

SUBMISSION ON A PUBLICLY NOTIFIED PROPOSAL FOR A POLICY STATEMENT

Under Clause 6 of First Schedule to Resource Management Act 1991

To: Greater Wellington Regional Council

Submission on: Proposed Wellington Regional Policy Statement

Name: Mighty River Power Limited

1. Mighty River Power **does wish** to be heard in support of this submission.
2. If others make a similar submission, Mighty River Power will consider presenting a joint case with them at a hearing.



R Hunter

Manager Environmental Strategy and Policy
for Mighty River Power Limited

Date: 8 June 2009

Address for service of Submitter

Mighty River Power Limited
PO Box 445
HAMILTON 3240

Contact person: **Jo-Anne Munro**
Telephone: (DDI) 07 857 0150 or 0275 112 381
Fax: 07 857 0192
Email: jo-anne.munro@mightyriver.co.nz

1.0 INTRODUCTION

1.1 Mighty River Power Limited

Mighty River Power Limited (Mighty River Power) is a State Owned Enterprise that is involved in both electricity generation and retail supply. It is the fourth largest electricity generator (based on electricity produced annually) in New Zealand. Mighty River Power owns and/or manages a diverse and expanding portfolio of generation assets throughout the North Island. Its portfolio includes the Waikato River Hydro System, geothermal interests at Mokai, Rotokawa, and Kawerau, the Southdown co-generation station in Auckland, Marsden Power Station Site, and an active landfill gas generation programme.

Mighty River Power sells electricity and gas to more than 390,000 electricity customers and nearly 40,000 gas customers through its retail business Mercury Energy. Mighty River Power's metering business Metrix provides meters and meter-reading services to residential and commercial customers across Auckland, and to other electricity retailers.

1.2 Background to Mighty River Power Submission

In general Mighty River Power supports the Proposed Regional Policy Statement (RPS). However, Mighty River Power does have concern that the document focuses too heavily on some issues and by doing so does not fully express the purpose and principles of the Resource Management Act 1991 (RMA).

The relief sought in this submission is directed towards achieving a:

- fuller and more accurate expression of Part II of the RMA;
- document that implements national Governmental policy direction particularly on energy and climate change;
- robust resource management policy framework for the region for the next ten years that gives due recognition to the enabling framework of the RMA with a secure electricity supply to the nation as a pivotal component; and
- a document that is easy to administer.

2.0 OVERALL RPS SUBMISSIONS

2.1 National Policy Direction on Energy

Mighty River Power supports in part the entire RPS for the following reasons:

The provisions of the RPS have a significant role to play in implementing the Government's energy policy. This is because the RPS must be given effect to in regional and district plans. In combination with the RPS, these Plans play a pivotal role in determining how natural and physical resources are used and developed. In respect of land within Greater Wellington's regional boundaries there is significant potential for the further development of renewable energy projects, primarily wind, bio-fuels and solar. Given the rich energy resource base of the region, it is Mighty River Power's submission that it is important that the Government's policy directions are incorporated into the RPS.

The Government's energy policy is articulated in the Energy Policy Framework released in October 2000 and revised in February 2002. Relevant outcomes sought by the Government for energy as set out in this framework are:

- *“Environmental sustainability, including continuing improvement in our energy efficiency and a progressive transition to renewable sources of energy*
- *Costs and prices to consumers which are as low as possible, while ensuring that prices reflect the full costs of supply including environmental costs*
- *Reliable and secure supply of essential energy services”.*

The Government has developed a number of policy mechanisms to implement the outcomes in this framework and has also amended Part II of the RMA. The Policy Mechanisms are the Sustainable Development Program of Action, the New Zealand Energy Strategy, the Government Policy Statement on Electricity Governance and the New Zealand Energy Efficiency and Conservation Strategy (NZECS).

The Sustainable Development Programme of Action seeks *“to ensure the delivery of energy services to all classes of consumer in an efficient, fair, reliable and sustainable manner”*¹. The desired outcomes of this policy are more efficient energy use, development and maximisation of renewable sources of energy and a secure supply of electricity, in the context of increasing demand for electricity and concern about its cost. In December 2006, the Government released a discussion paper outlining Options for a Plan of Action in Sustainable Land Management and Climate Change. The Plan notes that the energy sector will produce 16.8 million tonnes of excess CO² emissions in the first commitment period of the Kyoto Protocol, and the Government is committed to reducing those emissions.

¹ Department of Prime Minister and Cabinet, January 2003., section 3.2.

An updated Government Policy Statement on Electricity Governance (GPS), released in May 2009 includes provisions focusing on the security of supply as well as objectives to encourage planning and investment into renewable energy. The Electricity Commission is required to give effect to the GPS.² The GPS includes the following objectives:

“The Government’s objectives in relation to renewable energy, are that:

- *Undue barriers to investment in renewables should be reduced or removed;*
- *The efficient uptake of renewable generation should be promoted; and,*
- *The national transmission grid should be planned and made available so as to facilitate the potential contribution of renewables to the electricity system...”*³

The NZEECS, released in October 2007, sets the target of New Zealand’s efficient and renewable electricity system as being *“To have 90 per cent of electricity generated from renewable sources by 2025”*.

Mighty River Power notes that the NZEECS is prepared under the Energy Efficiency and Conservation Act 2000 and, therefore, is a matter to be considered by the Regional Council pursuant to s 61(2)(a)(i) of the RMA.

The New Zealand Energy Strategy to 2050 (the Strategy) was released by the Ministry of Economic Development in October 2007. The Strategy puts forward the Government’s vision of a sustainable low emission energy system that will ensure security of supply, promote renewable energy and improve efficiency, while maintaining New Zealand’s competitive advantage. In particular, the Government states as visions the desire *“to maximise the contribution of cost-effective renewable energy resources while safeguarding our environment”*, and *“to reduce our greenhouse emissions”*.⁴

The RMA has been amended by the Resource Management (Energy and Climate Change) Amendment Act 2004. This means that persons exercising functions and powers under the RMA are required to have particular regard to the effects of climate change (s 7 (i)); and the benefits to be derived from the use and development of renewable energy (s 7(j)).

These matters are required to be given particular regard to in respect of the preparation and change of policy statements and plans as well as in the consideration of resource consents.

² s172ZK Electricity Act 1992

³ Section 5, GPS on Electricity Governance (May 2009).

⁴ Section 3, New Zealand Energy Strategy (October 2007).

The National Policy Statement on Electricity Transmission was gazetted in March 2008. It contains policies which recognise that a secure, reliable and efficient transmission network is of national importance. It also recognises the importance of a strong grid in facilitating renewable development particularly as resources that are able to be harnessed for future generations are geographically constrained.

The proposed National Policy Statement for Renewable Electricity Generation (NPS) was released by the Ministry for the Environment in August 2008. The key objective of the NPS is to promote the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities, such that 90% of New Zealand's electricity will be generated from renewable sources by 2025. The NPS contains policies to recognise the national significance of the benefits of renewable electricity generation activities and acknowledge the practical constraints associated with the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities.

Regional policy statements, regional plans and district plans are required to give effect to national policy statements under ss 55 (2) and 62 (3) of the RMA.

Except as specifically addressed below, Mighty River Power considers that the proposed RPS adequately addresses the Government's policy framework and the provisions and intent of the proposed RPS should therefore be retained.

2.1.1 Mighty River Power seeks the following decision from the Regional Council:

The **retention** within the RPS of the relevant themes contained within national energy policy, namely:

- recognition of the importance of security of energy supply as a pivotal component to the sustainable management of natural and physical resources;
 - recognition of the benefits that accrue from the use and development of renewable energy resources including reducing dependency on imported fuels and the infinite nature of renewable resources;
 - recognition that renewable energy must be harnessed where the resource is situated and provide for the use of those resources;
 - recognise the priority to be given to renewable energy through resource allocation decisions;
-

- the contribution that renewable energy projects make towards meeting New Zealand's energy targets and international obligations such as the Kyoto Protocol; and
- the significance of the national grid in facilitating renewable generation from dispersed locations.

2.2 Section 1.1 – Setting the Scene

Mighty River Power supports in part section 1.1 for the following reasons:

In general, Mighty River Power is supportive of the broad framework of the proposed RPS in which policies are intended to complement each other and provide a robust, integrated approach to promoting the sustainable management of natural and physical resources.

However, Mighty River Power would like to see greater explanation as to how the policies within the RPS should be read in combination with one another. For example, Mighty River Power believes that further clarity could be added to the RPS by stating that policies relating to energy, infrastructure and waste should be assessed in combination with those policies on landscape and indigenous ecosystems, and vice versa.

Further, Mighty River Power considers that the RPS should state that the weighing of the various Objectives and Policies will be undertaken on a case-by-case basis, depending on the particular circumstances involved. In particular it should be noted that it is not Council's intention that provisions addressing adverse environmental effects will automatically be given greater weight than those addressing the benefits of activities.

2.2.1 Mighty River Power seeks the following decision from the Regional Council:

Amend the second to last paragraph in section 1.1, to read as follows:

"The Regional Policy Statement is not simply a collection of discrete policies. The policies are intended to complement each other and provide a robust, integrated approach to promoting the sustainable management of natural and physical resources. In this connection it is not appropriate to consider only those provisions addressing the adverse effects of activities, without consideration of those provisions which address the benefits of activities, and vice versa. Whether in relation to Regional and District Plan preparation, or the consideration of resource consent applications and notices of requirement, the weight to be given to competing objectives and policies must be determined on a case by case basis.

2.3 Overall focus of the proposed RPS

Mighty River Power supports the focus within the proposed RPS on inappropriate subdivision, use and development for the following reasons:

Mighty River Power supports the proposed RPS seeking to sustainably manage the values of the region by directing district and regional plans to include policies and methods that protect these values from inappropriate subdivision, use and development.

By directing district and regional plans to include provisions on 'inappropriate subdivision, use and development' the opportunity is afforded to consider the benefits of the activity along with any adverse effects. It also provides the opportunity to consider reasons which go to whether a particular activity needs to be located as proposed, such as the need to harness renewable energy where the resource is situated.

2.3.1 Mighty River Power seeks the following decision from the Regional Council:

Retain the policies in the RPS that provide direction for regional and district plans to include policies, methods and rules that protect the region's natural and physical resources from inappropriate subdivision, use and development.

CHAPTER 3 – ISSUES AND OBJECTIVES

2.4 Coastal Environment (Section 3.2)

Mighty River Power supports section 3.2 for the following reason:

Mighty River Power supports the recognition within this section that the regional coastal environment has significant wind and marine energy resources.

2.4.1 Mighty River Power seeks the following decision from the Regional Council:

Retain the recognition of significant wind and marine energy resources in the region within the background to section 3.2.

2.5 Objective 4 – Natural character

Mighty River Power supports this Objective for the following reasons:

The direction of this Objective is to protect the natural character of the coastal environment from the adverse effects of inappropriate subdivision, use and development.

Retention of the phrase ‘inappropriate subdivision, use and development’ is important because this allows consideration of the benefits of an activity along with any adverse effects. It also provides the opportunity to consider if the activity can locate elsewhere or if there is a need to locate in a particular locality.

2.5.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Objective 4 in its entirety.

2.6 Energy, infrastructure and waste (Section 3.3)

Mighty River Power supports this section for the following reasons:

Mighty River Power supports the resource management issues addressed in this section, namely that the section recognises the significant renewable energy sources that the region has and it addresses the New Zealand Energy Strategy, the NZEECS and the New Zealand Transport Strategy which outline New Zealand’s actions on energy and climate change. In addition, the section recognises that traditional energy supply will not be able to meet increasing demand and in the long term, the cost of energy will rise. It is also recognised that a challenge for the region is securing clean energy at affordable prices.

2.6.1 Mighty River Power seeks the following decision from the Regional Council:

Retain the resource management issues addressed in section 3.3 and Objectives 9 and 10, except as addressed in further detail below.

2.7 Objective 9 – Region’s energy needs

Mighty River Power opposes in part this Objective for the following reasons:

This Objective currently focuses on meeting the energy needs of the region. Mighty River Power notes that the Wellington region is currently a net importer of electricity and relies upon other regions to meet its electricity needs. Notwithstanding this, the region has the

resource base to meet electricity demand beyond its own needs. Furthermore, significant energy developments in the region are likely to not only supply the region but also contribute to national demand through the national grid.

Mighty River Power therefore seeks that the Objective recognises that energy supply projects will have benefits beyond the region. Focussing solely on the benefits to the region is not consistent with national policy.

2.7.1 Mighty River Power seeks the following decision from the Regional Council:

Amend the opening statement to Objective 9 to read *"The region's and nation's energy needs are met in ways that:..."*

2.8 Objective 10 – Benefits of regionally significant infrastructure

Mighty River Power supports in part this Objective for the following reason:

This Objective seeks that the social, economic, cultural and environmental benefits of regionally significant infrastructure are recognised and protected. Mighty River Power notes that while recognition and protection of the benefits of regionally significant infrastructure is important, there is also the need to recognise that there is infrastructure within the Wellington region that is of benefit at the national level.

2.8.1 Mighty River Power seeks the following decision from the Regional Council:

Amend Objective 10 to read *"The social, economic, cultural and environmental benefits of nationally and regionally significant infrastructure are recognised and protected".*

2.9 Fresh Water (Section 3.4)

Mighty River Power opposes section 3.4 for the following reason:

The approach of this section is to avoid activities that can affect the ecosystem function in rivers, lakes and wetlands. There is no consideration to remedying or mitigating the effects of such activities where the effects can be offset by another form of environmental compensation, using a 'no net loss' approach.

2.9.1 Mighty River Power seeks the following decision from the Regional Council:

- (a) **Retain** the recognition of the activities that can generate poor ecosystem function in rivers, lakes and wetlands; and
- (b) **Include** within the body of the explanation to this chapter that the effects of an activity can be considered where they can be offset by another form of environmental compensation, using a 'no net loss' approach; and
- (c) **Include** as an **additional clause** in issue (2), that the effects of an activity can be considered where they can be offset by another form of environmental compensation, using a 'no net loss' approach.

2.10 Objective 12 – Quantity & quality of freshwater

Mighty River Power opposes this Objective for the following reasons:

The approach of this Objective is to have the quantity and quality of fresh water meet the range of uses and values for which water is required; safeguard the like supporting capacity of water bodies; and meet the reasonably foreseeable needs of future generations.

There is no consideration as to how the effects of an activity on fresh water can be offset by environmental compensation. Mighty River Power considers that adverse effects can be remedied or mitigated by environmental compensation in some circumstances and that this should be provided for.

2.10.1 Mighty River Power seeks the following decision from the Regional Council:

Amend Objective 12 to **include an additional clause** which recognises that adverse effects can be remedied or mitigated by environmental compensation, using a 'no net loss' approach.

2.11 Indigenous ecosystems (Section 3.6)

Mighty River Power supports in part section 3.6 for the following reasons:

Mighty River Power supports the recognition in the RPS that the region's ecosystems are under threat and that ecosystems and habitats with significant biodiversity values should be identified and protected.

However, the protection of the regions ecosystems, habitats or areas of flora should not be absolute. Rather, the focus should be on maintaining or enhancing the overall biodiversity of the region, using a 'no net loss' approach.

2.11.1 Mighty River Power seeks the following decision from the Regional Council:

- (a) **Amend** the background to the resource management issues for section 3.6, so that the emphasis is on the maintenance, and where appropriate, the enhancement of the overall biodiversity of the region.
- (b) **Delete** existing Objective 16 and replace it with the following objective, or an objective to similar effect *"Net indigenous biological diversity is maintained or enhanced."*

2.12 Landscape (Section 3.7)

Mighty River Power supports section 3.7 for the following reason:

The key resource management issue in this section is that landscape change is being accelerated by inappropriate human activity and that the region's outstanding natural features and landscapes and significant amenity landscapes are identified and their values protected, maintained or enhanced. It is considered that this issue appropriately reflects the directions within the RMA and does not seek the absolute protection of the region's landscapes.

2.12.1 Mighty River Power seeks the following decision from the Regional Council:

- (a) **Retain** the key resource management issues addressed in this section; and
- (b) **Retain** Objective 17 in its entirety.

2.13 Regional form, design and function (Section 3.9)

Mighty River Power opposes in part section 3.9 for the following reasons:

The key resource management issues of this section are poor quality urban design; sporadic and uncoordinated development; and the integration of land use and transportation.

Mighty River Power considers that this section should explicitly recognise that the achievement of a good regional form design and function requires reverse sensitivity

issues to be addressed. Objective 21 and its explanation do not give consideration to potential reverse sensitivity effects when urban growth and rural residential development are assessed and when structure plans are prepared. Protecting particular natural and physical resources, such as renewable energy resources, and the facilities which harness these resources, from reverse sensitivity effects generated by urban growth and rural residential development, is an important part of good regional form.

It is important that decisions about regional form, urban growth and rural residential development take such reverse sensitivity considerations into account.

2.13.1 Mighty River Power seeks the following decision from the Regional Council:

Amend this section to **include** in the explanation and in Objective 21, recognition that reverse sensitivity effects need to be considered as part of the achievement of good regional form.

CHAPTER 4 – POLICIES AND METHODS

2.14 Policies 3 & 35 – Discouraging development in areas of high natural character

Mighty River Power opposes these Policies for the following reasons:

Policy 3 directs that district and regional plans should include policies, rules and/or methods that discourage new subdivision and/or development; and inappropriate use.

Policy 35 requires a similar approach be taken to the consideration of plan changes and notices of requirement.

The approach taken in both Policies is inconsistent with other policies in the RPS and the requirements of s 6 of the RMA, which direct district and regional plans to protect the natural character of the coastal environment from inappropriate subdivision, use and development. In particular, it is noted that the RMA does not differentiate between existing uses and new subdivision and development.

It is not clear why Policies 3 and 35 place an emphasis on all new subdivision and development rather than on only inappropriate subdivision, use and development. Doing so implies that all new subdivision and development is inappropriate within areas of high natural character. This sets a very high and inappropriate level of protection for such areas, which is greater than that anticipated in the RMA.

2.14.1 Mighty River Power seeks the following decision from the Regional Council.

(a) **Amend** Policy 3 as follows:

“District and regional plans shall include policies, rules and methods which discourage:

~~(a) new subdivision and/or development; and~~

~~(b) inappropriate subdivision, use and development on land in areas of high natural character in the coastal environment with high natural character”.~~

(b) **Amend** Policy 35 as follows:

“When considering a notice of requirement or a change, variation or replacement to a district or regional plan, particular regard shall be given to discouraging ~~new subdivision and development, and inappropriate use on land~~ inappropriate subdivision, use and development in areas of high natural character in the coastal environment ~~with high natural character~~. All of the following...”

2.15 Policy 4 – landward extent of the coastal environment

Mighty River Power supports this Policy for the following reason:

Mighty River Power supports that this Policy requires the identification of the landward extent of the coastal environment. In addition, it supports the inclusion of criteria for the identification of the landward extent of the coastal environment. This Policy, and the consequential district plan changes, will provide greater certainty in the process of identifying sites for future development, and will help highlight key matters that will need to be addressed. It will also ensure a degree of regional consistency in the identification of the landward extent of the coastal environment.

2.15.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Policy 4 in its entirety.

2.16 Policy 6 – Benefits from regionally significant infrastructure & renewable energy

Mighty River Power supports this Policy for the following reasons:

Mighty River Power supports the identification of the benefits associated with renewable energy developments, including the contribution that electricity generation makes to social and economic well being.

Mighty River Power also supports the explanation to this Policy which recognises that renewable energy and significant infrastructure can provide benefits from within and outside the region and that renewable energy benefits are not only generated by large scale renewable energy projects but also from smaller scale projects.

This Policy appropriately reflects and gives effect to Government policy on renewable electricity generation described in section 2.1 above.

2.16.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Policy 6 in its entirety.

2.17 Policy 7 – Protecting regionally significant infrastructure

Mighty River Power supports this Policy for the following reason:

Incompatible land use activities which locate next to regionally significant infrastructure can significantly affect the efficient use of these physical resources. Given the benefits of such infrastructure, it is important that the RPS requires its protection from incompatible new land use activities under, over or alongside.

2.17.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Policy 7 in its entirety.

2.18 Policies 11 & 39 – Maintaining & enhancing aquatic ecosystem health

Mighty River Power opposes these Policies for the following reasons:

Policy 11 directs regional plans to maintain and enhance aquatic ecosystem health and manage water bodies for other identified purposes. Policy 39 requires similar considerations to be made in relation to resource consent applications, notices of requirement and plan changes.

There is no provision within either Policy for the remediation and/or mitigation of adverse effects. Further, the Policies does not provide for adverse effects to be offset by other forms of environmental compensation.

Mighty River Power considers that water is a resource that is critical for the social and economic well being of people and communities and that this should be recognised in the RPS. As such, there should be a policy in the RPS that recognises the economic, social, health and well being benefits that are obtained from water use.

2.18.1 Mighty River Power seeks the following decisions from the Regional Council.

- (a) **Amend** Policies 11 & 39 to provide the ability to remedy and/or mitigate the adverse effects of the use of water for purposes not identified in the policies, and provide for environmental compensation in some circumstances.
- (b) **Include an additional** 'plan' policy that recognises the economic and social benefits obtained from the use of water resources.

2.19 Policy 12 – Allocating water

Mighty River Power opposes this Policy for the following reasons:

This Policy directs that Regional Plans shall include policies and/or rules that establish allocation limits for the total amount of water that can be taken from rivers and ground water without compromising aquatic ecosystem health.

Mighty River Power is concerned that the Policy does not recognise that in some circumstances environmental values can be met through means other than complying with the allocated environmental flows. In some circumstances there is the potential for environmental compensation.

2.19.1 Mighty River Power seeks the following decision from the Regional Council:

Amend the explanation of Policy 12 to recognise that the allocation limits should not be absolute and that there are circumstances where environmental compensation may be an appropriate alternative to complying with the minimum flows.

2.20 Policies 14 & 40 – Minimising the effects of earthworks & vegetation disturbance

Mighty River Power opposes these Policies for the following reason:

Mighty River Power is concerned with the use of the word 'minimised' in these Policies, as this wording is inconsistent with the RMA which seeks that adverse effects are avoided, remedied or mitigated.

2.20.1 Mighty River Power seeks the following decisions from the Regional Council:

(a) **Amend** Policy 14 so that it reads as follows:

“Regional and district plans shall include policies, rules and methods that control earthworks and vegetation disturbance ~~to minimise~~ in order to avoid, remedy or mitigate the adverse effects of:

a) erosion; and,

b) silt and sediment run off into water, or onto land that may enter water, so that aquatic ecosystem health is safeguarded.”

(b) **Amend** Policy 40 so that it reads as follows:

“When considering an application for a resource consent, notice of requirement, or a change, variation or replacement to a regional or district plan, particular regard shall be given to controlling earthworks and vegetation disturbance in order to ~~minimise~~ in order to avoid, remedy or mitigate the adverse effects of:

a) erosion; and,

b) silt and sediment run off into water, or onto land that may enter water, so that aquatic ecosystem health is safeguarded.”

2.21 Policy 17 – Protecting significant values of rivers & lakes

Mighty River Power opposes this Policy for the following reason:

Policy 17 requires the Regional Plan to include policies and rules that protect listed rivers and lakes. The requirement to protect such rivers and lakes is absolute and inflexible. It is considered that this requirement is not appropriate and does not reflect the purpose

and principles of the RMA, and is not consistent with the more balanced position presented in Objective 13.

2.21.1 Mighty River Power seeks the following decision from the Regional Council:

Amend Policy 17 as follows:

“Regional Plans shall include policies and rules that protect:

(a) ...

(b) ...

from inappropriate use and development.”

2.22 Policy 19 – Prioritising water abstraction

Mighty River Power supports this Policy for the following reason:

Mighty River Power supports that the RPS provides direction for regional plans to include policies and/or rules that give priority to the abstraction of water for the health needs of people and, that guidance is given through s 14 of the RMA on how to give priority to taking water.

2.22.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Policy 19 in its entirety.

2.23 Policy 22 – Identifying indigenous ecosystems & habitats

Mighty River Power supports in part this Policy for the following reasons:

Mighty River Power supports in part this Policy which directs district and regional plans to identify indigenous ecosystems and habitats with *significant* indigenous biodiversity values according to a set criteria. However, Mighty River Power considers that the terms ‘commonplace and ‘poorly represented’ within criterion (a)(i) and (a)(ii) respectively are unclear and open to interpretation. For the avoidance of doubt it is suggested that ‘no longer commonplace’ be replaced with ‘is now less than approximately 20% in the ecological district or a high quality example of an ecosystem’ and ‘poorly’ represented’ be replaced with ‘less than 20% is formally protected’.

It is further considered that within criterion (b) the phrase 'scarce or threatened in a local, regional or national context' is unclear and open to interpretation. Mighty River Power considers that this should be defined and suggests that 'less than 20% remaining' is an appropriate benchmark.

Mighty River Power supports that both criteria (a) and (b) are inclusive of habitats and ecosystems.

It is considered that what is defined as 'diversity' in criterion (c) is too broad. Mighty River Power considers that diversity should not be over-rated and that there should be definitive guidelines for what is considered to be a reasonable level of diversity within the Greater Wellington Region. Such guidelines will require the input of ecologists.

Mighty River Power also considers that tangata whenua values are not relevant in determining the significant indigenous biodiversity values of ecosystems and habitats, and therefore seeks the removal of criterion (e). It is considered that, subject to the amendment sought in section 2.31 below, matters of spiritual or cultural value to Tangata Whenua are appropriately addressed under Policy 48.

Furthermore, it is considered that this Policy has neglected to consider sustainability as a key criterion to identify indigenous ecosystems. Mighty River Power seeks that an additional sustainability criterion be added to this Policy.

2.23.1 Mighty River Power seeks the following decision from the Regional Council:

Amend Policy 22 to read as follows:

"District and regional plans shall identify indigenous ecosystems and habitats with significant indigenous biodiversity values that meet one or more of the following criteria and are considered positive for sustainability as defined below:

(a) Representativeness: high representativeness values are given to particular ecosystems and habitats that ~~were once typical and commonplace in a district or in the region, and:~~

(i) ~~are no longer commonplace~~ are now less than approximately 20% of their known or likely former cover in the ecological district;

(ii) are a high quality example of an ecosystem; or

~~(iii) are poorly represented are less than 10% formally protected within existing protected areas.~~

(b) *Rarity: the ecosystem or habitat has biological or physical features that are scarce or threatened in a local, regional or national context. This can include individual species, rare and distinctive biological communities and physical features that are unusual or rare.*

~~(c) Diversity: the ecosystem or habitat has a natural diversity of ecological units, ecosystems, species and physical features within an area.~~

~~(c) Ecological context of an area: the ecosystem or habitat:~~

~~(i) enhances connectivity or otherwise buffers representative, rare or diverse indigenous ecosystems and habitats; or~~

~~(ii) provides seasonal or core habitat for threatened indigenous species.~~

~~(iii) the ecosystem or habitat has a natural diversity of ecological units, ecosystems, species and/or physical features within a prescribed area.~~

~~(e) Tangata whenua values: the ecosystem or habitat contain characteristics of special spiritual, historical or cultural significance to tangata whenua, identified in accordance with tikanga Maori.~~

(d) A site is considered positive for sustainability if it meets all of the following criteria:

(i) Key ecological processes remain viable or still influence the site.

(ii) The key ecosystems within the site are known to be or are likely to be resilient to existing or potential threats under some realistic level of management activity..

(iii) The potential exists for ecological restoration in fragmented landscapes and environments where the original vegetated cover has been removed.

(iv) Existing or potential land and water uses in the area around the site could be feasibly modified to protect ecological values."

2.24 Policy 23 – Protecting indigenous ecosystems & habitats

Mighty River Power supports this Policy for the following reasons:

Mighty River Power supports the direction of this Policy which directs district and regional plans to protect indigenous ecosystems and habitats with significant indigenous biodiversity values from *inappropriate* subdivision, use and development, which is consistent with s 6 of the RMA.

As previously mentioned, inclusion of the phrase 'from inappropriate subdivision, use and development' allows district and regional plans to consider the adverse effects of an activity along with the benefits to assess the overall appropriateness of the proposed subdivision, use or development in its given setting.

2.24.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Policy 23 in its entirety.

2.25 Policies 24 & 26 –Identifying outstanding natural features and landscapes and identifying significant amenity landscapes

Mighty River Power supports in part these Policies for the following reasons:

Policy 24 directs District and Regional Plans to identify outstanding natural features and landscapes using a set of criteria. Policy 26 directs District and Regional Plans to identify significant amenity landscapes using a set list of criteria. Mighty River Power supports in part these Policies, and the intent behind them. It is considered that the criteria listed reflect relevant Environment Court decisions and reflect best practice.

However, given Policies 24 and 26 repeat the same list of criteria, it would be more appropriate if the two policies were combined.

2.25.1 Mighty River Power seeks the following decision from the Regional Council:

Combine Policies 24 and 26 to read:

"District and regional plans shall identify outstanding natural features and landscapes and significant amenity landscapes using the following criteria, and having determined that either:

- *the natural feature or landscape is exceptional or out of the ordinary under one or more of the criteria and the natural components dominate over the influence of human activity; or*
- *the landscape has important landscape value under one or more of the criteria:*

(a) ...”.

2.26 Policy 25 – Protecting outstanding natural features and landscapes

Mighty River Power supports this Policy for the following reasons:

Mighty River Power supports the direction of this Policy which directs district and regional plans to protect outstanding natural features and landscape values from *inappropriate* subdivision, use and development, which is consistent with s 6 of the RMA.

As previously mentioned, inclusion of the phrase ‘from inappropriate subdivision, use and development’ allows district and regional plans to consider the adverse effects of an activity along with the benefits to assess the overall appropriateness of the proposed subdivision, use or development in its given setting.

2.26.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Policy 25 in its entirety.

2.27 Policy 27 – Maintaining & enhancing significant amenity landscapes

Mighty River Power supports in part this Policy for the following reasons:

This Policy directs district and regional plans to include policies rules, and/or methods that maintain or enhance the significant amenity landscape values.

Mighty River Power supports in part this Policy which directs district and regional plans to include policies rules and/or methods that maintain or enhance the *significant* amenity landscape values, rather than have all amenity landscapes holding the same high value. The Policy is also consistent with s 7 of the RMA.

However, Mighty River Power has concerns that the Policy has currently drafted has the potential to imply that where a significant amenity landscape can not be maintained or enhanced through a development then that development may not be able to proceed. It

will not always be possible for a development to maintain or enhance a significant amenity landscape and sometimes a compromise will be necessary where the benefits of the development accrue at a number of levels including regional and national and will outweigh the desire to maintain or enhance a significant amenity landscape.

2.27.1 Mighty River Power seeks the following decision from the Regional Council:

- (a) **Amend** Policy 27 so that it states that the maintenance or enhancement of a significant amenity landscape will occur where it is reasonably practicable to do so.
- (b) **Include** in the explanation to Policy that sometimes the benefits of a development (for example, a renewable energy generation project) will mean that a compromise on the maintenance or enhancement of a significant amenity landscape will need to occur.

2.28 Policy 38 – Recognising benefits of infrastructure & renewable energy

Mighty River Power supports in part this Policy for the following reasons:

Mighty River Power generally supports the direction and intent of Policy 38. Mighty River Power considers that the Policy and its explanation appropriately reflects national energy and infrastructure policy.

It is also considered that clause (b) appropriately recognises that the location of electricity generation facilities which utilise renewable energy resource is fixed by the location of those resources. This constraint can restrict the ability of infrastructure and renewable energy projects to avoid and mitigate adverse environmental effects. In this connection, Mighty River Power has also sought changes to other policies so that they provide for the off-setting of adverse environmental effects, on a no net loss basis.

Notwithstanding this general support, it is noted that the Policy and its title are not consistent in their references to national and regional benefits. This should be corrected. In addition, it may be more appropriate for the Policy to make general reference to renewable energy resources rather than singling out wind and marine as is currently done.

2.28.1 Mighty River Power seeks the following decision from the Regional Council:

Amend Policy 38 and its title to read as follows:

“Policy 38 – Recognising the benefits from nationally and regionally significant infrastructure and renewable energy – consideration

When considering an application for resource consent, notice of requirement or a change, variation or replacement to a district or regional plan, particular regard shall be given to:

- (a) the social, economic, cultural and environmental benefits of nationally and regionally significant infrastructure and / or energy generated from renewable energy resources; and*
- (b) the nationally and regionally significant ~~wind and marine~~ renewable energy resources within the region and the need for electricity generation facilities to locate where these resources exist.”*

2.29 Policy 42 – Protecting aquatic ecological function

Mighty River Power opposes this Policy for the following reason:

Clauses (d), (e) and (h) of this Policy require the absolute protection of specific aquatic values. The requirement to protect such values is absolute and inflexible. It is considered that this requirement is not appropriate and does not reflect the purpose and principles of the RMA. In addition the requirements in these clauses is not consistent with the more balanced position presented in Objective 13 of the Proposed RPS.

2.29.1 Mighty River Power seeks the following decision from the Regional Council:

Amend clauses (d), (e) and (h) of Policy 42 by inserting the qualifying phrase *‘from inappropriate subdivision, use and development’* at the end of each of the clauses.

2.30 Policy 46 – Managing the effects on indigenous ecosystems and habitats

Mighty River Power supports in part this Policy for the following reasons:

Mighty River Power generally supports the direction of this Policy which is to manage the effects on indigenous ecosystems and habitats with significant indigenous biodiversity values.

However, the Policy should not focus on managing the effects of individual habitats, rather, the focus should be on managing the overall effects on indigenous ecosystems and habitats, using a 'no net loss' approach.

2.30.1 Mighty River Power seeks the following decision from the Regional Council:

Include provision for the offsetting of adverse effects on indigenous ecosystems and habitats within clause (h) of Policy 46 to achieve a 'no net loss' outcome.

2.31 Policy 48 – Avoiding adverse effects on matters of significance to tangata whenua

Mighty River Power supports in part this Policy for the following reasons:

This Policy directs that when considering an application for resource consent, notice of requirement, or a change, variation or replacement to a district or regional plan, particular regard shall be given to avoiding adverse effects on:

- a) the exercise of kaitiakitanga;
- b) mauri, particularly in relation to fresh and coastal waters;
- c) mahinga kai and areas of natural resources used for customary purposes; and
- d) places, sites and area with significant spiritual or cultural historic heritage value to tangata whenua.

While Mighty River Power recognises the importance of providing for matters of significance to tangata whenua, it is however concerned with the focus in the Policy on avoiding adverse effects.

Mighty River Power considers the avoidance test is very high. The Policy should instead provide for activities that can sustainably manage adverse effects and avoid, remedy or mitigate these effects as required under the RMA. In addition, the Act does not provide that any values, including matters of significance to tangata whenua should be given absolute protection.

2.31.1 Mighty River Power seeks the following decision from the Regional

Council:

Amend Policy 48 to read as follows:

“When considering an application for a resource consent, notice of requirements, or a change, variation or replacement to a district or regional plan, particular regard shall be given to avoiding, remedying or mitigating adverse effects on:

- a) the exercise of kaitiakitanga;*
- b) mauri, particularly in relation to fresh and coastal waters;*
- c) mahinga kai and areas of natural resources used for customary purposes; and,*
- d) places, sites and area with significant spiritual or cultural historic heritage value to tangata whenua.”*

2.32 Policy 49 – Managing effects on outstanding natural features and landscapes

Mighty River Power opposes this Policy for the following reasons:

This Policy provides guidance on the matters that should be considered in determining the appropriateness of activities proposed within outstanding natural features and landscapes. In doing so it only focuses on the adverse effects of activities. This approach is not consistent with the purpose of the RMA and case law on such matters.

A large number of Court decisions recognise that the benefits of activities, and functional constraints which restrict the location of activities, are also of relevance to an activity’s appropriateness when deciding whether or not an activity should be granted consent to proceed.

2.32.1 Mighty River Power seeks the following decision from the Regional Council:

Delete Policy 49 or amend to reflect the reasoning outlined above.

2.33 Policy 52 – Public access

Mighty River Power supports this Policy for the following reasons:

This Policy directs that when considering an application for resource consent, notice of requirement, or a change, variation or replacement to a district plan, particular regard

shall be given to enhancing public access to, and along, areas of the coast marine area and lakes and rivers.

Mighty River Power is particularly supportive that this policy gives regard to the integrity and security of regionally significant infrastructure in clause (j) of the Policy.

2.33.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Policy 52 in its entirety.

2.34 Policy 54 – Maintaining a compact, well designed and sustainable regional form

Mighty River Power opposes this Policy for the following reasons:

This Policy directs that when considering an application for a resource consent, or a change, variation or replacement to a district plan for urban development beyond the region's urban areas (as at March 2009), particular regard shall be given to whether:

- a) the proposed development is the most appropriate option to achieve Objective 21;
- b) the proposed development is consistent with the Councils growth and/or development framework or strategy that describes where and how future urban development should occur in that district; and/or,
- c) a structure plan has been prepared.

The broad aims of this policy are not opposed but Mighty River Power considers that Policy 54 and its explanation do not adequately provide for the consideration of potential reverse sensitivity effects in maintaining a compact, well designed and sustainable regional form.

As such, Mighty River Power would like to see greater discussion on reverse sensitivity effects as an additional matter considered when determining growth strategies, in the explanation section of Policy 54.

2.34.1 Mighty River Power seeks the following decision from the Regional Council:

Amend the explanation to Policy 54 so it more explicitly recognises the need to consider reverse sensitivity effects as part of maintaining a compact, well designed and sustainable regional form.

2.35 Policy 61 – Allocation of responsibilities for indigenous biodiversity

Mighty River Power supports this Policy for the following reasons:

This Policy directs regional and district plans to recognise and provide for the listed responsibilities when developing objectives, policies and methods, including rules, to maintain indigenous biodiversity.

Mighty River Power supports the direction of this policy, which divides the responsibilities of regional and district councils for the control of the use of land in maintaining indigenous biodiversity. This Policy is also consistent with s 62 (i) (iii) of the RMA.

2.35.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Policy 61 in its entirety.

2.36 Method 18 – Regional structure planning guide

Mighty River Power supports in part this Method for the following reasons:

This Method directs regional, city and district councils to prepare a structure planning guide about integrating land use with infrastructure and for delivering high quality urban design.

In preparing this guide, it will be important that consideration is given to reverse sensitivity effects and to the protection of and future development of the region's renewable energy resource.

2.36.1 Mighty River Power seeks the following decision from the Regional Council:

Amend the Method to recognise the need for the consideration of reverse sensitivity effects and the need to protect and enable future development of the regions renewable energy resource when preparing the structure planning guide.

2.37 Method 30 – Earthworks protocol

Mighty River Power supports this Method for the following reasons:

Mighty River Power supports the direction of this Method to guide district and regional plans to avoid gaps and unnecessary overlaps in the regulation of:

- a) earthworks, including vegetation disturbance; and,
- b) management of odour, smoke and dust.

Mighty River Power considers this will provide consistency across district and regional plans.

2.37.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Method 30 in its entirety.

2.38 Method 32 Sustainable energy programmes

Mighty River Power supports this Method for the following reasons:

This Method directs the Wellington Regional Council and city and district councils to implement sustainable energy programmes, to improve energy efficiency and conservation, reduce emissions of carbon dioxide and minimise the regions vulnerability to energy supply disruptions or shortages.

Mighty River Power is supportive of the direction of this method, particularly in regards to implementing *sustainable* energy programmes.

2.38.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Method 32 in its entirety.

2.39 Method 49 – Regional landscape character description

Mighty River Power supports this Method for the following reasons:

This Method directs Wellington Regional Council and city and district councils to prepare a methodology to develop and disseminate a regional landscape character description to assist in identifying outstanding natural features and landscapes.

Mighty River Power is supportive of this method as the focus is for the regional, city and district council to agree a method in order to identify *outstanding* natural features and landscapes as opposed to *all* natural features and landscapes.

2.39.1 Mighty River Power seeks the following decision from the Regional Council:

Retain Method 49 in its entirety.

2.40 Table 16 – Rivers and lakes with significant indigenous ecosystems

Mighty River Power opposes this table for the following reasons:

The inclusion of the full extent of the rivers and lakes in Table 16 does not take into account that there may be areas on each waterway that have been modified and no longer contain a significant ecosystem.

The criteria within Policy 22 should be used to identify rivers and lakes or particular areas of rivers and lakes with significant indigenous ecosystems. It is considered that if the criteria within Policy 22 have not been used then Table 16 should be removed.

2.40.1 Mighty River Power seeks the following decision from the Regional Council:

Delete Table 16 in its entirety.
