetings.

iv. I was also commissioned by Meridian Energy Limited ('Meridian') to assist in respect of its appeal on the biodiversity provisions of the Proposed One Plan, working collaboratively with TrustPower which has similar concerns. On this matter, I worked with Matiu Park, a senior ecologist at Boffa Miskell, who was also engaged jointly by Meridian and TrustPower to address these provisions. Mr Park is providing expert ecological evidence on the

outstanding issues in respect of the biodiversity provisions of the Proposed One Plan.

v. In preparing my evidence, my approach was to:

- Consider the provisions of the Proposed One Plan of consequence to TrustPower and Meridian, having regard to the purpose and principles of the Resource Management Act 1991 ('RMA' or 'Act') and other relevant national policies and strategies; and
- Recommend appropriate changes that would give effect to the amendments requested by TrustPower and Meridian in a manner that is consistent with the RMA and my duties as an independent planning expert.

vi. I have read the Code of Conduct for Expert Witnesses issued as part of the Environment Court Practice Notes. I agree to comply with the code and am satisfied the matters I address in my evidence are within my expertise. I am not aware of any material facts that I have omitted that might alter or detract from the opinions I express in my evidence.

1 Scope of Evidence

1.1 This evidence provides my independent planning opinion on a number of specific matters in which TrustPower and Meridian have an interest and which remain in dispute with the Regional Council or other parties.

1.2 Specifically, my evidence addresses Biodiversity (Chapters 7 and 12 and Schedule E) – on behalf of **Meridian** as an appellant and **TrustPower** as a section 274 party to the appeals including in particular those of the Minister of Conservation and Wellington Fish and Game Council.

1.3 My evidence supports the position of both Meridian and TrustPower on the provisions tabled by other parties as outlined in the Joint Memorandum to the Court dated 15 December 2011. In this matter, I have worked with Matiu Park, an Ecologist at Boffa Miskell, to understand the implications of the One Plan provisions as they relate to assessing and managing significant indigenous biodiversity in respect of wind farm development.

1.4 My evidence relies on the ecological evidence of Matiu Park of Boffa Miskell Limited, prepared on behalf of both Meridian and TrustPower.

1.5 In preparing my evidence, I have also reviewed a range of relevant documents, including:

(a) The s42A reports by Regional Council's advisers on biodiversity and infrastructure;

(b) The evidence of Clare Barton, planner, for the Regional Council;

(c) The Proposed One Plan, as notified and as amended by the decisions of the Council on submissions ('decisions version');

(d) The National Policy Statement on Renewable Electricity Generation, and the accompanying implementation guidance;

(e) The National Environmental Standard for Electricity Transmission Activities; and

(f) Guidelines for Local Authorities: Wind Power, Energy Efficiency and Conservation Authority, August 2004.

1.6 I would note that the evidence of Ms Barton provides comprehensive overviews to the preparation of the policies on biodiversity in the Proposed One Plan, with which I do not dispute. I therefore do not intend to provide any background except where particularly pertinent to my opinions and recommendations.

1.7 The specific changes to provisions I am recommending as appropriate and necessary are provided in **Appendix 1** of this evidence. These proposed amendments are shown as tracked changes, and, where appropriate, build upon the changes that have been agreed by the parties since the Council's decisions.

2 Introduction

2.1 In my evidence I address the following aspects of the appeals by the Minister of Conservation and Wellington Fish and Game:

(a) Rule 12-6 and why discretionary activity status is appropriate for managing activities within potentially rare, threatened and at-risk habitats;

(b) Policy 7-2Aa, including the implications of not retaining the reference to "site specific assessments", the requirement to maintain and enhance at-risk habitats and the biodiversity offsets framework;

(c) Policy 12-5, and the framework for biodiversity offsets;

(d) Policy 12-6, and the role of the ecological assessment criteria; and

(e) The approach to offsets proposed by the appellants.

2.2 In general, with the exceptions outlined below, I am confident that the decisions version of the One Plan provides an appropriate framework to sustainably manage the significant habitats of the Region in a manner that does not unduly restrict the activities of regionally important infrastructure. I now discuss those general matters in dispute.

Rule 12-6 and the Appropriate Activity Status for Activities

2.3 In my evidence to the Hearing Panel in 2008, I was satisfied that the most appropriate classification for vegetation clearance and land disturbance activities within rare, threatened and at-risk habitat types was as a discretionary activity. In response to the appellants seeking a non-complying activity status for activities in rare, threatened and at-risk habitats, I re-examined the alternative regulatory approaches, having regard to the comparative costs and benefits of the alternative approaches and their relative efficiency and effectiveness, and taking into account the changes to Chapter 12 that have been introduced by Council's decisions.

2.4 I remain satisfied that a discretionary activity classification is the most appropriate form of regulatory approach for achieving the One Plan objectives and fully support the Regional Council's planning adviser's recommendation to retain discretionary activity status as outlined in the evidence-in-chief of Clare Barton. Ms Barton's position is largely consistent with the Regional Council's position as outlined in the Respondent's Memorandum Relating to Unresolved Appeal Points on Biodiversity (dated

23 November 2011), where it is stated that activities in rare, threatened and at-risk habitats should remain discretionary because:

(a) The discretionary activity classification is sufficient to achieve the RMA's purpose in conjunction with the support of the associated policies;

(b) The gateway tests provide no useful addition to the management framework in this context; and

(c) The non-complying status can lead to undesirable distortions in the planning framework arising from the application of the bundling principle and may create unnecessary impediments to the assessment of projects that otherwise merit full discretionary consideration under section 104, Part 2 and national policy statements.

2.5 Given the uncertainties raised by Mr Park as to whether all the habitat types captured by Schedule E are ecologically significant under section 6(c) of the RMA and the importance of ensuring site visits are undertaken and robust, accepted ecological assessment can be applied to determine ecological significance of habitats within the region, I entirely agree with the Council's position. From the perspective of Meridian and TrustPower, I consider the appellants' position would make it unreasonably and unnecessarily onerous to develop energy generation facilities that may impact on some features associated with areas of identified significant biodiversity value. I consider the Committee clarified this position in their decision that the discretionary activity status was appropriate, with the following comment–

> *In light of the innovative approach to identifying Schedule E habitats and their mainly being determined by predictive methods rather than by on-site identification, we agree with Ms Clarke (for Meridian) that relevant activities in Schedule E habitats should be discretionary activities, apart from aspects of forestry which we have already discussed, with clear policy direction for resource consent decision-making*[1].

1 Refer paragraph 5-26 of decision

2.6 I have considered the issues associated with non-complying activity status and to consider opportunities to avoid the 'bundling' approach to resource consent applications arising from more restrictive activity statuses. Given the range of issues associated with the non-complying activity status sought by the appellants (DOC and Fish and Game) for activities in rare, threatened and at-risk habitat types, I have summarised my concerns below to assist the Court:

(a) There would be no difference in terms of applications being required to submit a full assessment of effects, including ecological analysis of the habitats in question and the identification of opportunities to avoid, remedy or mitigate adverse effects and/or provide opportunities for habitat enhancement and protection.

(b) Council would retain full discretion on the matters to consider, on the types of conditions it could impose, and, ultimately, whether to grant or refuse resource consent where the effects cannot be satisfactorily avoided or mitigated and thus undermine the objectives and policies.

(c) In my view, the current objectives and policies provide clear direction to decision-makers in respect of activities that may affect SNAs to determine whether any application is contrary to such policies and thus should be declined. A review of the operative RPS biodiversity provisions suggests the stronger policy framework for indigenous biodiversity in the One Plan provides sufficient scope that some activities that may result in adverse effects on the values of habitat types determined to be ecologically significant may be declined.

(d) The discretionary activity classification would provide greater certainty to applicants as the threshold tests under section 104D for non-complying activities do not have to be met and the bundling risks from a non-complying activity status would be avoided.

(e) Discretionary activity status would recognise that the effects of some activities within such habitats could be minor. Perhaps more importantly, discretionary status would also recognise that the rare, threatened and at-risk habitat type classification process is based on the less precise determination of a habitat type being consistent with Schedule E alone – and that this may capture some habitats as rare

or threatened when they have only moderate or low ecological values (i.e. activity status is determined by Schedule E habitat types alone and does not relate to habitat types deemed ecologically significant using the ecological significance assessment criteria in Policy 12-6). As I discussed in my Council hearing evidence, it is inappropriate to require resource consent as a non-complying activity if the habitat is not deemed to be ecologically significant and the effects are determined to be minor.

(f) It would reduce perverse behaviour to avoid requiring consent as a non-complying activity. For example, in the case of Meridian's Project Central Wind just south of Waiouru where I understand the applicant chose to construct a new access road through an area of indigenous vegetation considered by ecological survey to be of high biodiversity value (red tussock grassland – "at-risk" habitat) in order to avoid upgrading an existing farm access road through a highly modified wetland ("threatened" habitat type) determined by ecological survey to be of low value.

2.7 Perhaps more importantly, the non-complying activity status sought by the appellants also has a number of technical or application issues which, in my opinion, put into question their appropriateness as effective and efficient methods. In particular:

(a) A non-complying activity classification should, in my view, only apply where there is certainty as to the ecological values of the habitats in question and/or there are clear thresholds of effects – however, the proposed regulatory framework is based on the potentiality of habitats and even very minor activities within potentially significant habitats would trigger consent. As raised in the evidence of Mr Park, there is still some uncertainty that these habitat types are section 6(c) RMA habitats (refer Mr Park's discussion on cliffs, scarps and tors paragraphs 4.9 – 4.11).

(b) The default assumption, underscored by the policies of the One Plan, is that non-complying activities are inappropriate and will most likely be declined, particularly given the clear direction of Objectives 7-1

and 12-2 and Policy 11A3(e)[2] which infer that any modification, disturbance or loss of these habitats is, prima facie, contrary to these objectives – yet many activities may have quite minor effects on these habitats, and/or the habitat in question may not actually have high ecological values or be viable, or the effects could be avoided, remedied or mitigated (including offset by appropriate enhancement).

(c) Proposals may be amended to avoid a non-complying activity classification, in some cases to the detriment of the wider environment.

(d) Under the bundling principle, each component of a proposal would be required to meet the section 104D gateway test, incurring additional time, costs and uncertainty: this would significantly increase the costs and uncertainty for large projects. As outlined above, while I have given some detailed consideration to the bundling approach during the mediation on this issue, I do not intend to discuss this any further, other than reiterating the position of Ms Barton that *"there is an appreciable risk the application of the bundling principle will have unintended and undesirable consequences from a planning administration perspective and in achieving the RMA's overall purpose.*"[3] However, I will reiterate that under the bundling principle, a resource consent for a relatively minor activity in a Schedule E habitat type would result in the non-complying thresholds being applied across all other consents. This could raise considerable consenting issues if an application is found contrary to a specific policy of avoidance.

(e) Although I can see merit in the precautionary approach to protecting these rare, threatened and at-risk habitats (as outlined in the original Council hearing evidence of Mr Park), I consider that applying non-complying activity status for biodiversity protection on private land is overly restrictive and contrary to the intent of the RMA, particularly when considering the regional and national benefits of renewable

2 Policy 11A3(e) classifies as non-complying "those activities for which the Regional Council would generally not grant a resource consent owing to the potential for very significant adverse effects on the environment".

3 Refer statement of evidence of Clare Barton on behalf of Horizon's on the topic of biodiversity (paragraph 56(g)).

energy generation which must be considered under section 7(j) RMA and taken into account under the NPSREG. On this matter I note Ms Barton's statement in relation to the planning rationale for the activity status for activities in rare, threatened and at-risk habitat types where she considered that *"The examination of whether s.6(c) and s.5 is met by examination of the overall regime proposed is to look at it in the round and what it achieves for the Region not by advancing tenuous links between s.6(c) and the need for gateway tests"*[4].

2.8 In summary, I support Council's recommendation to retain discretionary activity status, which would still provide for a high level of protection of these rare and threatened habitats as required by section 6(c), while also recognising that biodiversity protection on private land cannot solely be undertaken through a restrictive regulatory approach.

Policy 7-2A

2.9 I now address the appeal of the Minister of Conservation and Wellington Fish and Game on Policy 7-2A in regard to what I consider is the necessity of site assessment to confirm the habitat type is indeed ecologically significant. This matter was the subject of discussion during the conferencing of ecologists in January 2012. Mr Park also discusses this matter in his evidence. I discuss this matter in terms of the implications the deletion sought by the appellants may have for other provisions in the plan, given Policy 7-2A forms part of the RPS and must be given effect to through the Regional Plan.

2.10 I note that this matter was not addressed in the evidence-in-chief of Ms Barton (i.e., as to the requirement for a site visit to confirm the significance of a potentially affect habitat) although Attachment 1 of her statement in response to unresolved appeal points (biodiversity) noted that she had not had sufficient time to assess the implications of the changes agreed by the technical (non-planning) expert witnesses. On a related matter, Ms Barton did reiterate the concluding comments of the Hearing Panel that clarified

[4] Refer para 56(c), page 21 of Ms Clare Barton's planning evidence on the biodiversity provisions.

the importance of site-specific assessments to determine ecological significance[5] which I consider remains important:

> *We have concluded that it cannot be assumed that all rare habitats, threatened habitats and at-risk habitats are automatically s6(c) RMA areas. Based on all the evidence of the ecological experts, we have decided that we should distinguish between rare habitats and threatened habitats on the one hand and at-risk habitats on the other, at least to some extent. We have concluded that:*
>
> *(i) Rare habitats and threatened habitats should be recognised as s6(c) areas unless site-specific assessments determine otherwise; but*
>
> *(ii) At-risk habitats need site specific assessments to determine their ecological significance.*

2.11 I do not consider it necessary to amend Policy 7-2A to remove the requirement for site-specific assessments. As raised in the evidence of Mr Park, there are sufficient examples whereby habitat types captured by Schedule E (including the exceptions in Table E.2) as rare and threatened may not qualify as significant indigenous vegetation and significant habitat of indigenous fauna under section 6(c) when assessed on the ground. Mr Park cites a number of examples in this regard in his statement; namely, the highly modified wetlands in the Horowhenua and examples of bare substrate and cliffs in the Region.

2.12 In the absence of a site-specific visit, I do not support the presumption implicit in Policy 7-2A of the RPS as sought by the appellants that all rare and threatened habitat types that are 'identified' in Schedule E are indeed ecologically significant. Without reference to the need to have a habitat's potential significance confirmed by a site specific assessment, the effect of such a presumptive clause in the RPS would have direct implications through subsequent provisions of the Regional Plan, including the activity status as I have just outlined. At worst, it would have the potential effect of making redundant subsequent provisions to assess the ecological significance of habitat types in Schedule E under Policy 12-5 - which states that "*consent must generally not be granted for vegetation clearance, land disturbance, forestry or cultivation and certain other resource use activities*

5 Summary of reasons given in section 5.5.2.5 (page 5-19) of the Decisions on Submissions to the Proposed One Plan Volume 1 – Reasons for Decisions August 2010

in a rare habitat, threatened or at-risk habitat assessed to be an area of significant indigenous vegetation or a significant habitat of indigenous fauna". In my opinion the appellants' relief appears to presume Schedule E already does this by deeming all rare, threatened and at-risk habitat types are ecologically significant under section 6(c) RMA.

2.13 As Mr Park outlines, given the number of limitations regarding some of the habitat type inclusions in Schedule E, it is essential that the decisions version of Policy 7-2A(a) be retained to ensure the RPS recognises that some of the habitat types listed in Schedule E may not be confirmed by site specific assessments as significant indigenous vegetation or significant habitat for indigenous fauna.

2.14 The appellants' also sought a number of other changes to Policy 7-2A, including –

(a) Imposing a requirement to maintain or enhance all at risk habitats;

(b) Imposing a new highly prohibitive Policy 7-2A(d) seeking to protect rare and threatened habitats by not allowing vegetation clearance, land disturbance, cultivation and certain other resource use activities except as provided in the policy;

(c) Amending the biodiversity offsets provisions in Policy 7-2a; and

(d) Establishing a new matter of 'national, regional and local costs' of establishing or undertaking an activity beyond that required under the National Policy Statement on Renewable Electricity Generation and National Policy Statement on Electricity Transmission.

2.15 In relation to the appellants' position to include a new clause (d), as currently drafted this provision would be highly prohibitive as some activities may be entirely appropriate in rare and threatened habitats. Mr Park cites a number of examples in his evidence where, although some habitat types may be consistent with Schedule E, they could not be deemed to be ecologically significant. While the appellants' relief may be intended more specifically in relation to the biodiversity offsets framework sought in Policy 7-2A, it is not, in my opinion, clearly drafted to provide for such activities. I discuss my other concerns about the relief sought by the

appellants' further in my evidence. Nonetheless, I contend that it is inappropriate to presume that all activities in these habitat types will have adverse effects, thus constraining activities in these habitats in this regard is not justified.

2.16 The appellants' suggested establishment of a new matter of 'national, regional and local costs' associated with establishing or undertaking an activity in Policy 7-2A is a matter that is not currently envisaged by either the One Plan (Chapter 3) nor the NPSREG and NPSET. While I agree it is important to recognise the many benefits associated with the establishment of infrastructure and other physical resources of regional or national importance, I do not consider it is appropriate to require the balancing of this with local costs within the biodiversity provisions.

2.17 I discuss the implications of the biodiversity offset amendments sought by the Department of Conservation and Fish and Game later in my evidence.

2.18 Overall, I recommend that Policy 7-2A be retained as per the decisions' version.

Policy 12-5: Consent Decision-Making for Activities in Rare Habitats, Threatened Habitats and At-Risk Habitats

2.19 The Minister of Conservation and Fish and Game have sought a number of fundamental changes to Policy 12-5 which would introduce a number of new issues, most notably changing the established RMA approach to avoiding, remedying or mitigating adverse effects. The insertion of the new clauses (ii) and (iii) under sub-clause (b) would create a mitigation hierarchy that I consider would be inconsistent with best practice and one that I believe is not envisaged by the RMA.

2.20 First, I am concerned at the appellants' relief in terms of Policy 12-5(b) which would effectively mean that consent will generally not be granted for **any** resource use activities in rare, threatened or at-risk habitats assessed to be an area of significant indigenous vegetation or a significant habitat of indigenous fauna if there are any more than minor effects (the decisions version referred to "vegetation clearance, land disturbance, forestry or cultivation and certain other resource use activities").

2.21 As I have discussed earlier in relation to Policy 7-2A, deleting "vegetation clearance, land disturbance, forestry or cultivation and certain other" would make this policy overly prohibitive in terms of potential resource uses within these habitats, particularly in at-risk habitats given the potentially large areas of such habitat types remaining in the Region. Ultimately, the protection of significant indigenous vegetation and significant habitat for indigenous fauna needs to be undertaken with consideration as to how it contributes to the overall purpose of the RMA – in essence, section 6(c) of the RMA is not an end in itself.

2.22 Similar to the concerns raised earlier in my evidence and that of Mr Park, some areas of 'at-risk' habitat may, after site assessment, not be considered to be significant under section 6(c) RMA. Therefore, requiring more than minor adverse effects on these areas to be avoided is inconsistent with Part 2 RMA, not in the least by precluding these areas from potential development in the manner proposed by the appellants. Given the nature of the habitat types in Schedule E (ranging from wetlands through to bare cliffs and forest ecosystems), I contend that it is important that a wide range of management options and other mechanisms for managing effects in rare and threatened habitats should be available.

2.23 Closely linked to the importance of ensuring an applicant can consider a range of management mechanisms is the appellants' proposed amendments to the 'avoid, remedy or mitigate' hierarchy of the RMA through the insertion of the new clauses ((ii) and (iii) in Policy 12-5. I do not consider such an approach whereby avoidance of all more than minor effects is envisaged by the RMA. As has been raised by Mr Park, some of the habitat types in Schedule E are located in areas where there is high potential for regionally significant renewable energy generation (for example, elevated landforms containing scarps and tors). The hierarchy sought would be a substantial move away from the effects management framework that has been evolving since the RMA came into effect in 1991.

2.24 I discuss the amendments to the biodiversity offset provisions sought by the appellants' later in my evidence.

Policy 12-6: Criteria for Assessing the Significance of, and Effects of Activities on, an Area of Habitat

2.25 Meridian and TrustPower opposed the appellants' proposed deletion of Policy 12-6(i)(C) 'has functioning ecosystem processes' on the basis that this criterion is an important and accepted component of representativeness. Mr Park was involved in expert caucusing on this matter and his evidence discusses his position in some detail.

2.26 It is my understanding that the retention of the 'functioning ecosystems processes' criterion sought by Meridian and TrustPower in consistent with accepted assessment criteria from other regions and districts in New Zealand which take into account the essential processes required for the functioning of the particular ecosystem. Mr Park cites a number of examples in his evidence.

2.27 On consideration of the outstanding issues in relation to these Policy 12-6 assessment criteria and the interplay of Schedule E, I agree that some additional refinement of the criteria is warranted. As outlined in Mr Park's discussion on the recent *Friends Of Shearer Swamp Incorporated v West Coast Regional Council* ([2010]NZEnvC 345) decision, a number of the concepts are confused with aspects of ecological context incorporated within representative criteria.

2.28 Having reviewed the changes to the ecological assessment criteria in Policy 12-6 suggested by the ecological experts during caucusing and considered their broader application in relation to the habitat types in Schedule E, I consider a practical solution would be to amend Policy 12-6 to require functioning ecosystem processes as a consideration along with other aspects of a site's condition. This would be an improvement on the term being deleted or included either separately or within a broad-ranging criterion of representativeness, rarity and condition.

2.29 While on the matter of the ecological assessment criteria in Policy 12-6, it is important to briefly discuss the position of Ms Barton for Council that Policy 12-6(a)(i) be amended to provide that all three sub-clauses stand on their own and that if any of the provisions apply then the habitat is considered

representative[6]. Although this matter is not directly under appeal, I consider Mr Park has provided sufficient evidence that all of the habitats in Schedule E may not comprise significant indigenous vegetation or significant habitat for indigenous fauna when site specific assessments are undertaken. Accordingly, I consider all three 'representativeness' criteria should be considered together, in association with the other rarity/distinctiveness and ecological context criteria. Classifying a habitat type as ecologically significant simply by ticking off any one of the criteria listed in Policy 12-6 is contrary to similar provisions I am familiar with and indeed inconsistent with section 6(c) RMA. Mr Park discusses this matter in more detail in his evidence.

Biodiversity Offsets (Policy 7-2a and Policy 12-5)

2.30 Meridian and TrustPower opposed the appeals of the Minister of Conservation and Wellington Fish & Game Council seeking changes to Policy 12-5 to clarify the position of biodiversity offsetting in the 'avoid, remedy and mitigate' hierarchy and to make amendments to the matters to be considered when decision-makers are considering/assessing offsets. Meridian and TrustPower both consider that the decisions' version framework establishing biodiversity off-sets was appropriate and straightforward.

2.31 I have two broad concerns with these appeals. First, the relief sought would fundamentally change the established effects management framework of the RMA. Secondly, I do not consider the concept of biodiversity offsets as outlined in the appeal are sufficiently developed to be applied in the nature intended by the appellants. Mr Park also discusses the concept of biodiversity offsets as a form of ecological mitigation, which suggests that restricting biodiversity offsets to the manner sought by the appellants' may reduce the potential for applying biodiversity offsets in a more flexible manner.

2.32 In considering this aspect of the appellants' relief, Ms Barton notes that, notwithstanding the guidance provided by the intent of the Proposed National Policy Statement on Indigenous Biodiversity (NPSIB), a

[6] Refer para 22(f) page 6 and later para 36 of Ms Clare Barton's biodiversity statement.

hierarchical approach is appropriate in this context. Ms Barton recommends that the current wording of Policy 12-5(b) and (c) should be amended to clarify that such an approach is appropriate. Consistent with Meridian's and TrustPower's position on this matter, Ms Barton notes that a similar hierarchy is contemplated in the decisions version, Chapter 3, Policy 3-3(c)(iv) where *"whether any more than minor adverse effects that cannot be adequately avoided, remedied or mitigated by services or works can be appropriately offset, including through the use of financial contributions"* is a matter to be taken into account by the Regional Council and territorial authorities when managing adverse environmental effects from the establishment, operation, maintenance and upgrading of infrastructure.

2.33 While there is a considerable body of international ecological, social and policy research and development on Biodiversity Offsetting[7], in practice in New Zealand an offset has typically been considered as a form of mitigation, often carried out at a distance from the site of the adverse effects. Mr Park discusses his experience in his statement. In recent examples, biodiversity offsets have been developed as part of a package of "mitigation measures". For example, the New Zealand Transport Agency put forward a number of management methods to address residual biodiversity effects associated with the proposed Transmission Gully Project. In response, the Board of Inquiry considered that:

> *...for the purposes of Transmission Gully Project the concept of offsetting is intended to encompass management methods which fall into the categories of remedying, or mitigating (or even avoiding) adverse effects.*[8]

2.34 As outlined in the evidence of Mr Park, an offset can provide an opportunity for biodiversity gains, provided the offset is well designed, implemented and monitored. One of the key aspects of offsetting is to quantify what constitutes no net loss/net gain and this requires an agreed and rigorous framework.

7 For details see: http://bbop.forest-trends.org/ The Department of Conservation is also seeking to develop an agreed New Zealand approach through the Biodiversity Offsetting Programme

8 EPA 0072 Final decision and report of Board of Inquiry into the NZTA Transmission Gully Plan Change Request

2.35 Overall, as a concept, I consider it is appropriate that the application of biodiversity offsets is applied in the One Plan as offsets can be beneficial in appropriate circumstances. However, the application of offsets should be flexible enough to take account of the wide range of scenarios which could be applied within the remediation or mitigation framework of the RMA. This matter was a key consideration of the decisions version of this policy where the Committee decided in relation to the concerns raised by the Minister of Conservation that the policy *"now provides guidance on those matters to enable a decision-maker to make the appropriate decision based on all the relevant facts in the particular circumstances of the actual case"*.[9]

2.36 In my opinion, restricting the concept in the manner proposed by the appellant inadvertently limits its application and may not lead to biodiversity gains for New Zealand. On the basis of the wider-ranging issues associated with biodiversity offsets, I agree with Mr Park that until there is more national guidance on the use of biodiversity offsets under the RMA context, Policies 7-2A and 12-5 should be retained as per the decisions version10. I note that Ms Barton for the Regional Council supports the retention of these more general provisions for biodiversity offsets. Ms Barton also supports Mr Park's and my position that biodiversity offsets should be recognised as part of the broad suite of "avoid, remedy, mitigate" requirements set out in section 5 of the RMA, rather than as a set of alternative management tools that should be considered separate from, or following, the avoidance, remediation or mitigation of adverse effects.

2.37 Finally, I also consider that biodiversity offsets should be able to be considered as part of a package of mitigation to address adverse effects on indigenous biodiversity values whenever a resource consent or plan change is sought, rather than overly restricting its application as proposed by the appellants. I consider the revised Policy 7-2 provides a good step towards providing a much-needed regional framework for biodiversity offset mitigation of any adverse effects associated with major infrastructure.

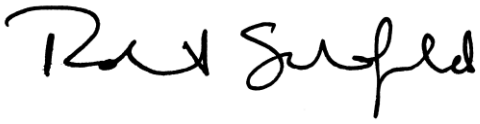
9 Refer page 5-37 of Council Hearing decision

10 I note the BBOP (refer earlier footnote) has just released an international *"Standard on Biodiversity Offsets: A tool to assess adherence to the BBOP Principles on Biodiversity Offset Design and Implementation"*.

Conclusion

2.38 In conclusion, I support the overall intent and approach of the One Plan to provide a strong framework for promoting the integrated management of the Region's natural and physical resources, focusing on key regional assets and issues. In particular, the recognition of the regional and national importance of infrastructure within the biodiversity provisions of the Plan is supported.

2.39 The focus of both Meridian's and TrustPower's appeals and section 274 party interests were on ensuring that the management framework provided by the One Plan included sufficient certainty and clarity in the types and levels of protection. These appeal points also sought a flexible consent regime that provides for some limited change to occur in a manner that would avoid, remedy or mitigate significant effects while recognising the national and regional benefits of renewable energy.



Robert Schofield
Director, Boffa Miskell Limited | Environmental Planner
17 February 2012

Appendix 1: Recommended Amendments to the Proposed One Plan

The following outline the proposed amendments to the Proposed One Plan discussed in my evidence (changes shown as struck-through or underlined) (based on the decisions version of the One Plan):

Policy 12-6

(a) An area of rare habitat, threatened habitat* or at-risk habitat* may be recognised as being an area of significant indigenous vegetation or a significant habitat of indigenous fauna if:*

(i) in terms of representativeness, that habitat:

(A) comprises indigenous habitat type that is under-represented (20% or less of known or likely former cover), or

(B) is an area of indigenous vegetation ~~that is large relative to other areas of habitat in the Ecological District or Ecological Region,~~ that is typical of the habitat type in terms of species composition, structure and diversity ~~with indigenous species composition, structure and diversity typical of the habitat type.~~ and has functioning ecosystem processes.

(C) has functioning ecosystem processes.

Or

(ii) in terms of rarity and distinctiveness, that habitat supports an indigenous species or community that:

(A) is classified as threatened (as determined by the New Zealand Threat Classification System and Lists), or*

(B) is distinctive to the Region, or

(C) is at a natural distributional limit, or

(D) has a naturally disjunct distribution that defines a floristic gap, or

(E) was originally (ie., prehuman) uncommon within New Zealand, and supports an indigenous species or community of indigenous species.

or

(iii) in terms of ecological context, that habitat provides:

(A) connectivity (physical or process connections) between two or more areas of indigenous habitat, or

(B) an ecological buffer (provides protection) to an adjacent area of indigenous habitat (terrestrial or aquatic) that is ecologically significant, or

(C) part of an indigenous ecological sequence or connectivity between different habitat types across a gradient (eg., altitudinal or hydrological), or

(D) important breeding areas, seasonal food sources, or an important component of a migration path for indigenous species, or

(E) habitat for indigenous species that are dependent on large and contiguous habitats., or

(F) is an area of indigenous vegetation that is large relative to other areas of habitat in the Ecological District or Ecological Region.

(b) The potential adverse effects^ of vegetation clearance, land disturbance*, forestry* or cultivation* on a rare habitat*, threatened habitat* or at-risk habitat* must be determined by the degree to which the proposed activity will diminish any of the above characteristics of the habitat that make it significant, while also having regard to the ecological sustainability of that habitat.*