

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 Biodiversity
& Heritage.

STATEMENT OF EVIDENCE OF RICHARD ZANE PETERSON

1.0 INTRODUCTION

- 1.1 My name is Richard Zane Peterson and I am an Associate and the Wellington Planning Manager of Harrison Grierson Consultants Limited.
- 1.2 I have 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.
- 1.3 In my role as Manager of Harrison Grierson's Wellington Planning team, I oversee a team of five planners (myself included) 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.
- 1.4 Amongst others things I have recently assisted the Greater Wellington Regional Council in preparing draft Regional Policy Statement provisions in relation to energy and regional form. I have also recently worked with the New Zealand Institute of Economic Research to complete the Section 32 evaluation for the proposed National Policy Statement on Electricity Transmission, on behalf of the

Ministry for the Environment. I am currently assisting the Ministry for the Environment to review the Section 32 guidance material available on the Quality Planning Website.

- 1.5 I appear in connection with the submissions and further submissions lodged on the proposed One Plan by Mighty River Power Limited ("Mighty River Power"). I was engaged by Mighty River Power to present evidence in relation to its submissions, but was not involved in the preparation of the submissions.
- 1.6 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 hearing 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.

2.0 SCOPE OF EVIDENCE

- 2.1 My evidence is divided into three parts. In Part One, I provide a background and overview to the Mighty River Power submissions on the proposed One Plan biodiversity provisions.
- 2.2 In Part Two of my evidence, I will guide you through the Mighty River Power submissions related to biodiversity.
- 2.3 In Part Three of my evidence, I will guide you through the only Mighty River Power submission which addressed heritage matters.

3.0 SUMMARY

- 3.1 The Mighty River Power submissions on the Proposed One Plan biodiversity provisions are broadly focussed on three issues. The first is the ambiguity and potential for uncertainty contained within Schedule E. This second is the use of water management sub zones as a defining unit for biodiversity assessment. The third is the apparent tension between the proposed biodiversity provisions and Chapter 3 of the One Plan.
- 3.2 Mr Shaw's evidence addresses Schedule E in detail. While the specific changes recommended by Mr Shaw are not within my area of expertise, I note that from

a planning perspective it is important that as much certainty as possible is written into Schedule E. Should Schedule E retain ambiguity, as Mr Shaw suggests that it currently does, the intent and value of the biodiversity provisions of the One Plan could be undermined and significant uncertainty will exist for resources users, Council and the public as to the resource consent status of activities.

3.3 The majority of my evidence focuses on the those parts of the Mighty River Power submission which seek to resolve tensions between Chapters 3 and 7 of the Proposed One Plan.

3.4 In section 8 of my evidence I consider the appropriateness of Objective 7-1. This provision sets the objective for the management of indigenous biodiversity within the Manawatu-Wanganui region. As proposed, the objective contains two parts. The first is the broad aim that the existing level of indigenous biological diversity is maintained into the future. The second part, contained within clauses (a) to (c), sets out in broad terms three courses of action that will be taken to achieve the aim set in part one.

3.5 It is my view that clauses (a) to (c) should be deleted from this objective. My main reason for this recommendation is that clauses (a) to (c) appear to paraphrase Policies 7-2 to 7-4 but are worded differently. Consequently, the standard of protection required under Objective 7-1 differs from that required under Policies 7-2 and 7-3. This creates an unwarranted, and I suspect unintended, internal inconsistency between provisions of the proposed One Plan which is not appropriate.

3.6 Sections 9 and 10 of my evidence address Policies 7-2 and 7-3. These policies set the course of action to be taken in relation to rare and threatened habitats (Policy 7-2) and at-risk habitats (Policy 7-3) to achieve Objective 7-1. In doing so the Policies address:

- the level of adverse effects likely to be acceptable in relation to such habitats; and
- the approach for determining the level of such effects (i.e. the criteria of representativeness, rarity etc).

3.7 I generally concur with the recommendations of the Officer's Report in relation to these policies. These changes, particularly those recommended in relation to

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- Policy 7-2, appropriately reflect Chapter 3 of the Proposed One Plan. However, I believe that value would be added to the Policies by clarifying that the mechanisms available to offset adverse effects on rare, threatened or at-risk habitats are not limited to financial contributions. In my view it is unnecessary to limit the mechanisms potentially available to offset effects to only financial contributions.
- 3.8 In section 11, I recommend that an additional sentence be added to Policy 12-3 to make it clear that vegetation clearance and land disturbance will generally only be allowed in rare and threatened habitats in a manner consistent with Policy 7-2. As proposed, Policy 12-3 states that vegetation clearance and land disturbance associated with important or essential activities will be generally allowed. This is not consistent with Policy 7-2.
- 3.9 In sections 12 and 13 I agree with the Officer's recommendations in relation to Policy 12-5 (which states that Council will make decisions on applications involving rare, threatened and at-risk habitats in accordance with the provisions of Chapter 7) and Rule 12-8 (which established specified activities within rare and threatened habitats as non-complying activities).
- 3.10 Section 14 of my evidence addresses the further submissions made by Mighty River Power. With regard to the Genesis Power submissions on the hydro-lakes I accept the Officer's recommendation that Part (b) of Table E.2 does exclude the Lakes from the definition of a habitat. However for purposes of clarity I believe that there would be value in including text, such as that included in paragraph 14.4 below, within the Explanation and Principle Reasons to Chapter 7 of the Proposed One Plan.
- 3.11 With regard to the TrustPower submission on Anticipated Environmental Results I concur with the Officer's recommendation. I also generally concur with the Officers recommendation in relation to the TrustPower submission on Chapter 7 Methods. However I note that the interests of generating companies are not limited to waterways, as suggested in the Officer Report and encourage the Council to ensure that these broader interests are considered as part of all methods listed in Chapter 7.
- 3.12 In short my key recommendations in relation to indigenous biodiversity are that:
- It is appropriate that activities within rare and threatened habitats require resource consent as a non-complying activity;
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- Clauses (a) to (c) should be deleted from Objective 7-1 in order to avoid tensions with Policies 7-2 to 7-4;
 - Policy 7-2 will be critical to the consideration of resource consent applications within rare and threatened habitats and I consider that the changes recommended by the Officer with respect to infrastructure are appropriate and better reflect the provisions of Chapter 3 of the Proposed One Plan; and,
 - Policies 7-2 and 7-3 should clarify that the mechanisms available to resource users to off-set their adverse effects on rare, threatened and at-risk habitats are not restricted to just financial contributions.

3.13 Finally, Mighty River Power only made one submission on the Heritage provisions of the One Plan. This submission seeks the retention of Policy 7-10. I agree with the Officer's recommendation to retain this provision subject to specific changes.

Part One – Background to the Mighty River Power Submissions

4.0 THE INCLUSION OF BIODIVERSITY PROVISIONS IN THE ONE PLAN

4.1 It is important to note that Mighty River Power does not oppose the inclusion of biodiversity provisions, including rules, within the One Plan. Mighty River Power accepts that it is within the Regional Council's functions and powers to do so, as addressed in the section 42A report of Mr Maassen. Moreover, Mighty River Power believes that regionally consistent biodiversity provisions will assist to avoid compliance costs that can result from inter-district differences.

4.2 I agree with Mighty River Power's view on this matter.

5.0 MIGHTY RIVER POWER'S KEY CONCERNS

5.1 Notwithstanding this view, Mighty River Power's submission on the Proposed One Plan reflects fundamental concerns held by Mighty River Power about the proposed biodiversity provisions. In particular, key concerns of Mighty River Power relate to:

- The content and structure of Schedule E, as proposed, including apparent ambiguities and uncertainties;

- The use of water management sub zones as a defining unit for biodiversity assessment, as opposed to ecological districts or Land Environments of New Zealand (“LENZ”) ‘environments’; and
- The failure of the biodiversity objectives and policies to allow for even minor adverse impacts upon rare or threatened habitats and to recognise the particular benefits of essential infrastructure, which are recognised in Chapter 3 of the One Plan.

5.2 The first two key concerns are addressed in the evidence of Mr Shaw.

5.3 In the main my evidence focuses on the third key concern. In this regard, I note an important theme common to many of the Mighty River Power submission points is a desire to resolve the apparent tension between the provisions of Chapter 7, which seek to protect the region’s living heritage and those of Chapter 3, which recognise and provide for the benefits of essential infrastructure. Mighty River Power considers that it is important to clarify how Chapters 3 and 7 relate during the Policy Statement and Plan formulation rather than leaving this task to a case-by-case assessment undertaken as part of the consideration of resource consent applications.

5.4 I support this approach.

5.5 Following the completion of the submission period for the Proposed One Plan, a series of pre-hearing meetings have been held, which Mighty River Power attended. While I did not attend these meetings, Mighty River Power considers that they were useful in clarifying the Council’s intent in relation to the biodiversity provisions and in relation to several matters addressed in the Mighty River Power submission.

5.6 Following these meetings Mighty River Power is therefore comfortable with a large number of the officer’s recommendations. However Mighty River Power does not accept all of the recommendations, a position with which I agree and address in more detail in the following section of my evidence.

Part Two – Mighty River Power Biodiversity Submissions

6.0 INTRODUCTION

6.1 The relevant Mighty River Power submissions seek:

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- To delete the proposed biodiversity provisions, including Schedule E, and consider an ecological district or LENZ based approach or to exclude infrastructure or energy related activities from the chapter or amend the provisions as further requested (3579/73, 359/92, 359/141);
 - Amendments to Objective 7-1 (a) to (359/74):
 - remove the reference to 'any' loss or modification;
 - to reflect the direction in Policy 3-3 in relation to essential infrastructure; and
 - reflect that criteria such as representativeness are important to define the significance of sites.
 - The deletion of, or amendment to Policy 7-2 (359/78);
 - The retention of Policy 7-3 (359/80);
 - The amendment of Policy 12-3 so that it includes reference to rare and threatened habitats (359/97);
 - The amendment of Policy 12-5 so that it excludes important and essential activities (359/99); and
 - The amendment of Rule 12-8 so that the consent status of activities within rare and threatened habitats is discretionary rather than non-complying (359/100).

6.2 The relevant Mighty River Power further submissions:

- Support the Genesis submission which requests that all references to rare and threatened habitats are preceded by the phrase 'naturally occurring' (X519/14);
- Support the Genesis submissions which seek the exclusion of specified lakes from Objective 7-1, Policy 7-2 and Rule 12-8 (X519/4, X519/5, X519/6);
- Support the TrustPower request to amend all methods to include reference to the potential appropriateness of energy development (X519/291); and

- Support the TrustPower request that Table 7-6 be deleted or that column 1 of the Table be amended to include text which allows for '*change because of natural processes or infrastructure or energy development in the national interest*'.

7.0 DELETION OF THE PROPOSED BIODIVERSITY PROVISIONS

Mighty River Power submissions

- 7.1 The Mighty River Power submission seeks the deletion of the proposed biodiversity provisions, or the exclusion of infrastructure from Chapters 7 and 12 and Schedule E, or the amendment of the provisions as specified in the submissions. Mighty River Power has two key reasons for these submissions.
- 7.2 First, Mighty River Power is concerned that the proposed provisions relating to biodiversity create a 'tension' with the direction of the provisions in Chapter 3. In this regard Policy 3-3 (a) recognises that there are functional constraints on infrastructure that limit the ability to avoid adverse effects, and that the Policy also provides for the use of financial contributions to offset adverse environmental effects. In contrast, the Mighty River Power submission notes, the provisions of Chapter 7 appear to preclude such considerations.
- 7.3 Second, Mighty River Power is concerned that the approach taken to biodiversity management in the Proposed One Plan, and specifically with regard to the determination of significance, uses water management sub zones as the smallest spatial scale. Mighty River Power submitted that this has the ability to over-rate the significance of some habitats.

Officer recommendations & commentary

- 7.4 In response to the Mighty River Power submissions (and the submissions of others) the Officer Report (section 4.23.2) and the report of Ms Maseyk note and recommend that:
- the biodiversity provisions in the One Plan are based on LENZ analysis and that it is Council's intention that the assessment of ecological significance be based on ecological districts;
 - the use of the water management sub-zones is '*intended as a locational trigger to indicate to landowners whether a rule applies to them*' (para 127

Maseyk evidence), but that this was not clear in the Proposed One Plan; and

- *'it is appropriate to provide for mitigation, or offset by financial contributions in a limited number of circumstances...'*

7.5 Mighty River Power accepts and agrees with these recommendations, subject to the resolution of the more specific matters regarding Schedule E addressed in the evidence of Mr Willie Shaw and the matters addressed below in my evidence.

7.6 I agree with this position based on the understanding that the changes requested by Mr Shaw will ensure that Schedule E is sufficiently clear to avoid inappropriate levels of uncertainty regarding what constitutes a habitat and consequently the resource consent status of activities.

8.0 AMENDMENTS TO OBJECTIVE 7-1 (a)

Mighty River Power submission

8.1 Objective 7-1 sets the aim for the management of indigenous biodiversity within the Manawatu-Wanganui region. As proposed, it contains two parts. The first part is the broad aim that the existing level of indigenous biological diversity is maintained into the future. The second part, contained within clauses (a) to (c), sets out in broad terms three courses of action that will be taken to achieve the aim set in part one.

8.2 The Mighty River Power submission opposes Clause (a) of Objective 7.1 because of the inclusion of the word 'any' in relation to loss and modification, because of the lack of reflection of Policy 3-3 and because it does not adequately reflect that criteria such as representativeness are important to define the significance of habitats.

8.3 To this end the Mighty River Power submission seeks that the Objective be amended as follows:

Rare and threatened habitats, as defined in Schedule E, are protected from activities that may cause ~~any~~ loss or modification to the features that make the habitat significant (as defined using criteria such as representativeness, distinctiveness, and ~~or~~ ecological context) of these areas. Where activities identified as essential infrastructure in Chapter 3 are proposed provision is made

for remedying or mitigating adverse effects on the environment including where appropriate the ability to offset any residual adverse effect by way of a financial contribution.

Officer recommendations & commentary

8.4 The Officer Report (section 4.5.2) recognises that the requirement within the Objective to protect rare and threatened habitats from any loss or modification is a very high threshold and would probably not allow any activities to take place within those habitats. Further the report recognises that some activities with minor effects are likely to be appropriate where they provide community benefit. It is therefore recommended that the word 'any' in Objective 7.1 be replaced with the phrase '*more than minor*'.

8.5 The Officer Report also recommends changes to how the Objective refers to 'representativeness, rarity, distinctiveness and ecological context' so that this is consistent with references elsewhere.

8.6 In this regard the officer recommends that Clause (a) of the Objective be amended to read as follows:

rare and threatened habitats, as defined in Schedule E, are protected from activities that may cause ~~any~~ more than minor loss or modification to the representativeness, rarity and distinctiveness or ecological context of the rare and threatened habitat*, as assessed in accordance with Table 7.1*

8.7 I consider that the concerns raised in the Mighty River Power submission regarding the Objective are valid. As proposed the Objective would effectively prevent activities from occurring within rare and threatened habitats, which I believe is inappropriate, particularly given the intent of Chapter 3. The changes recommended in the Officer Report would resolve these concerns to some extent. However, I do not believe that either the changes sought in the Mighty River Power submission, or those recommended in the Officer Report are the most appropriate.

8.8 To this end I note that Objective 7-1(a), as amended by the recommendations of the Officer Report, is not entirely consistent with Policy 7-2, also as amended by the recommendations of the Officer Report. In particular I note that the changes recommended to Objective 7-1(a) seek to protect rare and threatened habitats from activities that may cause more than minor loss or modification to

the values associated with the habitat. In comparison the changes recommended to Policy 7-2 provide for more than minor, but less than significant adverse effects, to be remedied or mitigated where the activity relates to the provision or maintenance of infrastructure that is of national or regional importance.

- 8.9 In other words, Objective 7-1 (a) would set a higher standard of protection than for rare and threatened habitats than is envisaged in the changes recommended by the Officer to Policy 7-2.
- 8.10 In order to overcome this inconsistency, Clause (a) to (c) of Objective 7-1 would need to be re-drafted in line with Policies 7-2 to 7-4. However, I believe that such a repetitious approach is not necessary.
- 8.11 In addition I note that clauses (a) to (c) of Objective 7-1 read more as policies than they do as part of an objective. In other words, they set a course of action rather than a desired outcome.
- 8.12 For these reasons rather than proposing a further revision to Objective 7-1 it is my opinion that the Council should delete clauses (a) to (c) from the Objective. The Objective would therefore simply be:

The existing level of indigenous biological diversity is maintained into the future.

- 8.13 I recognise that this would be beyond the specific relief sought by Mighty River Power in relation to Objective 7-1. However, it can arguably be considered within the scope of Mighty River Power's submission on Chapter 7 as a whole, which opposes the Chapter as, among other things (section 3.1.8.1 of the Mighty River Power submission):

There are also provisions in the chapter that are not clear or are difficult to interpret or can be interpreted in different ways; there are inconsistencies, and some technical inaccuracies. These act to reduce the certainty with which the plan can be interpreted and applied by users.

9.0 THE DELETION OF, OR AMENDMENT TO, POLICY 7-2

Mighty River Power submission

9.1 Policy 7-2 sets the broad course of action to be taken in relation to the management of adverse effects on rare and threatened habitats. It contains four clauses which:

- Cross reference to Schedule E for the purposes of identifying such habitats;
- State the general level of protection to be afforded to rare and threatened habitats;
- State that pest management and habitat enhancement will generally be allowed; and
- As proposed, describes those circumstances in which activities, other than pest management and habitat enhancement may be allowed.

9.2 The Mighty River Power submission in relation to Policy 7-2 seeks either the deletion of the Policy or its amendment by the addition of the following to Clause (d):

In considering whether an adverse effect is minor or not the following factors will be taken into account:

- *The net effect on the biodiversity of the ecological district or LENZ environment taking into account the mitigation measures proposed*
- *The benefits from the activity at a regional and national level*
- *The provisions of Chapter 18 Financial Contributions where relevant.*

9.3 Mighty River Power's reasons for this request are to ensure that the Policy more appropriately reflects the direction in Policy 3-3 and Chapter 18, and provides better guidance on the matters that will be taken account of, through these provisions, by decision makers.

Officer Recommendations and Commentary

9.4 The Officer Report (section 4.7.2) recognises that the mitigation and offset, by way of financial contributions, of minor effects is appropriate in some cases. In particular the officer recommends that these cases be limited to those from

which a community benefit is generated, specifically infrastructure of national or regional importance as identified in Policy 3-1.

9.5 The Officer Report therefore recommends that Clause (d) be amended to read:

The activities described in (b) may be allowed where the activity is for the purpose of providing or maintaining infrastructure of regional or national importance as identified in Policy 3-1 and

- i) there will be no significant adverse effect on the factors which contribute to the significance of the areas as assessed in accordance with Table 7.1 and*
- ii) Any more than minor adverse effects are avoided as far as practicable, and*
- iii) Any more than minor (but less than significant) adverse effects are adequately remedied or mitigated, including through the use of financial contributions to adequately compensate or offset the adverse effects, and*
- iv) The remedy, mitigation or financial contribution identified in (iii) above results in a net conservation gain to the habitat type in the region.*

9.6 In general I consider that the changes recommended by the Officer are appropriate, and would satisfactorily resolve the concerns raised by Mighty River Power.

9.7 Notwithstanding this, I believe the amendment proposed by the Officer unnecessarily restricts the mechanisms through which adverse effects may be off-set to only financial contributions. There appears to be no justification to limit off-setting to just this mechanism. In this regard I note that the Business and Biodiversity Offset Program¹ website² identifies several offset approaches which involve the adverse effect generating body being responsible for the design, implementation and monitoring of an offset activity.

¹ The Business and Biodiversity Offset Program (BBOP) is an international partnership between companies, governments and conservation experts to explore mechanisms for undertaking biodiversity offsets. Solid Energy and the Department of Conservation are members of the BBOP advisory committee.

² www.forest-trends.org/biodiversityoffsetprogram/

9.8 I therefore propose that Clause (d) (iii) and (iv) of Policy 7-2, as recommended in the Officer's Report should be amended to enable such an approach and to read:

iii) Any more than minor (but less than significant) adverse effects are adequately remedied or mitigated. This may include the offsetting of adverse effects and/or the use of financial contributions to adequately compensate for or offset the adverse effects, and

iv) The remedy, mitigation, offsetting, or financial contribution identified in (iii) above results in a net conservation gain to the habitat type in the region.

10.0 THE RETENTION OF POLICY 7-3

Mighty River Power submission

10.1 Policy 7-3 sets the broad course of action to be taken in relation to the management of adverse effects on at risk habitats. It also contains four clauses which broadly follow the same structure as with Policy 7-2, but which allow for a greater level of adverse effects.

10.2 The Mighty River Power submission seeks the retention of Policy 7-3. In this regard Mighty River Power supports the direction of the Policy and is supportive of the guidance provided to applicants about the matters that will be considered by Council when making decisions on resource consent applications.

Officer Report & Commentary

10.3 While proposing some minor amendments to the Policy, the Officer Report in the main recommends that the Policy be retained and in doing so accepts the Mighty River Power submission and rejects those which seek to have the Policy removed.

10.4 In general terms I agree with the position taken in the Officer Report. However as with Policy 7-2, I believe there would be value in clarifying that the mechanisms available to 'off-set' adverse effects on at-risk habitats are not limited to financial contributions. For this reasons I recommend that Clause (d) (iii) of Policy 7-3 be replaced with the following:

(iii) actions, or works, or financial contributions can be used to adequately compensate for or offset significant adverse effects.

11.0 AMENDMENT OF POLICY 12-3

Mighty River Power submission

11.1 Mighty River Power's submission, in part, supports Policy 12-3 which recognises that vegetation clearance and land disturbance associated with important and essential activities such as essential infrastructure will generally be allowed. However the Mighty River Power submission also seeks to amend Policy 12-3. The amendment sought by Mighty River Power is to clarify that the reference to vegetation clearance includes the clearance of rare, threatened and at-risk habitats.

Officer Report & Commentary

11.2 The Officer Report recommends that the Mighty River Power submission be rejected as Policy 12-3 deals with vegetation clearance and land disturbance generally, not just where it relates to rare, threatened and at-risk habitats. Further the Officer notes that including the reference requested by Mighty River Power would inappropriately narrow the focus of the Policy.

11.3 I disagree that the amendment requested by Mighty River Power would narrow the focus of the policy. However, notwithstanding this, it is my view that Policy 12-3, both as proposed and in the amended form suggested by Mighty River Power in its submission, creates tensions with Chapter 7, specifically Policy 7-2. I am therefore of the view that an additional sentence should be added to the Policy as follows:

Within rare and threatened habitats vegetation clearance and land disturbance will generally only be allowed in a manner consistent with Policy 7-2.

12.0 AMENDMENT OF POLICY 12-5

Mighty River Power submission

12.1 Policy 12-5 states that the Regional Council will make decisions on resource consent applications involving rare and threatened habitats, and at-risk habitats in accordance with the objectives and policies in Chapter 7. The Mighty River Power submission opposes this Policy and seeks to have important and essential activities excluded from it, consistent with Policy 12-3.

Officer Report & Commentary

12.2 The Officer Report notes that the Policy refers decision makers back to Chapter 7. Given the changes proposed to the policies within Chapter 7 which more appropriately provide for energy and infrastructure activities the Officer argues that it is not necessary to exclude these activities from Policy 12-5. Notwithstanding this, the Officer recommends changes to Policy 12-5 so that it refers back to the specific objective and policies within Chapter 7 which are relevant.

12.3 I agree with the Officer's recommendation and reasons in relation to Mighty River Power's submission on Policy 12-5.

13.0 AMENDMENT OF RULE 12-8***Mighty River Power submission***

13.1 Mighty River Power's submission opposed Rule 12-8, arguing that the non-complying status was unnecessarily restrictive and proposing a discretionary activities status as a more appropriate approach.

Officer report & Commentary

13.2 The Officer Report (section 4.28.2) asserts that the non-complying status is an appropriate status for activities that impact upon rare and threatened habitats. In support of this assertion the Officer Report references the section 42A report of Ms Maseyk in which it is argued that the rare and threatened habitats meet the tests for being considered significant for the purposes of the section 6 (c) of the RMA.

13.3 Subject to the detailed changes to the Plan provisions set out in his evidence, Mr Shaw generally concurs with the position taken by Ms Maseyk in relation to the significance of rare and threatened habitats.

13.4 Based on this and the changes recommended by the Officer in relation to Policy 7-2 I agree with the recommendation of the Officer Report that the non-complying status is an appropriate status for activities within rare and threatened habitats.

14.0 FURTHER SUBMISSIONS

Inclusion of the phrase 'naturally occurring'

- 14.1 Genesis Power Limited (268/51) has sought the amendment of all references to 'rare and threatened habitats' to 'naturally occurring rare and threatened habitats'.
- 14.2 Mighty River Power has submitted in support of this request. TrustPower Limited has also submitted in support, while both the Minister of Conservation and the Tararua-Aokautere Guardians have opposed this request.
- 14.3 The Officer Report recommends that the submission of Genesis (and consequently that of Mighty River Power) be rejected. The reason for this rejection is not explicitly stated, however it is noted elsewhere in the Officer Report that artificially created habitats are not considered to be habitat in accordance with part (b) of Table E.2 in Schedule E.
- 14.4 While I accept that the Officer is technically correct on this matter, I believe that for the purpose of clarity the exclusion of artificially created habitats should be signalled earlier in the One Plan rather than left to Schedule E. With this in mind I recommend that the following text be added to Section 7.7 – Explanation and Principle Reasons, as the final paragraph of the sub-section on Biodiversity:

'Schedule E of the Regional Plan sets criteria for determining what is a rare, threatened or at-risk habitat. Under this criteria artificial habitats, such as habitat created and maintained in association with hydro electric power generation do not constitute such a habitat.'

The exclusion of hydro-lakes from various provisions

- 14.5 Genesis Power Limited has sought to exclude Lake Otamangakau, Te Whaiu and Moawhango from Objective 7-1, Policy 7-2 and Rule 12-8 as these are artificial habitats.
- 14.6 Mighty River Power has submitted in support of the Genesis submissions (X519/4, X519/5, X519/6).
- 14.7 While the Officer Report recommends that the Genesis submissions be accepted in part, no amendments are recommended. The Officer's reason for this approach is that the Lakes referred to in the Genesis submission are not

considered habitats under the one plan in accordance with clause viii of part (b) of Table E.2.

- 14.8 Again I broadly agree with the Officer's recommendation but believe that some value would be added by the inclusion of the text recommended in paragraph 14.4 above.

Include the potential appropriateness of electricity generation within methods

- 14.9 TrustPower Limited has submitted seeking amendment to all methods within Chapter 7 so that they include reference to the potential appropriateness of hydroelectricity generation and energy development interests. Mighty River Power has submitted in support of the submission.
- 14.10 In response to the TrustPower submission, the Officer Report notes that if TrustPower, or any generating company, has a known interest in a waterway that was significant for protection for its biodiversity values then Council would involve them in the project, rather than involving them in all projects.
- 14.11 I concur with the general approach proposed by the Officer and agree the methods need not be amended as requested by TrustPower. However, I note that the interests of generating companies are not limited to waterways and encourage the Council to ensure that these broader interests are considered as part of all methods listed in Chapter 7.

Amendments to the Anticipated Environmental Results

- 14.12 In its submission TrustPower requests that Table 7-6 be deleted or that column 1 of the Table be amended to include text which allows for '*change because of natural processes or infrastructure or energy development in the national interest*'. At present the Anticipated Environmental Results do not allow for natural change to habitats or change that occurs in accordance with a resource consent.
- 14.13 Mighty River Power submitted in support of the TrustPower request.
- 14.14 The Officer Report notes that TrustPower's request is generally consistent with the objectives and policies of Chapter 7 and therefore recommends changes as detailed in Appendix B of the report.
- 14.15 I concur with the Officer recommendation and reasons.

Part Three – Mighty River Power Heritage Submission

15.0 POLICY 7-10

- 15.1 Mighty River Power made one submission on the heritage provisions being considered as part of this hearing. This submission seeks the retention of policy 7-10. The reason for Mighty River Power's support is that the policy recognises the ability to avoid, remedy or mitigate adverse effects on historic heritage.
- 15.2 Meridian Energy has submitted in opposition to the Mighty River Power submission. This reflects its original submission on the Policy which sought that it be amended to reflect the intent of the RMA, that is to protect historic heritage from "inappropriate subdivision and development". In addition, in its original submission Meridian Energy requests that the clause requiring that adverse effects on historic heritage are avoided, remedied or mitigated should be qualified by adding "as far as reasonable".
- 15.3 The Officer Report argues that what constitutes an acceptable level of adverse effects on historic heritage should be determined on a case-by-case-basis. Further the Officer disagrees with Meridian Energy's submission that adding the wording "inappropriate subdivision, use and development" into the Policy adds any value to the Proposed One Plan in terms of translating the RMA into the regional context. Instead the Officer considers that it is much more effective and useful to provide policy that enables decision makers to evaluate what is inappropriate by providing a specific set of criteria to consider and which can be applied consistently across the region and on a case-by-case-basis. Therefore in addition to leaving Policy 7-10 largely unaltered the Officer recommends the addition of new Policy 7-11 which provides such criteria.
- 15.4 I concur with this view and support the Mighty River Power submission that the provision be retained.

16.0 CONCLUSION

- 16.1 In conclusion, the Hearing Panel will recall that Part One of my evidence provided a broad background to the Mighty River Power submission and highlighted key concerns in relation to:

1) the tension between Chapters 3 and 7; and,

2) the use of water management sub zones as the key spatial unit for the One Plan biodiversity provisions.

16.2 Part Two of my evidence discusses Mighty River Power's specific submission points and further submissions relevant to the Proposed One Plan biodiversity provisions. I have outlined my views in relation to each of these submissions.

16.3 Part Three of my evidence discusses Mighty River Power's only submission point that relates to the Proposed One Plan Heritage provisions. In relation to this submission I agree that the Officer's recommendation and reasons are appropriate.



Richard Zane Peterson
Associate/Planning Manager
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