

BEFORE THE ENVIRONMENT COURT

IN THE MATTER OF

appeals under clause 14 of the First
Schedule to the Resource Management
Act 1991 concerning Proposed One Plan
for the Manawatu-Wanganui Region

**FEDERATED FARMERS OF NEW
ZEALAND ENV-2010-WLG-000148**

AND

**MERIDIAN ENERGY LTD
ENV-2010-WLG-000149**

AND

**MINISTER OF CONSERVATION
ENV-2010-WLG-000150**

AND

**PROPERTY RIGHTS IN NEW
ZEALAND ENV-2010-WLG-000152**

AND

**HORTICULTURE NEW ZEALAND
ENV-2010-WLG-000155**

AND

**WELLINGTON FISH & GAME
COUNCIL ENV-2010-WLG-000157**

Appellants

AND

**MANAWATU-WANGANUI
REGIONAL COUNCIL**

Respondent

**STATEMENT OF EVIDENCE OF SHANE ALEXANDER HARTLEY
ON BEHALF OF FEDERATED FARMERS OF NEW ZEALAND**

1.0 INTRODUCTION

- 1.1 My name is Shane Alexander Hartley. I am a Director of Terra Nova Planning. I hold the qualifications of Bachelor of Arts in Political Studies and History, and Bachelor of Town Planning. I am a Member of the NZ Planning Institute.
- 1.2 I was actively involved in policy and resource consent processes while employed by the Rodney District Council between 1981 and 1999 holding the various positions of Planner, Senior Planner, Planning Manager, and Forward Planning Manager, and since 1999 have as a consultant been involved in numerous policy and consent processes for both private clients and public agencies.
- 1.3 My professional experience has substantially been in the area of strategic and District Plan land use. My extensive experience with statutory processes and documents includes:
- the Auckland and Northland Regional Policy Statements,
 - Auckland Regional Growth Strategy,
 - Waikato Regional Plan: Variation 5 - Lake Taupo
 - District Structure Planning,
 - District Plan resource management, including Plan and plan change / variation preparation and processing, and
 - land use and subdivision resource consent applications and private plan changes.
- 1.4 I have read and agree to comply with the Environment Court's Expert Witness Code of Conduct (Consolidated Practice Note 2006). This evidence is within my area of expertise, except where I state that I am relying on some other evidence. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2.0 BIODIVERSITY RULES - DISCRETIONARY OR NON-COMPLYING?

2.1 My Statement focuses on whether certain activities should be classified as Discretionary or Non-complying in regard to rare, threatened and at-risk habitats in the Horizons One Plan.

2.2 I consider that the Regional Plan (DV POP) properly provides for activities within Rare, Threatened and At-Risk habitats as Discretionary Activities under Rule 12-6.

2.3 In this respect, the non-complying status for activities in rare and threatened habitats as sought by the appeals by the from the Ministry of Conservation, and Wellington Fish and Game, is in my opinion neither necessary nor appropriate in the context of the overall approach of the Plan's biodiversity objectives, policies and methods (including rules). The thrust of the biodiversity provisions establishes a well focused and balanced biodiversity regime. The over-arching objective is found in Chapter 7 of the Plan, being;

Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna and maintain indigenous biological diversity including enhancement where appropriate. (Objective 7-1)

2.4 Policy 7-1 apportions biodiversity management responsibilities between the Regional Council and territorial authorities, with the Regional Council developing objectives, policies and methods for the purpose of establishing a region-wide approach for maintaining indigenous biological diversity, and developing rules controlling use of land to protect areas of significant indigenous vegetation and habitats of indigenous fauna and to maintain indigenous biological diversity. Territorial authorities are excused from providing District Plan methods for that specific purpose with the Regional Council clearly taking the primary role.

2.5 Policy 7-2A addresses the regulation of activities affecting indigenous biological diversity the methodology the Plan takes is signalled in sub-policies (a) and (b) which are;

(a) Rare habitats and threatened habitats must be recognised as areas of significant indigenous vegetation and

significant habitats of indigenous fauna unless site-specific assessments determine otherwise.

(b) At-risk habitats require site-specific assessments to determine their ecological significance.

- 2.6 The Schedule E process is the approach the Regional Plan takes as an alternative to attempting to accurately map the significant areas of indigenous biodiversity throughout the region, which I consider is well and graphically described by Clare Barton as “real-time, as required” site assessment¹. In providing for biodiversity protection by way of habitat type classification, the Council has avoided the need to schedule and/or map ecologically significant areas.
- 2.7 However, under this management approach, landowners have considerably less certainty as to whether areas of indigenous vegetation within their properties fall within one of the Rare, Threatened or At-Risk classifications. There are no immediately measurable geographic or spatial boundaries by which such a determination can be made. In this context, the Discretionary Activity classification for activities, based on the processes outlined in the policies and Schedule E, provides an appropriate balance between the Council’s regulatory responsibilities and objectives, and land owner interests and requirements.
- 2.8 Furthermore, the Schedule E methodology does not in my view sit comfortably with a Non-complying activity status. The methodology is one which administers discretionary judgment guided by firm Plan objectives and policies, in association with specified exclusions provided for Table E.2(b) of Schedule E. Policies 12-5 and 12-6 provide a clear direction as to the required decision approach to a Discretionary Activity application.
- 2.9 Thus the focus of an application is entirely on the significance of a specific habitat, and the potential adverse effects of a proposed activity on that habitat – which, in the case of rare or threatened habitats requires any more than minor adverse effects having to

¹ Para 21 Clare Barton, Statement of Planning Evidence, 31 January 2012

be avoided, or otherwise remedied, mitigated or offset - guided also by the criteria for assessing the significance of and effects of activities on an area of habitat under Policy 12-6.

- 2.10 In this respect, I concur with Clare Barton's reasons for preferring a Discretionary as opposed to a Non-complying approach². Ultimately, the relevant biodiversity policies and rules of the Regional Plan establish a management regime which avoids the inevitable pitfalls and errors almost certainly likely to arise if detailed mapping and classification of significant biodiversity areas are attempted over such an extensive area. The approach recognises the many "grey" areas inherent in identifying biodiversity habitat from a regulatory perspective, and provides a reasonably straight-forward resource consenting approach that is more sensitive to the land management decision process and timeframe of affected land owners.

Shane Hartley

17 February 2012

² Para 56, Clare Barton's Statement of Evidence, 31 January 2012