

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

**AND**

**IN THE MATTER** of the Proposed National Policy  
Statement for Renewable Energy  
Generation

**SUBMISSIONS TO THE BOARD OF INQUIRY ON THE PROPOSED NATIONAL  
POLICY STATEMENT FOR RENEWABLE ENERGY GENERATION 2009**

**1. INTRODUCTION**

- 1.1 I appear for Mighty River Power Limited (Mighty River Power) at this Board of Inquiry for the Proposed National Policy Statement for Renewable Energy Generation (the NPS).
- 1.2 Mighty River Power made a number of submissions to the NPS relating to the issues of renewable energy, a sustainable energy future and the issue of relative reversibility. Mighty River Power's specific submissions on provisions contained in the NPS were made in the context of the issues outlined.
- 1.3 The topics I will cover in my submissions are:
  - (a) The evidence to be presented by Mighty River Power.
  - (b) The amendments sought to the NPS by Mighty River Power through its submissions.

**2. EVIDENCE TO BE PRESENTED**

- 2.1 In support of Mighty River Power's submission evidence will be presented by Mr Rob Hunter, Manager – Environmental Strategy and Policy.
- 2.2 Given the importance of the outcome of the NPS to Mighty River Power and its operations (both existing and in the future), our evidence has been designed to provide an overview to Mighty River Power and its operations as well as the importance of allowing for the use and development of renewable energy resources in New Zealand.

## Mr Hunter's Evidence

- 2.3 Mr Hunter's evidence is designed to introduce the company Mighty River Power to you and to explain Mighty River Power's interest in the NPS.
- 2.4 As Mr Hunter explains in his evidence, electricity is an absolutely essential commodity for a modern economy. New Zealand's *demand* for electricity is growing at a rate estimated to be between 1.3 – 2.5%.<sup>1</sup> This is due to increases in the population, as well as increased use of technology and a growing economy.<sup>2</sup> On the other side of the equation, the traditional energy sources of supply for electricity (such as gas) are diminishing. In terms of *large scale* hydro-electricity generation of the sort that New Zealand has traditionally relied upon, it is difficult to envisage that scale of hydro generation being consented today or the opportunity for any further development on that scale.<sup>3</sup>
- 2.5 In terms of maintaining security of electricity supply for New Zealand, Mr Hunter graphically illustrates (in his Figure 3) that we may very well reach a position that in order to meet supply we will need to rely on higher inflows than usual into our hydro lakes. That is, we will be relying on wet years, and be completely at the mercy of the weather.<sup>4</sup> If new generation capacity is not installed, this situation could potentially occur as early as 2012. This is an undesirable situation for a modern, developed economy to be in.
- 2.6 The New Zealand Energy Strategy to 2050, the New Zealand Energy Efficiency and Conservation Strategy 2007 and the NPS all provide for a target of 90% of our electricity generation being supplied by renewable sources by the year 2025. This target will be very challenging to meet.
- 2.7 It is clear that in order to meet this target, the country will need to capitalise on its renewable energy resources and opportunities. To achieve this the NPS must be both a requiring and enabling document which allows for the use and development of renewable energy resources for electricity development and which does not require these projects to meet a higher test (i.e. the concept of reversibility in Policy 3) than other activities under the Resource Management Act 1991 (RMA).

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<sup>1</sup> Paragraph 5.3 Mr Hunter's evidence.

<sup>2</sup> Paragraphs [5.9] to [5.11], Mr Hunter's evidence.

<sup>3</sup> Paragraph [5.12], Mr Hunter's evidence.

<sup>4</sup> Paragraph [5.5], Mr Hunter's evidence.

2.8 Mighty River Power supports the intent and need behind the NPS. However, it considers that the NPS as it is currently drafted creates a significant barrier for renewable energy generation to occur sustainably in New Zealand.

### **3. BACKGROUND TO MIGHTY RIVER POWER AND THE ISSUE OF RENEWABLE ENERGY**

3.1 Mighty River Power is a State Owned Enterprise that commenced full operation on 1 April 1999 following New Zealand's 1999 electricity market reforms. As Mr Hunter's evidence explains, Mighty River Power plays a significant role in the use and development of renewable energy resources. Around 70% of New Zealand's electricity needs were met by renewable energy in 2007, with over 85% of Mighty River Power's contribution coming from renewable energy sources.

3.2 The development of New Zealand's renewable energy resources is of national significance for a number of reasons, including concerns over climate change and environmental quality, the dawn of the emissions trading era and the country's international obligations and reputation.

3.3 This significance was given legislative force by amendments to the RMA in 2004 that added "*the effects of climate change*" and "*the benefits to be derived from the use and development of renewable energy*" to the list of matters to which decision-makers under the Act must pay particular regard. It is clear recognition by Parliament of both the importance of the use and development of renewable energy and the need to address climate change.<sup>5</sup>

3.4 There is a clear indication being sent by central government of the need to recognise the national significance of renewable electricity generation through such strategies such as the New Zealand Energy Strategy, the New Zealand Energy Efficiency and Conservation Strategy.

3.5 In addition, the preamble to the NPS notes the vital role renewable energy generation plays in the wellbeing of New Zealand, its people and the environment and the role renewable energy generation plays in addressing the effects of climate change.

3.6 Mr Hunter's evidence will detail that the demand for electricity is increasing.<sup>6</sup> The only way to decrease the country's reliance on fossil fuels while increasing total supply is by rapidly and substantially developing its renewable energy

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<sup>5</sup> *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541 at para [222].

<sup>6</sup> Paragraphs [5.3] and [5.9], Mr Hunter's evidence.

resources. To give some context to the 90% renewable electricity generation goal, by 2025 New Zealand would need to have increased its renewable electricity supply in the range of 19,000 GWh to 28,000 GWh in order to achieve 90% (based on demand increases of 1.5-2.5% per annum).<sup>7</sup> In order to meet the 90% goal by 2025 the development of New Zealand's renewable resources will have to be accelerated significantly.

3.7 Increased reliance on renewable electricity generation decreases New Zealand's reliance on fossil fuels, meaning that many of the benefits that result from the use of renewable energy, such as reduced emissions of greenhouse gases and other contaminants, in fact flow back into the environment and its ecosystems.

3.8 Taking a broader view, the localised effects of renewable electricity generation infrastructure have to be balanced with the local, regional, national and even global benefits of the use and development of renewable energy resources. The Environment Court has stated:

*"Electricity is a vital resource. There can be no sustainable management of natural and physical resources without energy, of which electricity is the major component".*<sup>8</sup>

3.9 There is also an urgent need to recognise that viable opportunities to harness those resources only occur in particular locations, and that the development of renewable electricity generation infrastructure in those locations, even if it generates significant localised adverse effects, may yet represent the most sustainable outcome.

#### **4. RESOURCE MANAGEMENT ACT 1991**

4.1 Section 51 of the RMA defines the matters to be considered by a Board of Inquiry. The section states that:

*"(1) The Board of Inquiry must consider the following matters:*

- (a) the matters in Part 2; and*
- (b) the proposed national policy statement; and*
- (c) any submissions received on the proposed national policy statement; and*
- (d) any evidence received; and*
- (e) any other relevant matter..."*

4.2 As the Board will be very aware, Part II of the RMA contains both the purpose and principles to the Act. The purpose of the RMA is to "*promote the*

<sup>7</sup> Paragraph [5.14], Mr Hunter's evidence.

<sup>8</sup> *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541 at para [64].

*sustainable management of natural and physical resources*" (s 5(1)). Section 5(2) defines sustainable management as meaning:

*"...managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

- 4.3 The purpose of the RMA is to be given practical expression through all decision making under the Act. Section 5 guides decision-makers towards the overarching purpose of sustainable management and directs them to sustainably manage resources in such a way as to meet the reasonably foreseeable needs of future generations.<sup>9</sup>
- 4.4 Section 5 requires an overall broad judgment on whether or not a proposal promotes the sustainable management of natural and physical resources. That approach allows for a comparison of conflicting considerations, their scale or degree, and their relative significance.
- 4.5 It needs to be appreciated that the purpose of the NPS is not sustainable management of the renewable energy source, but sustainable management *in respect* of the resources that constitute renewable energy. Even in a document that is as targeted as the NPS, the concept of sustainable management still must embrace more than just the issue of renewable energy.
- 4.6 In order for the country's natural and physical resources to be sustainably managed in relation to renewable energy, the NPS must recognise the tremendous value of the renewable energy resources of the nation as a whole. It must also recognise that viable opportunities to harness those resources only occur in particular locations, and that the development of renewable electricity generation infrastructure in those locations, even if it generates significant localised adverse effects, may yet represent the most sustainable outcome.
- 4.7 It is a well established legal principle that Part II of the RMA forms the framework for all resource management decisions. The Act gives priority to Part II matters which form a framework against which all the functions, powers and

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<sup>9</sup> As held by the Environment Court in *Independent News Auckland Limited v Manukau City Council* (2004) 10 ELNRNZ 16.

duties under the Act are to be exercised for the purpose of giving effect to the RMA.<sup>10</sup>

- 4.8 This broader view of sustainability is reflected in s 6 of the RMA which defines matters of national importance:

*"...In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from **inappropriate** subdivision, use, and development:*
- (b) The protection of outstanding natural features and landscapes from **inappropriate** subdivision, use, and development...*
- (f) the protection of historic heritage from **inappropriate** subdivision, use, and development."* [emphasis added]

where it is apparent that resources are to be sustainably used and development as long as the use and development are appropriate.

- 4.9 With reference to the function of the word "inappropriate" in s 6(a) in its Awhitu wind farm decision, the Environment Court held:<sup>11</sup>

*"Clearly, therefore, an analysis of what is 'appropriate' development must also take into account section 7 matters. Section 7 provides for matters to which the consent authority shall have particular regard in achieving the purposes of the Act. These are matters to which the Court should pay particular regard; to be 'on inquiry', and the test is a high one"*

- 4.10 In *NZ Rail v Marlborough District Council* the High Court commented (in respect of the s 6 tests) that:<sup>12</sup>

*"The recognition and provision for the preservation of the natural character of the coastal environment in the words of s 6(a) is to achieve the purpose of the Act, that is to say to promote the sustainable management of natural and physical resources. That means that the preservation of natural character is subordinate to the primary purpose of the promotion of sustainable management. It is not an end or objective on its own but is accessory to the principal purpose.*

*...It is...a question of inappropriateness to be decided on a case by case basis in the circumstances of the particular case...It is, however, only one of the matters of national importance, and indeed other matters have to be taken into account. It is certainly not the case that the preservation of the natural character is to be achieved at all costs. The achievement which is to be promoted is sustainable management and questions of national importance, national value and benefit, and national needs, must all play their part in the overall consideration and decision."*

<sup>10</sup> *Royal Forest & Bird Protection Society v Manawatu-Wanganui Regional Council* (A086/95 (PT)).

<sup>11</sup> *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541, para [222].

<sup>12</sup> [1994] NZRMA 70, p85-6.

4.11 In respect to s 7 of the RMA, Mighty River Power submits that ss 7(i) and (j) is of relevance to this hearing in that particular regard is to be had to *“the effects of climate change”* and *“the benefits to be derived from the use and development of renewable energy.”*

4.11 In the *Upland Landscape Protection Society Incorporated v Clutha District Council*<sup>13</sup> decision the Environment Court said, in relation to section 7(j), that<sup>14</sup>:

*“7(j) provides that the Court should have particular regard to the benefits to be derived from the use and development of renewable energy. Without 7(j) benefits of renewable energy could still be raised and debated in general terms under Part 2 and section 104(1)(a). We conclude that the purpose and effect of the insertion of 7(j) is to avoid relitigating on a case by case basis the benefits of renewable energy over those which use non-renewable energy sources (coal, gas etc). If Parliament had intended to require such benefits to be proven in each case there is little point for 7(j). If so any benefits or benefits (if any) were simple drafting solutions. Although no particular benefits are identified nevertheless we must conclude 7(j) prefers renewable over non-renewable energy. Like all criteria of Part 2 the outcome will be influenced by the particular benefits and their magnitude in a particular case.”*

4.12 This comment was made in response to arguments before the Court that wind generation did not have benefits.

4.13 The benefits of renewable energy have also been discussed in *Genesis Power Limited v Franklin District Council*<sup>15</sup> and in *Unison Networks Ltd v Hastings District Council*<sup>16</sup>. In the *Unison Networks* case, Environment Court which concluded that:

*“the capacity to produce a reliable, and relatively affordable supply of electricity is vital to enable people and communities to provide for their social and economic well being, and for their health and safety. Producing electricity in the way proposed will, even if in a small way considered globally, help slow the rate of climate change and thus contribute to sustaining the potential of the planet's resources to meet the needs of future generations. It will do that by helping to safeguard the life-supporting capacity of those resources.”<sup>17</sup>*

4.14 In light of increasing demand, the Environment Court has also acknowledged the importance of maximising existing generation output:

*“Over recent years, New Zealand's demand for electricity has been growing faster than new generation. We were told...that for the year 2005 the growth rate was 2.5%...[It was]...stressed that because of the potential for electricity shortages combined with the uncertainty surrounding new generation, it is very important that existing generation is at least retained where possible, if not increased. [It was] ... said:*

<sup>13</sup> (C85/2008), 25 July 2008, Judge Smith presiding.

<sup>14</sup> *Ibid*, at para [233].

<sup>15</sup> [2005] NZRMA 541 at para [64].

<sup>16</sup> (EnvC, W058/2006) p26.

<sup>17</sup> *Unison Networks Limited v Hastings District Council* (EnvC, W058/2006) p29 at para [81].

*'From an economic perspective, it is important that resource consent conditions do not have the effect of reducing generation output, unless it is absolutely necessary to achieve sustainable management.'*<sup>18</sup>

- 4.15 Similarly, the Environment Court has stated the full utilisation of generation facilities is in the national interest.<sup>19</sup>
- 4.16 Section 55 requires local authorities to amend their planning documents to give effect to the provisions of a NPS (s 55(2) (a), RMA). If the NPS is allowed to go through in its current form then a number of plans will then be amended in ways that will adversely affect the use and development of renewable energy resources which is inconsistent with the purpose and principles of the RMA.
- 4.17 Applying these provisions of the NPS it is clear that the purpose and principles of the Act, in particular the promotion of sustainable development cannot be achieved if the NPS contains the test of relative reversibility which lends a level of protections to resources being used for electricity generation from renewable energy resources. The NPS must take a broader view. The notion of appropriateness refers to all of the social, cultural, economic and environmental factors encompassed by the RMA's definition of sustainable management. In determining whether development is appropriate all the relevant matters must be weighed and balanced.
- 4.18 It is Mighty River Power's submission that the Board when making its decision on the NPS needs to consider and have particular regard to climate change and the benefits of renewable energy generation and whether the NPS as currently draft achieves Part II of the Act, in particular ss 7(i) and 7(j).

## **5. MIGHTY RIVER POWER'S GENERAL SUBMISSIONS TO THE NPS AS A WHOLE**

### **General Submission on the NPS as a whole**

- 5.1 Mighty River Power supports the intent and direction of the NPS on the whole. However, it is concerned that the development of the NPS is being done in isolation from other proposed national policy statements such as the National Policy Statement for Freshwater Management and existing National Policy Statements such as the National Policy Statement for Electricity Transmission.
- 5.2 Mighty River Power's submission to the NPS sought that the ongoing development of the NPS not be undertaken in isolation. Mighty River Power

<sup>18</sup> *Rotokawa Joint Venture Ltd & Mighty River Power Ltd v Waikato Regional Council* (EnvC, A041/07) at para [425].

<sup>19</sup> *Ngati Rangī Trust & Ors v Manawatu-Wanganui Regional Council & Genesis Power Limited* (EnvC, A067/04) at para [402].

sought that the Board of Inquiry for the NPS works with the respective Boards of Inquiry into the New Zealand Coastal Policy Statement (NZCPS) and the National Policy Statement for Freshwater Management so that the current tension in the various documents is eliminated. It is Mighty River Power's submission that if this integration adds to the time required to finalise these policy statements then this is an acceptable and worthwhile delay to allow for the long term outcome.

- 5.3 In addition, Mighty River Power also expressed the view that if the Government considers that the most appropriate means to achieve the integration required for success is to withdraw all of the three policy statements mentioned above and redraft portions of them then this option should not be overlooked.
- 5.4 The key to successful achievement of the targets that are key to New Zealand's development, such as those identified in the New Zealand Energy Strategy lies in the integration of all of the applicable National Policy Statements. Currently the NZCPS has undergone the Board of Inquiry process and is awaiting for the Board to release its decisions report.
- 5.5 The NZCPS, along with the proposed National Policy Statement for Freshwater Management, play a role in enabling or restricting the development and operation of renewable electricity generation in New Zealand. In addition, the National Policy Statement for Electricity Transmission has been completed which will also influence the development of renewable electricity generation projects.
- 5.6 It is important that the various national policy statements work in an integrated manner in order to achieve success in the objectives set out in each of them. For instance, the NZCPS promotes protection of the 'coastal environment' which includes all of the coastal marine area and a section of the land adjacent to the coast from "inappropriate use and development". This includes the use of the 'coastal environment' for the generation of renewable electricity. The generation of electricity is intended to be enabled by the development of the proposed NPS which is the subject of this Board of Inquiry.
- 5.7 A quick assessment of the potential resources which may provide generation 'fuel' for renewable electricity indicates that approximately half of the potential wind energy resource is within the coastal environment and not surprisingly all of the potential marine, tidal or wave, generation. The opportunities for the development of these potential electricity sources is extremely limited by the NZCPS, as a result of the strongly protectionist approach taken to the policy

which is to be read along with the enabling but not requiring approach taken in this NPS.

- 5.8 In respect of the proposed National Policy Statement for Freshwater Management, it is Mighty River Power's opinion that it offers no support towards achieving the Government's targets around maintaining security of electricity supply and building New Zealand's electricity generation capacity up in order to deliver a 90% renewable generation profile by 2025 as promoted in the New Zealand Energy Strategy. In addition, it does not promote the development of hydro electricity generation as any form of priority for the use of the nation's fresh water resources, even though such use leaves the water still available for other abstractive or in-stream use following its generation use. If there is to be any expectation of achieving these long term goals for New Zealand any opportunity to provide for the provision of renewable electricity generation cannot be overlooked.
- 5.9 Section 104 of the RMA requires that all national policy statements relevant to any decision making process be considered together and given equal priority. In a situation where more than one national policy statement is applicable in a particular decision the manner in which each national policy statement is developed and the strength of its policies is extremely important.
- 5.10 In the current situation of the use and development of renewable electricity generation, this is extremely important because the policies applicable to this use and development are in tension and are not working in an integrated manner to achieve New Zealand's long term targets – both nationally and internationally.
- 5.11 If national policy statements are to be used to inform and guide the use and development of renewable energy generation within New Zealand, then all of the statements must work in an integrated manner to achieve the desired outcome rather than against one another in manner which constrains rather than enables such desired development.

### **Climate Change**

- 5.12 Mighty River Power's submission addressed the issue of climate change and the role that this NPS had in enabling the nation to achieve its national and international commitments in respect of climate change.
- 5.13 It is noted that New Zealand has made an international commitment to reduce greenhouse gas emissions to 1990 levels during the initial Kyoto Protocol

commitment period (2008 to 2012). To comply with its obligations under the Kyoto Protocol, New Zealand must look to reduce its emissions of greenhouse gases in all sectors of the economy including the current reliance on thermal generation by developing its renewable energy resources. This has significant implications for New Zealand, noting that on current predictions, New Zealand faces adverse economic impacts during the first commitment period as highlighted in Mr Hunter's evidence.<sup>20</sup>

5.14 The ability to access, use and develop renewable energy resources in New Zealand is limited. The country does not have an endless supply of viable renewable energy sources. This means that New Zealand will be even more dependant on its existing renewable generation assets and will have to develop more of its hydro, geothermal, biomass, wind, solar, wave and tidal energy resources. Opportunities for such development need to be maximised for the national interest, and recognised through the development of appropriate provisions in this NPS.

5.15 The nation's ability to achieve its energy and climate change goals as well as achieving a security of electricity supply is to an extent dependant on the impact of this NPS.

## **6. MIGHTY RIVER POWER'S SPECIFIC SUBMISSIONS TO THE OBJECTIVES AND POLICIES OF THE NPS**

### **Objective to the NPS**

6.1 The Objective for the NPS:

*"To recognise the national significance of renewable electricity generation by promoting the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities, such that 90 percent of New Zealand's electricity will be generated from renewable resources by 2025 (based on an average hydrological year)".*

6.2 Mighty River Power's submission supported the inclusion of this Objective in the NPS for the following reasons:

6.2.1 The policies included in the NPS are enabling provisions which allow renewable electricity generation to be developed and operated.

6.2.2 There is an opportunity for the NPS to establish the use and development of renewable energy resources for electricity generation as a matter of national priority in much the way that the NZCPS establishes national priorities for the coastal environment and coastal marine area.

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<sup>20</sup> Paragraph [6.1], Mr Hunter's evidence.

- 6.2.3 If the objective of 90% renewable electricity generation by 2025 is to be achieved, then the policies for the NPS must prioritise and promote development rather than simply allowing it to occur. Every contemplated renewable energy generation development is already required to pass over significant number of pre-existing RMA-based hurdles all of which are intended to ensure appropriate environmental and other standards are achieved, but which can also have the undesired effect of constraining appropriate development, therefore frustrating the objective.
- 6.3 Mighty River Power seeks the retention of the objective to the NPS in its current form or, if amendments are deemed to be necessary, in a form that realises the intent behind the Objective.
- 6.4 It is important that the NPS reflect central government policy direction and provide for the use and development of renewable energy resources. This objective (as drafted) reflects the target set by the government and provides for the use, development, upgrading and maintenance of new and existing renewable energy resources which is an essential step towards achieving these targets.

#### **Policies Supported in Full by Mighty River Power**

- 6.5 Mighty River Power's submission supported in full the inclusion of Policy 1 'Recognising the national significance of the benefits of renewable generation activities', Policy 2 'Acknowledging the practicable constraints associated with the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities' and Policy 5 'Supporting small and community-scale renewable electricity generation' in the NPS.
- 6.6 Mighty River Power sought the retention of these policies in their entirety as these Policies recognise the national importance of renewable energy generation. Policy 1 recognises the national significance of the benefits derived from renewable electricity generation activities and requires decision-makers to have particular regard to the local, regional and national benefits relevant to renewable electricity generation activities. It also recognises that the maintenance or increasing of electricity supply is an activity which has national benefits.
- 6.7 The decision taken to focus on benefits has the potential to result in an immediate boost to consenting of renewable electricity generation projects as it raises the status of the activity to being nationally significant. Policy 1 will have the effect of requiring that all hearings for renewable electricity generation projects to have particular regard for the benefits broadly when making

decisions. This will broaden the consideration of the value of applications past the local impact consideration commonly dominating first order hearings.

- 6.8 Policy 2 is supported as it recognises that there are constraints, including practical and technical issues, on being able to avoid, remedy or mitigate adverse effects of renewable electricity generation activities. This policy clearly outlines the constraints on the development of renewable electricity generation and requires that these matters are given particular regard to in the decision making process. This policy will be considered along with other matters which are being dealt with by other National Policy Statements, including the NZCPS.
- 6.9 Policy 2 allows for the explicit consideration of these matters but when (as is likely to be the case in practice) it is read alongside the policies in the NZCPS, Policy 2 may become ineffective. The overall consenting impact will be positive but once the NZCPS review is finalised the playing field is likely to be further tilted against renewable electricity generation development. It is for this reason that it is important that the finalisation of the NPS is not done in isolation, an issue which has been dealt with earlier in these submissions.
- 6.10 Policy 5 of the NPS supports the development of small and community scale renewable electricity generation projects. Mighty River Power supported this Policy as it recognised the importance of allowing renewable electricity generation to occur at small and community levels as well as providing for the development of renewable electricity resources at the local level.
- 6.11 Mighty River Power supports raising the "small" size cut-off to 10MW as it would seem to make sense to increase the threshold of small-scale generation up to 10MW to be consistent with other legislation. This will avoid unnecessary future confusion and also serve to promote more embedded generation development resulting in greater value being able to be realised from this opportunity.
- 6.12 However, Mighty River Power queries why the decision has been made to exclude any offshore wind, tidal or wave generation. Renewable energy is defined in s 2 of the RMA as meaning energy produced from solar, wind, hydro, geothermal biomass, tidal, wave and ocean current sources.
- 6.13 Furthermore, this exclusion means that any renewable electricity generation project which is off shore must be treated in the same manner no matter how large. This approach will serve only to discourage investigation of this option for development of marine based renewable electricity generation. It is difficult to see the justification for this in a national policy statement which is aiming to enable development in order to allow New Zealand to achieve its accepted long

term targets with respect to generation profile and security of supply of electricity to the economy.

### **Policies Supported in Part by Mighty River Power**

- 6.14 Policy 4 of the NPS addresses the issue of enabling the identification of renewable energy generation possibilities. Mighty River Power's submission on this Policy supported it in part.
- 6.15 Mighty River Power had, and still has, concerns over the level of detail that local authorities may end up requiring for the identification and assessment of energy sources for renewable electricity generation.
- 6.16 Mighty River Power's submission sought the retention and amendment of Policy 4 so that it is made clear that the identification and assessment of potential sites does not require the exact sites to be identified and assessed. It would be better if the maps identified areas of high environmental value indicating potential for renewable energy generation activities rather than identifying specific spots.

### **The Concept of Relative Reversibility**

- 6.17 Policy 3 of the NPS requires decision makers, when considering proposals to develop new renewable generation capability, to have particular regard to the relative degree of reversibility of the adverse environmental effects associated with proposed generation technologies.
- 6.18 Mighty River Power's submission to the NPS opposed the inclusion of this Policy and the test of relative reversibility on the grounds that it was contrary to the rest of the NPS and is inconsistent with the purpose and principles of the RMA. It is Mighty River Power's submission that this Policy and the test contained within it should be deleted from the NPS.
- 6.19 Under the RMA, effects are deemed to include positive benefits of an activity. Section 3 of the RMA defines the meaning of effect as:

*"In this Act, unless the context otherwise requires, the term **effect** ... includes—*

- (a) Any positive or adverse effect; and*
- (b) Any temporary or permanent effect; and*
- (c) Any past, present, or future effect; and*
- (d) Any cumulative effect which arises over time or in combination with other effects—*

*regardless of the scale, intensity, duration, or frequency of the effect, and also includes—*

- (e) Any potential effect of high probability; and*
- (f) Any potential effect of low probability which has a high potential impact."*

- 6.20 The term 'effect' is defined as including positive effects as well as adverse effects. The Court has held that all effects must be assessed in respect of an activity, including any benefits from that activity.<sup>21</sup>
- 6.21 To require consideration of the relative reversibility of adverse effects from a renewable energy generation activity is inconsistent with the definition of effects under the RMA and does not allow for a balancing of positive effects to occur which is an integral part behind the intent of Part II of the RMA.
- 6.22 Furthermore, the inclusion of the test of relative reversibility has the potential to completely override any value gained by the development of the NPS and is detrimental to the pursuit of renewable energy generation activities within New Zealand.
- 6.23 The concept of relative reversibility also introduces a level of interference in the process of RMA consenting which is neither warranted nor justified. It introduces a significant hurdle which is only to be applied to renewable electricity generation projects. This is counter to the intent of providing for and increasing the amount of renewable electricity capacity in New Zealand with the aim of achieving 90% renewable generation by 2025.
- 6.24 As a nation, New Zealand does not have a multitude of pathways to achieve the targets laid out in the New Zealand Energy Strategy, the New Zealand Energy Efficiency and Conservation Strategy and in the Objective to the NPS itself.
- 6.25 No other development under the RMA is subject to a specific test of reversibility. Such an inclusion in the NPS places renewable electricity generation projects at a significant disadvantage and promotes inconsistency between these projects and how other activities are dealt with under the RMA.
- 6.26 The concept of sustainability means that neither the use and development of a resource or the protection of resources should prevail. It is the sustainable management of the resource that is paramount. To potentially require the adverse effects of renewable energy generation to be 'reversed' is inappropriate and does not adhere to the concept of sustainable management.
- 6.27 The RMA is an enabling piece of legislation in that it provides for and promotes the use and development of natural and physical resources as long as certain tests are met (as defined in s 5 of the Act). The intent of the Act is that all proposed activities are to be treated the same and are required to meet the same tests. The introduction of relative reversibility is inconsistent with the

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<sup>21</sup> *Elderslie Park Limited v Timaru District Council* [1995] NZRMA 433 (High Court).

purpose and principles of the Act as it is imposing a test on one type of activities (i.e. renewable energy generation activities) that is not applicable to be met by other land use activities under the Act.

## **7. CONCLUSION**

- 7.1 Mighty River Power's primary submission and concern is that as the NPS, as it currently stands fails to adequately recognise the importance of developing additional renewable energy generation activities within New Zealand. The concept of relative reversibility contained in Policy 3 is contrary to the Objective of the NPS and is inconsistent with Part II of the RMA.
- 7.2 Renewable energy generation is an important issue for New Zealand. The NPS needs to recognise the need for and provide for the use and development of renewable energy generation. In addition this Objective needs to be consistently acknowledged and provided for among other national RMA documents such as the National Policy Statement for Freshwater Management.

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