

**IN THE MATTER OF** the Resource Management  
Act 1991

**AND**

**IN THE MATTER OF** the Proposed One Plan  
notified by the Manawatu-  
Wanganui Regional Council,  
hearing related to Water.

## **STATEMENT OF EVIDENCE OF RICHARD ZANE PETERSON**

### **INTRODUCTION**

1. My name is Richard Zane Peterson and I am a Senior Associate and the Wellington Planning Manager of Harrison Grierson Consultants Limited.
2. I hold a Masters Degree in Regional and Resource Planning (with Distinction), completed in 1997, and have some 12 years planning and resource management experience. I have worked as a planner in both the private and public sector, including work for both territorial authorities and a regional council. During my career I have been involved in a number of resource consent, designation and plan and policy making processes and consequently have been involved in many local authority hearings.
3. In my role as Manager of Harrison Grierson's Wellington Planning team, I oversee a team of two planners who work for a wide range of clients including the resource consent and policy arms of local authorities, telecommunication providers, central government ministries and agencies, industry bodies, land developers and other private clients.
4. Amongst others things I have recently been working for the Porirua City Council on a Plan Change to introduce new Open Space and Recreation Zones to that City. I have also assisted the Ministry for the Environment to review the Section 32 guidance material available on the Quality Planning Website and have worked with the New Zealand Institute of Economic Research on the Section 32 evaluation for the Electricity Transmission National Policy Statement. In 2008 I was engaged by Mighty River Power Limited (Mighty River Power) to provide planning evidence to the Board of Inquiry for the proposed New Zealand Coastal Policy Statement (NZCPS). I have also overseen the work of my team, and provided planning

advice directly, in assisting the Horowhenua District Council to process resource consent applications.

5. I have read the Environment Court Consolidated Practice Note 2006 and agree to comply with it and to apply it as if it was a duty to the Hearings Panel. I understand that as an expert witness I have an overriding duty to assist the Hearings Panel impartially on relevant matters within my area of expertise. Except where I state that I am relying upon the specified evidence of another person, my evidence in this statement is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions which I express.

## ***Scope and Summary of Evidence***

### **OVERVIEW**

6. My evidence addresses the specific Mighty River Power submissions on Chapters 6, 13 and 16. This evidence covers three broad issues:
  - the role of Water Management Zones and Water Management Sub-Zones and the related objectives and policies;
  - water quality; and,
  - beds of rivers and lakes.
7. My evidence regarding Chapter 6 does not cover Mighty River Power's submissions regarding water quantity. Planning evidence on these submissions is provided by Mr Andrew Collins.
8. Appended to my evidence is a track change document that contains all of the changes that both Mr Collins and I have recommended. I note that for the sake of clarity I have included the recommendations provided in the Officer's Report and have shown these in green text. Mr Collins and my recommendations to the Hearings Panel are shown in red text.

### **EARLIER EVIDENCE**

9. My previous evidence on the Proposed One Plan Chapter 3 'Energy, Infrastructure and Waste' provided a background and overview to the Mighty River Power

submissions. In that background I outlined my understanding regarding the purpose of Regional Policy Statements, relevant sections of the Resource Management Act 1991 (RMA or the Act) and relevant national policy. I do not propose to repeat this background information in this evidence; rather, I refer the Hearings Panel to sections 4 and 5 of my One Plan evidence on Chapter 3 'Energy, Infrastructure and Waste'. I also note that Mr Collins has provided background to the Mighty River Power submission, and has updated this to take into account more recent changes, in his evidence.

10. I also refer the Hearings Panel to paragraphs [4] to [15] of my supplementary evidence to the General Hearing in 2009 regarding Chapter 3 and specifically resource use activities. I consider this is of particular relevance to the matters at hand at this hearing.
11. In response to my evidence and that of others, the following comment was provided by Barry Gilliland in his 'End of Hearing Statement' dated the 4th of August 2009 (page 7):

*'Although I consider some resource use activities can be included in the definition of operation, I do not consider it is 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 infrastructure "trumping" the resource uses of other activities during resource allocation and decision making processes. I do not consider this would be an appropriate resource management outcome.'*

12. Mr Gilliland recommends a change to the definition of operation that excludes water abstraction, discharge of contaminants and occupation of the Coastal Marine Area. However in my view this outcome would not be appropriate. My reasons for this are as follows.
13. The amendments sought by Mighty River Power to recognise and provide for resource use activities as well as infrastructure are not intended to give infrastructure priority status or to 'trump' other resource users. I understand that relative priority in which one application is processed first in relation to another is a matter which has been, and continues to be, considered by the Courts. The amendments that I have recommended in my previous evidence on Chapter 3 are not seeking to influence decisions about priorities. Rather, the objectives and policies of Chapter 3 should be, and are required to be taken into account when

Council make its s104 and s104D RMA considerations on an individual application's merits. In my view such decisions are divorced from Council's decision on the order in which water allocation applications are to be processed.

14. I therefore disagree with the exclusion of water abstraction from the definition of operation. As I noted previously, the act of water abstraction is critical to realising the benefits from such resources. Using hydro as an example, I note that the ability to take, divert, dam and discharge water is critical to realising the benefits of this renewable energy resource. To give full and appropriate regard to s7(j) of the Act I consider that the Council needs to apply the same level of recognition to the use of these resources, as it does to the associated infrastructure.
15. Contrary to the direction recommended in the End of Hearing Report, I consider that the various provisions within Chapter 3 should be amended so that it is clear that they cover resource use activities associated with infrastructure. Importantly, I note my recommendations (at pages 9 to 12 of my supplementary evidence to the 2009 General Hearing) on Policy 3-3, which seek to provide a policy framework that should be applied to the management of adverse environmental effects arising from infrastructure and from associated resource use activities.
16. I consider that my earlier recommendations are directly relevant to the chapters being considered at the current hearing, and have drafted my recommendations accordingly.

#### **SUMMARY OF SPECIFIC RECOMMENDATIONS**

17. The following sections of my evidence consider submissions made by Mighty River Power. In several instances I recommend that amendments be made to the Proposed One Plan. By way of summary I note the following points.
18. In relation to Objective 6-1 and Policy 6-1, I consider that by focussing solely on Water Management Zones and Sub-Zones these provisions place undue significance on the role of these 'units' in the management of adverse effects on the region's surface water bodies. I note that in contrast to Policy 6-1 elsewhere in the Plan specific sites and reaches take on an important role within the management framework for surface water bodies. This approach recognises the particular values that may exist at these points, but which may not exist more broadly within the waterbody. I also note that for larger projects which impact

across an entire Sub-Zone or which cross Sub-Zones it may be appropriate to focus the management of adverse effects at a catchment or potentially region-wide basis. For these reasons, while recognising the need to seek appropriate environmental outcomes in relation to surface water values, I consider that it is relevant that Policy 6-1 recognise that the 'unit' or area that will be applied to any assessment of a project should be relevant to characteristics of the proposal.

19. Similarly, in relation to surface water quality Policies 6-3, 6-4 and 6-5 it is my view that these provisions should provide for off-set mechanisms which ensure no net loss of water quality. Such mechanisms should be available where it is not reasonably practicable to meet, maintain or enhance the existing water quality standards of individual Water Management Zones or Sub-Zones. I consider that this approach would be appropriately less absolute in its focus on the values of individual Water Management Zones or Sub-Zones and would therefore more appropriately reflect the purpose of the RMA.
20. My recommendations in relation to Objective 6-4 and Policy 6-28 are based on a similar premise. That is, that the focus of the One Plan provisions should be on the overall outcome in terms of the values of surface water bodies and not solely on the values associated with individual Water Management Zones or Sub-Zones. Again I propose that a no net loss approach would therefore be more appropriate.
21. Specifically in relation to Objective 6-4 I consider that it is inappropriate that this objective seeks to enable the use of beds of rivers and lakes provided that their other values are not compromised. With this requirement I do not consider that the Objective is the most appropriate in relation to the purpose of the RMA and I therefore recommend that this particular part of the Objective be deleted.
22. In relation to Chapter 13 I recommend that an amendment is made to Rule 13-23. I consider that the rule as worded in the Officer track-changes could be interpreted to apply to quite significant lengths of rivers and streams. It is my view that, if retained, this quite restrictive rule should only apply to specific sites of concern. To this end I therefore recommend changes to clauses (a) and (b). I also note the overlap between rules 13-23 and 12-6 and recommend the deletion of clause (d) to overcome this issue.
23. Finally in relation to Chapter 16 I make recommendations in two areas. The first follows on from my concern with regard to Rule 13-23. This is that several Chapter 16 rules and standards could be interpreted to apply to quite significant

lengths of the region's rivers and streams. I understand that this is not intended and suggest wording to help clarify this point.

24. The second and more substantive recommendation relates to Policy 16-1. I consider that this Policy should include reference to the provisions of Chapter 3. In my view there are two reasons for this. Firstly, doing so would be consistent with other Chapters in the Regional Plan, such as Chapter 13. Secondly, doing so would enable the provisions of Chapter 3 to be considered as part of the s104D 'gateway test' for non-complying activities. I believe that in order 'to give effect to' the directions contained within Chapter 3 it is appropriate for such access to be available.

## ***Amendments to Chapters 6, 13 & 16***

### **CHAPTER 6**

#### ***Objective 6-1 Water Management Values, Policy 6-1 Water Management Zones and Values***

25. As notified, Objective 6-1 seeks that surface water bodies are managed in a manner which sustains their life-supporting capacity and recognises and provides for the values set out in Schedule D.
26. Policy 6-1 provides that for the purposes of managing water quality, water quantity, and activities in the beds of rivers and lakes, the rivers and lakes in the Manawatu-Wanganui Region have been divided into the water management zones shown in Schedule D. Policy 6-1 seeks that rivers and lakes shall be managed in a manner which recognises and provides for the values identified in Schedule D.
27. Mighty River Power's submission opposes this objective and policy, in part, for several reasons. In summary, Mighty River Power is concerned that these provisions are seeking to recognise and provide for a wide range of existing values in all cases. Mighty River Power notes in its submission that in some cases provision for these values may not be the most appropriate means of achieving the purpose of the RMA. It also notes that in some cases actual or potential effects on these values can be avoided, remedied or mitigated, for instance where there are adverse effects on amenity or on fishery values.

28. Additionally, Mighty River Power is of the opinion that there may also be other means of providing for some of the identified values for example by enhancing values of other locations or recognising Policy 18(1)(a) and (b) that enables the consideration of financial contributions in situations where adverse effects are not able to be avoided, remedied or mitigated.
29. Mighty River Power seeks an amendment to Objective 6-1 so that it reads as follows:
- "Surface water bodies are managed in a manner which sustains their life-supporting capacity and recognises and provides for the values set out in Schedule D where it is appropriate to do so."*
30. Regarding Policy 6-1, Mighty River Power seeks an amendment as follows:
- "...The rivers and lakes shall be managed in a manner which recognises and provides for the values identified in Schedule D for each water management sub zone, where this is appropriate. It is recognised that in some circumstances the recognised values will not be able to be provided for."*
31. Mighty River Power also seeks the insertion of a cross reference to Chapter 18 'Financial Contributions'.
32. The Officer's Report notes (page 54) for Objective 6-1 that *'the words "where it is appropriate" add less certainty to the Objective and are inappropriate'* and for Policy 6-1 *'the wording is uncertain and the wording proposed in the amended Policy 6-1 is more certain'*. I accept that the proposed wording as sought by Mighty River Power is not as clear as it could be. However I do not believe that the underlying issues raised in its submission have been appropriately addressed in the Officer's Report. I consider that these issues are legitimate and should be addressed.
33. I recognise that the Water Management Zones and Water Management Sub-Zones are useful geographical areas at which to assess and identify values. I do not, however, believe that these areas can be used on the sole basis for integrated management, as is stated in the revised version of Policy 6-1 recommended in the Officer's Report.
34. A policy framework focused solely on managing values at the level of Water Management Sub Zones fails to recognise that there may be other ways to achieve the focus of the RMA which is safeguarding the life supporting capacity of

water generally. It is noted that the RMA is not about the absolute protection or maintenance of values in each Water Management Zone or Water Management Sub-Zone.

35. I support the concerns expressed by Mighty River Power in their submission. I consider that given the purpose of the RMA, recognising and providing for the values set out in Schedule D (now Schedule Ba) at Water Management Sub-Zone level will not be appropriate in all cases. I also consider that enhancing the values at other locations (i.e outside the immediate Water Management Zone) through appropriate mechanisms, including amongst other things financial contributions, should be recognised within Chapter 6 as an appropriate mechanism for achieving the broader objective of maintaining water quality and the prevention of further decline. For larger uses that cover more than one Water Management Sub-Zone, the reduction in values in one zone can be off set by measures off site, in another zone. In other words integrated management at a catchment wide or regional level may in fact be most appropriate in some circumstances.
36. In addition, I consider that the emphasis in Policy 6-1 on Water Management Zones and Sub-Zones is inconsistent with other sections of the Proposed One Plan that provide for and seek to manage site/reach specific values. These values are described in Schedule Ba2: Surface Water Management Values and are referred to throughout the Plan. While divided into the Water Management Zone and Water Management Sub-Zone geographical areas, the maps provided in Schedule Ba2.2 that illustrate how and where specific water management values apply show that only a portion of areas within these zones actually have these values. I therefore deem it inappropriate that Water Management Zones and Water Management Sub-Zones are the sole units to be used for the integrated management of waterbodies. Activities at sites that are shown on the maps in Schedule Ba2.2 as not containing the values should not be assessed as having these values simply due to the fact that the site is located within a wider geographical area, being a Water Management Zone or Water Management Sub-Zone, that has these values.
37. To this end, I consider that the adverse effects of activities on water bodies should be considered at a range of scales including Water Management Sub-Zones, site or reach specific areas and also in the context of a larger area such as a catchment or the region.
38. I therefore recommend that the Hearings Panel make changes to the text for Objective 6-1 and Policy 6-1 as set out below. I note that Mr Collins has

addressed how Table 6.2 and Schedule Ba addresses the potential hydro-electricity values associated with the region's surface water bodies.

### **Objective 6-1: Water management values**

Surface water ~~bodies~~<sup>^</sup> ~~are~~ ~~is~~ managed in a manner which ~~sustains safeguards~~<sup>1</sup> ~~their~~ ~~its~~ life-supporting capacity and ~~recognises and provides for which avoids, remedies or mitigates adverse effects on~~ the values set out in Schedule ~~Ba~~ ~~by 2030~~.

### **Policy 6-1: Water management framework zones and values**

~~For the purposes of managing water quality, water quantity, and activities in the beds of rivers and lakes, the rivers and lakes waterbodies in the Manawatu-Wanganui Region have been divided into the water management sub-zones shown in Schedule D. The rivers and lakes waterbodies shall be managed in a manner which recognises and provides for the values identified in Schedule D for each water management sub-zone. The values and their associated purposes are set out in Table 6.2.~~

~~For the purpose of safeguarding the life-supporting capacity of water bodies<sup>^</sup> and to avoid, remedy or mitigate adverse The environmental effects<sup>^</sup> of activities on water<sup>^</sup> quality, water<sup>^</sup> quantity and the beds<sup>^</sup> of rivers<sup>^</sup> and lakes<sup>^</sup>, water bodies<sup>^</sup> in the Manawatu-Wanganui Region shall be managed in accordance with the following framework:~~

- ~~(i) The Water Management Zones\* and Water Management Sub-zones\* and Groundwater Management Zones defined in Schedule Ba, Part Ba1 shall be used as one of the units for integrated management of describing the values of water bodies and establishing the status of activities which effect water bodies<sup>^</sup>;~~
- ~~(ii) The environmental effects of activities on water bodies will be assessed at the scale appropriate to the proposal, including specific sites and reaches within a water-bodies, the water management sub-zones and catchment- or region-wide;~~
- ~~(iii) Water bodies<sup>^</sup> shall, where appropriate, be managed in a manner that recognises and provides for the surface water<sup>^</sup> management values defined in Schedule Ba, Part Ba2;~~
- ~~(iv) Surface water<sup>^</sup> quality shall, where appropriate, be managed according to the standards set in Schedule D, which provide for the values defined for each Water Management Sub-zone\*;~~
- ~~(v) Surface water<sup>^</sup> allocation shall, where appropriate, be managed according to the minimum flows and allocation limits set in Schedule B, Table B1, for each Water Management Sub-zone\* and groundwater shall, where appropriate, be managed according to the allocation limits set in Schedule C for each Groundwater Management Zone'~~

<sup>1</sup> Water Officer's Report – recommendation WTR16

**Policy 6-3, Policy 6-4 and Policy 6-5**

39. Mighty River Power's submission opposes Policy 6-3, Policy 6-4 and Policy 6-5. Broadly, Mighty River Power opposes the direction in the policies that existing water quality is required to be maintained or improved in all cases. Mighty River Power considers that in some cases non-compliance with the standards may not result in significant adverse effects on the environment and therefore the ability to remedy or mitigate any adverse effects should also be provided for.
40. Specifically regarding Policy 6-4, Mighty River Power states that the Policy does not recognise that in some limited circumstances non-compliance with the standards may be off set by measures off site, i.e there may be a net improvement in water quality as a result of the application.
41. Mighty River Power's submission seeks that the policies be amended to reflect the following:
- amendments so that the water quality standards are not required to be met in all cases;
  - provision is made for the remediation or mitigation of adverse effects on the environment;
  - amendments to reflect that enhancement is only required where the standards are not met and there is a recognised adverse effect on the environment; and
  - amendments to reflect that enhancement is not required where there is a net improvement in water quality.
42. Referring to Mighty River Power's submission, the Officer's Report states (page 83) for Policy 6-3 that *'I have noted in Section 4.23 that the Water Management Zones and Values are intended to target the avoidance, remediation or mitigation of adverse effects. I have recommended changes to Policy 6-1 to provide some clarification around this issue'*.
43. Regarding Policy 6-4 the Officer's Report contends (on page 83) that the policy is re-written so that it is not inferring that a discharge has to clean up a river and the Policy has regard to the likely effects of the activity and the characteristics of the discharge.

44. Regarding Policy 6-5, in response to Mighty River Power's submission and other submissions, the Officer's Report suggests the rewording of Policy 6-5(a)(i) as follows:

*"(i) maintains or enhances ~~improves~~ the existing water quality."*

45. I support the concerns expressed by Mighty River Power in their submissions because the words contained within the policies do not recognise that the RMA provides for adverse effects on the environment to be avoided, remedied or mitigated. Additionally, I do not consider that it is appropriate that existing water quality of specific localities is required to be maintained or improved in all cases. Further, I consider the use of Water Management Zones and Water Management Sub-Zones for measuring compliance is too limiting for the reasons that I have provided in paragraphs [34] to [35] above.
46. I note that the Officer's Report has attempted to address concerns identified in relation to Policy 6-4. While I concur with the Officer's recommendation, I consider that in some circumstances where after the adverse environment effects of a proposal have been avoided as far as reasonably practicable and there are still adverse effects, there should be an opportunity to provide for the remediation or mitigation of such effects. Further, where these effects cannot reasonably be remedied or mitigated, there should be provision to offset these effects on the proviso that there is no net loss in relation to the relevant values.
47. I therefore recommend the changes sought to Policy 6-3, 6-4 and 6-5 as follows.

***'Policy 6-3: Ongoing compliance where water<sup>^</sup> quality standards are met***

- (a) *In each case where the existing water<sup>^</sup> quality meets the relevant water<sup>^</sup> quality standard within a Wwater Mmanagement Ssub-zone\*, as shown in Schedule DBa, activities shall be managed in a manner which ensures that the water<sup>^</sup> quality standard continues to be met, as far as reasonably practicable, or otherwise any adverse effects are appropriately remedied, mitigated or off-set to ensure no net loss in relation to water quality.*

.....'

***'Policy 6-4: Enhancement where water<sup>^</sup> quality standards are not met***

- (a) *In each case where the existing water<sup>^</sup> quality does not meet the relevant water<sup>^</sup> quality standard within a Wwater Mmanagement Ssub-zone\*, as shown in Schedule D, activities shall be managed in a manner which as far as reasonable practicable, maintains or*

enhances existing<sup>2</sup> water<sup>^</sup> quality in order to meet the water<sup>^</sup> quality standard for the Wwater Mmanagement Ssub-zones\* shown in Schedule D.

- (b) Where it is not reasonably practicable to maintain or enhance existing water quality, any significant adverse effects on water quality shall be appropriately remedied, mitigated or off-set to ensure no net loss in relation to water quality.

.....'

**'Policy 6-5: Management of activities in areas where existing water<sup>^</sup> quality is unknown**

- (a) In each case where there is insufficient data to enable a comparison of the existing water<sup>^</sup> quality with the relevant water<sup>^</sup> quality standard as shown in Schedule D, activities shall be managed in a manner which:
- (i) as far as reasonably practicable maintains or improves enhances<sup>3</sup> the existing water<sup>^</sup> quality
  - (ii) where it is not reasonably practicable to maintain or enhance existing water quality, any significant adverse effects on water quality shall be appropriately remedied, mitigated or off-set to ensure no net loss in relation to water quality.
  - (iii) has regard to the likely effect of the activity on the values identified for the relevant Wwater Mmanagement Ssub-zone\*
  - (iv) has regard to relevant information about the existing water quality in upstream or downstream Wwater Mmanagement Ssub-zone\*, where such information exists.

.....'

48. I also recommend that a consequential amendment be made to Section 6.7 - Explanations and Principal Reasons as provided below and shown in the Appendix to my evidence.

'The Horizons Region has been divided into Wwater Mmanagement Ssub-zones\* for the purpose of managing water quality and quantity. Water bodies within these Wwater Mmanagement Ssub-zones\* have been assigned values which represent the ecosystem, recreational, cultural and social and economic values of the water body (Objective 6-1, Policy 6-1). Standards have been assigned to protect recognise and provide for these values (Policies 6-2 to 6-5).'

**Objective 6-4 River and Lake Beds and Policy 6-28 Activities in waterbodies with a value of Natural State, Sites of Significance**

<sup>2</sup> Water officers report – recommendation WTR 266

<sup>3</sup> Water officers report – recommendation WTR 27

49. Objective 6-4 seeks that all values of the beds of rivers and lakes are recognised and provided for, including enabling future use and development of the beds of rivers and lakes provided other values of the river or lake are not compromised.
50. Policy 6-28 seeks that in those Water Management Sub-zones with a Value of Natural State, Sites of Significance – Cultural, or Sites of Significance – Aquatic, as shown in Schedule D, activities in, on, under or over the beds of rivers and lakes shall be managed in a manner which:
- (a) avoids adverse effects on these values
  - (b) maintains the habitat and spawning requirements of the species identified in Schedule D as being significant within the subject Water Management Sub-Zones.

**Objective 6-4**

51. Mighty River Power's submission opposes Objective 6-4, in part, because it is considered that the words contained within the objective do not recognise that the RMA provides for adverse effects on the environment to be avoided, remedied or mitigated. For this reason Mighty River Power does not agree that all values have to be recognised and provided and that values cannot be 'compromised'.
52. Mighty River Power's submission seeks that Objective 6-4 be reworded so that it reads as follows:

*'Future use and development of river and lake beds is provided for where appropriate provision is made for other values'.*

53. The Officer's report (page 68) rejected this submission as it was noted that the wording is unclear and no one would know what 'appropriate provision' would mean.

**Policy 6-28**

54. Mighty River Power's submission opposes Policy 6-28 because it is considered that the avoidance test is a high one and the Act places no priority on avoiding effects. Mighty River Power states that:
- the policy needs to be amended to reflect the fact that in some circumstances adverse effects on these values may be remedied or mitigated; and

- the policy does not provide a cross reference to Policy 18-1(a) which recognises that adverse effects that are not able to be avoided, remedied or mitigated may be offset by other means such as off-site mitigation.
55. Mighty River Power's submission seeks that the policy be amended to reflect the above points including the addition of *'where this is practicable otherwise adverse effects are required to be remedied or mitigated'* to clauses (a) and (b) and an additional clause which states that in some circumstances financial contributions may be an appropriate mechanism to mitigate adverse effects.
56. The Officer's Report (page 145) states that:
- 'The Policy is intended to send a strong signal that in relation to these sites... adverse effects need to be avoided. I do however accept that through a consent process it could be determined that effects can be mitigated by various means to a level that still maintains the values of importance. In my opinion, remediation may not be an appropriate reference within the Policy as remediation to me signals past tense...and I do not consider that this is appropriate for this Policy.'*
57. Regarding the inclusion of a reference to Chapter 18 'Financial Contributions', the Officer's Report (page 146) considers that such an inclusion is *'inappropriate as the effects are not being sought to be an offset but rather the values within these Sites of Significance need to be protected and maintained.'*

### **Assessment**

58. I support the concerns raised by Mighty River Power regarding Objective 6-4. I consider that it is inappropriate to require that the values of the beds of rivers and lakes are not compromised in any circumstance. There may be instances where a legitimate activity, which meets the purpose of the RMA does compromise the values of the bed of a river or lake. I consider that the qualifier *'provided other values of the river or lake are not compromised'* could impede the future use and development of the beds of rivers and lakes by legitimate activities. I therefore do not consider that this objective is the *'most appropriate'* within the context of the purpose of the RMA.
59. I recognise that Council seeks the inclusion of Policy 6-28 to ensure that adverse effects on the values of Sites of Significance – Cultural, Sites of Significance – Aquatic and Natural State Sites are avoided. I also support the Officers

recommendation to include the mitigation of adverse effects. However, I also understand the concern expressed by Mighty River Power in their submission.

60. In this regard I agree with Mighty River Power that in some circumstances where the adverse environment effects of a proposal can not be avoided as far as reasonably practicable, there should be an opportunity to provide for the remediation or mitigation of such effects. Further, where these effects cannot reasonably be remedied or mitigated, there should be provision to offset these effects on the proviso that there is no net loss in relation to the relevant values.
61. I note that this approach would be similar to that being considered in relation to rare, threatened and at-risk sites of significance.
62. Based on the above considerations I recommend the following amendments to Objective 6-1 and Policy 6-1.

**'Objective 6-4: River<sup>^</sup> and lake<sup>^</sup> beds<sup>^</sup>**

All ~~significant<sup>4</sup>~~-significant values of the beds<sup>^</sup> of rivers<sup>^</sup> and lakes<sup>^</sup> beds are recognised and provided for, including enabling future use and development of the beds<sup>^</sup> of rivers<sup>^</sup> and lakes<sup>^</sup> beds, ~~provided other values of the river<sup>^</sup> or lake<sup>^</sup> are not compromised.~~'

**'Policy 6-28: Activities in water bodies<sup>^</sup> with a Value of Natural State, Sites of Significance - Cultural, or Sites of Significance - Aquatic**

In those ~~W~~water ~~M~~management ~~S~~sub-zones\* with a Value of Natural State, Sites of Significance - Cultural, or Sites of Significance - Aquatic, as shown in Schedule ~~D~~ Ba, activities in, on, under or over the beds<sup>^</sup> of rivers<sup>^</sup> and lakes<sup>^</sup> shall be managed in a manner which:

- a) ~~avoids or mitigates<sup>5</sup> adverse effects<sup>^</sup> on these values ensures that any more than minor adverse environmental effects are avoided as far as reasonably practicable, or otherwise remedied or mitigated;~~
- b) ~~any more than minor adverse effects which cannot reasonably be avoided, remedied or mitigated are offset to result in no net loss in relation to the surface water management values.~~

.....'

63. Based on the above recommendations, I also recommend that consequential amendments be made to the 6.1.5, Issue 6-3, and Section 6-7 Explanation and Principal Reasons as provided below and in the Appendix to my evidence.

**' 6.1.5: River and Lake Beds**

...

<sup>4</sup> Water officers report – recommendation WTR 19

<sup>5</sup> Water officers report – recommendation WTR 51

*This modification has contributed to the economic growth and wellbeing of our Region, but it has also negatively altered the character and ecology of most waterways bodies in the Region, impacting on cultural values attributed to waterways bodies and leading to the loss or fragmentation of indigenous plant and animal populations. Both the positive and adverse effects of such modification are recognised and provided for in the Plan.*

**'Issue 6-3: River and lake beds**

*The demand for flood and erosion control to protect many types of land use has led to significant modification of the Region's waterways bodies.<sup>6</sup> Structures required to be located within the beds of rivers and lakes, including bridges, culverts, water intake and discharge pipes and hydroelectricity structures, also affect the natural character of waterways bodies. These types of uses and developments, in conjunction with gravel extraction which while having beneficial effects in terms of community well-being, e.g. through flood mitigation<sup>6</sup> and electricity generation, have modified, and continue to modify the physical characteristics and ecology of many of the Region's waterways bodies.<sup>6</sup>*

**6.7 Explanation and Principal Reasons**

**'Beds of Rivers and Lakes**

*The use of the beds of the Region's rivers and lakes is important to community wellbeing. However, equally the physical nature of our the Region's rivers and lakes is important to maintaining the values assigned to them. Management of activities in the beds of rivers and lakes will be undertaken in order to maintain these values, and other important physical attributes (Objective 6-27, Policy 6-31). Some values are treated differently. Important aquatic biodiversity sites, cultural sites and natural state areas would be negatively and potentially permanently harmed by some activities and consequently an emphasis has been placed on avoiding more than minor adverse effects on such values as far as reasonably practicable are given a high level of protection (Policy 6-28). Flood control and drainage schemes have damaged water values in some areas, but also provide valuable protection services to the community. Maintaining this level of service is important, while ensuring that other values are not further compromised (Policy 6-29). While recognising the values, we acknowledgement is also needed that some activities, such as river restoration, are beneficial and should be allowed to occur (Policy 6-31).*

....'

**CHAPTER 13**

**General**

64. I note that Mighty River Power supports the reference made to Chapter 3 'Infrastructure, Energy and Waste' in Policy 13-1(d). Mighty River Power considers that it is appropriate to have particular regard to the Objectives and

<sup>6</sup> Water officers report – recommendation WTR 15

Policies in Chapter 3 when consents for discharges are being assessed and have sought that Policy 13-1(d) be retained.

65. The Officer's Report (page 179) accepts the Mighty River Power submission based on the following considerations:

*"I do not recommend the deletion of Policy 13-1(d) which provides a cross reference to objectives and policies in various other Chapters in the Plan as the provisions of these chapters are also relevant to a consideration of an application dealt with in Chapter 13."*

66. To enable access to Chapter 3 for the purpose of s104D RMA considerations, I support Mighty River Power's submission and the recommendation made in the Officer's Report to retain Policy 13-1(d).

**Rule 13-23 Discharges of contaminants to Natural State Water Management Sub-Zones, Sites of Significance – Aquatic and lakes and wetlands.**

67. Rule 13-23 provides for the discharge of contaminants to Natural State Water Management Sub-Zones, Lakes and Wetlands as a non-complying activity.

68. Mighty River Power's submission opposes this rule as the rule does not recognise that in some cases there might be minor and or temporary discharges into these areas that will not result in adverse effects on the environment. In such cases Mighty River Power believes that it is not reasonable for an activity to be classified as a non-complying activity because of non-compliance with this rule.

69. To this end, Mighty River Power's submission seeks that the rule be amended to become a discretionary activity. A discretionary activity status would still enable the council to refuse consent where that is justified.

70. The Officer's Report (page 246) recommends that Mighty River Power's submission be rejected for the following reason:

*"Given the significance of the values that are set out in the Plan around these activities and the potential adverse effects of discharges of contaminants on those values I consider it appropriate to retain the Non-Complying Activity status."*

71. I consider that the concerns raised in Mighty River Power's submission regarding this Rule are valid. As recommended in the Officer's Report, the wording of the rule will require resource consent for all discharges of contaminants into Water Management Sub-Zones with Natural State values and/or waterbodies containing

Sites of Significance - Aquatic values. I consider that this rule could be interpreted to apply quite widely and unnecessarily catch discharges which do not occur within valued reaches of the Region's waterbodies. Maps Ba:11 and Ba:12 (page Ba-57) illustrate that only a small portion of sites or reaches within water management sub-zones have these values.

72. Therefore without changing the status of the rule, I consider that Mighty River Power's concerns are valid but can be appropriately addressed by the changes I have recommended to Policies 6-3, 6-4 and 6-5 above and by rewording Rule 13-23 so that, in relation to clauses (a) and (b), it only applies at the actual location of the values in question.
73. I also wish to comment on clause (c) of this rule which governs discharges of contaminants into wetlands classified as rare habitats or threatened habitats. I note that this clause appears to partially duplicate Rule 12-8 of the Proposed One Plan, and Rule 12-6 of the Hearings Panel's provisional determinations (dated 22 June 2009). These Chapter 12 rules cover a range of activities (including discharges) within rare, threatened and at risk habitats (including wetlands). I consider that this duplication is unnecessary and would be best resolved by deleting clause (c) from Rule 13-23 and retaining the more general rule (i.e. Rule 12-6 of the Provisional Determinations).
74. Based on the above considerations I recommend that Rule 13-23 be amended as follows.

Rule <sup>^</sup>	Activity	Classification
<b>13-23</b> <del>Discharges<sup>^</sup> of contaminants<sup>^</sup> to Natural State Water Management Sub-zones*, Sites of Significance Aquatic and lakes<sup>^</sup> and wetlands highly valued water bodies</del>	Any direct <i>discharge<sup>^</sup></i> of <i>contaminants<sup>^</sup></i> into: (a) <del>a site identified as</del> Natural State <del>Water Management Sub-zone*</del> <u>on Map Ba:11 and Table Ba:11</u> (b) a <del>water-body<sup>^</sup> site</del> identified as a Site of Significance – Aquatic <del>in Schedule Dba- on Map Ba:12 and Table Ba:12</del> (c) a natural <i>lake<sup>^</sup></i> , except Lake Otamangakau, Lake Te Whaiiau and Lake Moawhango (d) <del>a wetland<sup>^</sup> classified as a rare habitats*, or threatened habitat*</del> except the <i>discharge<sup>^</sup></i> of <i>agrichemicals*</i> for the purpose of <del>controlling</del> <u>pests-control as defined in a regional pest management strategy prepared under the Biosecurity Act 1993</u> (this activity is regulated by Rule 14-2).	<b>Non-complying</b>

## **CHAPTER 16 - BEDS OF RIVERS AND LAKES**

### ***Reference to and Definition of Site Specific Values***

75. Table 16.1 in Section 16.2 sets out the standard conditions for activities involving the beds of rivers and lakes that are referred to in a number of the permitted activity rules for the chapter. Mighty River Power lodged a further submission in support of the submissions by Trust Power Limited regarding Section 16.2. The TrustPower submissions seek to delete reference to Table 16.1 in Rules 16-5 - 16-7, 16-10 - 16-12, 16-18, and 16-19. Mighty River Power supports these submissions as it is considered that many of the standard conditions are unreasonable and not appropriate in some instances.
76. The Officer's Report recommends that the TrustPower submissions and Mighty River Power's further submission be rejected. The Officer notes that (page 325):
- 'In my opinion it is appropriate for permitted activities to have conditions to ensure that the activity has a minor effect on the environment. I consider that this table is appropriate for permitted activities and reference to table 16.1 should be kept.'*
77. I consider that the concerns raised in the TrustPower submissions and Mighty River Power's further submissions are valid to an extent. This is because in my view the current wording of many of the standards within Table 16.1 could be interpreted in such a way that the standards would apply to an inappropriately large proportion of the region's waterbodies.
78. In this regard I consider that the wording of the conditions implies that activities located within the entire length of waterbodies which contain the site specific/reach values identified in Schedule D (now schedule Ba) are required to comply with the standards. From the maps included in Schedule Ba it can be seen that generally only a small portion of a waterbody contains these site specific or reach values.
79. Using Sites of Significance – Aquatic as an example, I note that a table is provided (Ba:12) that provides a locality description of the site with these values. If a site is not identified in these tables, but located within a sub-zone with these values, I do not consider it appropriate that an assessment against the standard conditions should be required.

80. I consider that these concerns can be addressed by rewording the standards in Table 16.1 so reference is made to the specific site of the value and not to the entire Water Management Sub-Zone or waterbody. I have provided an example below and my recommendations on all of the standard conditions are provided in the Appendix to this evidence.

Riparian ~~Habitat~~

(applies to all sites ~~sites within~~ water bodies with a ~~V~~value of Site of Significance - Riparian ~~Habitat~~ as shown in Schedule ~~D~~ Ba)<sup>7</sup>

81. Related to these recommendations, I consider that it is also necessary to reword the rules in Chapter 16 to provide greater certainty that for a site outside of the areas with values identified in the Maps and Tables in Schedule Ba the specific rules do not apply.

82. Again as an example, I would recommend that rule 16-4 (a), Natural State Water Bodies, be re-worded as follows:

(a) **Natural State water bodies**<sup>^</sup>

(i) The erection, placement or extension of any structure<sup>^</sup> in, on, under or over ~~the bed~~<sup>^</sup> ~~of a river~~<sup>^</sup> ~~or lake~~<sup>^</sup> that section of a water body<sup>^</sup> valued as Natural State\*, listed in Schedule Ba (~~including lines, cables pipelines and ropeways,~~ excluding lines, cables and ropeways that go 'over' a river<sup>^</sup> or lake<sup>^</sup> valued as Natural State which are regulated by Rule 16-10)

(ii) Any excavation, drilling, tunnelling or other disturbance of ~~the bed~~<sup>^</sup> ~~of a river~~<sup>^</sup> ~~or lake~~<sup>^</sup> that section of a water body<sup>^</sup> valued as Natural State\*, listed in Schedule Ba

83. The Track-Change Appendix to this evidence contains the full details of these recommended changes.

84. Finally I note that while Schedule Ba includes tables, in addition to maps, which define the extent of other site specific or reach values, no such table has been included in relation to natural state values. To ensure that the provisions relating to natural state values can be interpreted with appropriate certainty I consider that such a table should be included. If this is not done users of the One Plan will be reliant upon Map Ba 11 and the Natural State definition, recommended by Officers on page Ba 55. This definition is as follows:

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<sup>7</sup> Consequential change from recommendations and changes to Schedule D including the development of the new Schedule Ba.

**Natural State Definition:** *All sections of rivers^ that have sources in, and flow within, the Public Conservation Land, with the exception of those where damming or diversion have significantly affected the natural state of the water^ (Table D.3 Table Ba.11).*

85. I do not consider that the combination of this definition and Map Ba 11 offer sufficient certainty to resource users regarding whether their activities are impacted by the natural state rules and conditions.

**Policy 16-1 and Policy 16-2**

86. Policy 16-1 sets out the matters Council will consider in making decisions on resource consent applications and setting consent conditions for activities in, on, under or over the bed of a river or lake. Policy 16-2 sets out the matters Council will consider in making decisions on resource consent applications and setting consent conditions for activities in, on, under or over the bed of an artificial watercourse or artificial lake.

87. Mighty River Power's submission opposes both Policy 16-1 and Policy 16-2, seeking that these policies recognise that the provisions of Chapter 3 are relevant for consent decision making involving applications for infrastructure and renewable energy projects.

88. The Officer's Report (page 299 and page 301) recommends that Mighty River Power's submissions regarding these policies be rejected. While the Officer considers that cross referencing is always a helpful tool the Officer notes that:

*"..in considering an application for resource consent all the relevant provisions of Part I will be taken into account and therefore I do not recommend the cross references be included."*

89. I support Mighty River Power's submission and consider that the amendment sought will appropriately give effect to Chapter 3 in this section of the Regional Plan. My two reasons for supporting Mighty River Power's submission are as follows.

90. Firstly, I consider that the Regional Plan needs to be consistent in how it incorporates the provisions of the Regional Policy Statement. If consistency is not maintained it raises questions about the weight that the provisions of Chapter 3 should have in relation to different activities.

91. The provisions of Chapter 3 are incorporated into the Regional Plan in both Chapter 15 and Chapter 13, both of which relate to region's water resource like Chapter 16. As I have previously noted in my evidence, Mighty River Power's submission seeks that Policy 13-1(d) that provides a cross reference to Chapter 3 be retained. The Officer's Report recommends that the submission be accepted and that Policy 13-1(d) be retained.
92. I note at this point no explanation has been provided in the Officer's Report that justifies incorporating the provisions of Chapter 3 in some chapters of the Regional Plan and not others.
93. Second, in considering an application for a non-complying activity, s 104D(1) of the RMA sets a gateway test which consent authorities must consider prior to undertaking an assessment under s 104. The second gateway test is to consider whether the application is not contrary to the objectives and policies of the *relevant plan*.
94. As such, the consent authority, for the purposes of this gateway test, can only consider the objectives and policies of the Regional Plan and not the objectives and policies contained within the Regional Policy Statement. Not incorporating the provisions of Chapter 3 into Chapter 16 of the Regional Plan will not allow the relevant matters addressed in that the chapter of the Regional Policy Statement to be taken into account as part of the gateway test for any non-complying activities affecting the beds of lakes and rivers.
95. Based on the above considerations I recommend that the provisions of Chapter 3 be provided for in Policy 16-1 as provided below. I note that Policy 16-2 need not be amended, assuming the recommended amendment to Policy 16-1 is adopted, as clause (d) of Policy 16-2 is sufficient.

**'Policy 16-1: Consent decision-making for activities in the beds of rivers and lakes beds (including modified watercourses but excluding artificial watercourses and artificial lakes)**

*When making decisions on resource consent applications and setting consent conditions, for activities in, on, under or over the bed of a river or lake the Regional Council will:*

- (a) *recognise and provide for the policies regarding the beds of rivers and lakes in Section 6.4.4, and have regard to the other provisions of Chapter 6 where appropriate*
- (b) *have regard to the extent to which the activity is consistent with best management practices*

- (c) *seek to avoid where practicable any adverse effects<sup>^</sup> on any other lawful activity in, on, under or over the bed<sup>^</sup> of the river<sup>^</sup> or lake<sup>^</sup>, including existing structures<sup>^</sup>*
- (d) *have regard to whether the activity is of a temporary nature or is associated with necessary maintenance\* work*
- (e) *recognise and provide for the provisions of Chapter 10 in relation to flood management and Chapter 3 in relation to infrastructure and energy-*
- (f) *in relation to the beds<sup>^</sup> of lakes<sup>^</sup> that are rare habitats\* or threatened habitats\* when assessed in accordance with Schedule E, have regard to the biodiversity policies in Chapter 12*

## **CONCLUSION**

96. This statement of evidence addresses Chapters 6, 13 and 16 of the proposed One Plan. It focuses on Mighty River Power's submissions relating to surface water management values, water quality and beds of rivers and lakes. Mighty River Power's submissions on water quantity are addressed in the evidence of Mr Collins.
97. I consider that amendments are required to the provisions in Chapter 6, 13 and 16 to recognise that the protection or maintenance of values within individual Water Management Zones and Sub-Zones will not always be appropriate. Further, I consider that provision should be made for off-set mechanisms to be considered when it is not practicable to avoid, remedy or mitigate adverse effects on individual Water Management Zones or Sub-Zones. Overall I consider that this approach would more appropriately reflect the purpose of the RMA.
98. In relation to Chapters 13 and 16 I consider that several rules and standards should be amended so that it is clear that they only relate to the specific sites at which the values in question are located.
99. Finally I also consider that Policy 16-1 should incorporate reference to Chapter 3 so that it is consistent with other chapters of the Regional Plan and enable access to Chapter 3 for the purpose of s104D gateway test.

Richard Zane Peterson  
21 October 2009

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