

**Before the Wellington Regional Council
In Wellington**

Under the Resource Management Act 1991 (the Act)

In the matter of the Proposed Wellington Natural Resources Plan

Hearing Stream Three

Between **Wellington Regional Council**

Regional Council

And **Fertiliser Association of New Zealand**

Submitter

**Statement of Evidence of Claire Ursula Kelly for Fertiliser
Association of New Zealand**

Dated: 17th August 2017

Qualifications and Experience

- 1 My full name is Claire Ursula Kelly. I am a Senior Planner at Boffa Miskell Limited, a national firm of consulting planners, ecologists and landscape architects. I hold the qualification of Master of Environmental Management (Hons). I am a Full Member of the New Zealand Planning Institute, and have over 10 years' experience as a resource management planner.
- 2 I have been a planning consultant based in Christchurch for the past 10 years, providing consultancy services to a wide range of clients around New Zealand, including local authorities, primary producers, land developers, and the infrastructure sector. My experience includes:
 - i. Work on the preparation of second generation district plans for Ashburton District Council, South Taranaki District Council and Timaru District Council; including preparing s42A reports and attending hearings of submissions;
 - ii. Preparing submissions and further submissions on a number of district plan changes on behalf of clients; and
 - iii. Preparing resource consent applications for a wide range of development projects.
- 3 Specific to The Fertiliser Association of New Zealand ('**FANZ**'), I have been involved with the preparation of submissions on the Proposed Wellington Natural Resources Plan, the Proposed Gisborne Regional Freshwater Plan and the Proposed Otago Regional Policy Statement (RPS), the Marlborough Environment Plan and the Southland Water and Land Plan.
- 4 My evidence is given in support of FANZ's submission and further submission on the Water Allocation & Natural Form and Function of the Proposed Natural Resources Plan for the Wellington Region (Proposed WNRP).
- 5 In this matter, I was engaged by FANZ to prepare a submission on the Proposed WNRP in October 2015 and a further submission in March 2016.
- 6 While this matter is not before the Environment Court, I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed

Scope of Evidence

- 7 I have read the Section 42A Report which provides a summary of the submissions and points raised. In addition, it provides a useful overall discussion of the matters raised in submissions and the relevant provisions.
- 8 My evidence focusses on the matters of most importance to FANZ, being the definition of 'health needs of people', the management of effects on natural processes and the provisions relating to natural character.
- 9 **Appendix A** to my evidence sets out FANZ's submission points and the Officer's recommendations.

Discussion of FANZ's Submission Points

Definition: Health Needs of People

The amount and quality of water needed to adequately provide for people's hygiene, sanitary and domestic requirements.

- 10 FANZ (S302/006) submitted that the definition of the 'health needs of people' is too narrow and does not consider matters beyond water quality and quantity. The s42a Officer notes that the term 'health needs of people' is only ever used in provisions relating to water. They consider that the definition of 'health needs of people' is critical to the policies that establish priorities for the use of water, particularly when river flows are low. If any clarification is required, the Officer considers that it would be more appropriate to clarify the policies that use the term 'health needs of people'. Consequently, the Officer does not recommend any changes to the definition.
- 11 I accept the Officer's reasoning, but in my opinion 'health needs' would generally relate to a wider number of matters than water quantity and include air and soil quality. I therefore suggest that the definition is amended to be consistent with its intended meaning.
- 12 Furthermore, given that the policies in which the term is used only relate to water quantity, I question the reference to water quality. Whilst I understand that when river and lake levels are low, water quality can decline as pollutants become concentrated, I assume that all drinking water will meet the required minimum standards. However, I consider that it would be beneficial to include specific reference in the policies on water quality to provide for the domestic water needs of people.

- 13 Overall, I suggest that the definition is amended as follows:

Definition: ~~Health needs of people~~ Domestic water needs of people

The amount and quality of water needed to adequately provide for people's hygiene, sanitary and domestic requirements.

Objective O19

Interference from use and development on natural processes is minimised.

Policy P26

Use and development will be managed to minimise effects on the integrity and functioning of natural processes.

- 14 FANZ sought to delete Objective O19 (S302/015) and Policy P26 (S302/035) because the definition of natural processes includes a wide range of matters such as erosion and deposition, swash-up and flooding, and that activities will be required to 'minimise' effects on a wide range of natural processes. Furthermore, as notified, the objective is vague and unclear, for example FANZ questions what is meant by the term 'interference'.
- 15 The Officer considers that objectives should be clear, self-contained and describe the intended outcome. As notified, the Officer does not consider that Objective O19 is self-contained and recommends amending the Objective to more clearly identify its intent that use and development does not prevent or interfere with the natural functioning of physical and biological processes, effects are managed to ensure that natural elements, patterns and processes continue to occur, natural processes are not modified to a more than minor extent, and the integrity and functioning of natural processes and forms is retained.
- 16 The Officer also states that natural processes are often an important factor in an area of natural character and an outstanding nature feature and landscape. While human activities may interfere with natural processes, this can be reversible where the integrity and functioning of natural processes and forms is retained. In the Officer's opinion, the specificity in Objective O19 and Policy P26 addresses the potential effects of activities on natural processes that may not be so significant as to diminish natural character as a whole. The Officer considers that including specific provisions that address natural processes in Objective O19 and Policy P26 will assist the Council in carrying out its coastal and freshwater management functions. Use and development may be appropriate and Objective

O19 and Policy P26 recognise that this may have adverse effects on the integrity of natural processes that need to be managed.

Objective 019 (as recommended by the Officer)

~~The interference from use and development on natural~~ natural processes, is ~~minimised~~ including natural elements, patterns and ecological processes continue to occur, and the integrity and functioning of natural processes and forms are retained.

- 17 Policy P26 to be retained as notified.
- 18 I find the Officer's reasoning confusing as it starts by stating that 'use and development does not interfere with the natural functioning of physical and biological processes' and then proceeds to state that effects are managed to ensure natural processes continue to occur and are not modified to a more than minor extent and the functioning of natural processes is retained.
- 19 Furthermore, as amended, the recommended Objective is potentially more stringent than the Objective as notified. As notified, the Objective recognised that use and development would affect natural processes but that effects should be minimised. The wording recommended by the Officer states that the 'integrity and functioning of natural processes and forms is retained'. Integrity, in this context, presumably refers to 'whole' and 'functioning' as essentially how the natural process operates or works. In my opinion, this intent seems quite absolute and could potentially prevent any use and development but then in the discussion on Policy P26, the Officer states that human activities may interfere with natural processes, but that this can be reversible where the integrity and functioning of natural processes and forms is retained. I question how you can interfere with a natural process and not affect its integrity and function, at least to some degree.
- 20 I also question the impact of this objective and policy on dams and other activities that effect natural processes. The Plan provides for such activities, and they, by their nature, have a significant impact on natural processes by stopping, for example flooding. However, such an activity could be considered contrary to the objectives and policies of the Plan.
- 21 I also consider that Policy P26 that seeks to minimise effects on the integrity and functioning of natural processes will not meet the intent of Objective O19 (as reworded by the Officer) as it seeks the integrity and functioning of natural processes is retained. However, in my opinion, the wording of the objectives and policies and the reasoning of the Officer has led to confusion about intended

outcomes. I suggest that, at its simplest, it is the intent of the objectives and policies to ensure that use and development does not adversely impact on the integrity and functioning of natural processes and forms.

- 22 Whilst it is my preference that natural processes are managed through the objectives and policies on natural character, I acknowledge the Council's reasoning for including a specific objective and policy on natural processes. Consequently, I suggest that Objective O19 is deleted and replaced as follows, to facilitate some change to the integrity and function of nature process as this is seemingly anticipated by the Plan and the Officer:

Objective O19

To ensure that use and development does not adversely impact on the integrity and functioning of natural processes and forms.

- 23 I do not seek any change to Policy P26 given the caucusing on Policy P4: the minimisation of effects.

Policy P24: Outstanding natural character

Areas of outstanding natural character in the coastal marine area will be preserved by:

- (a) avoiding adverse effects of activities on natural character in areas of the coastal marine area with outstanding natural character, and*
- (b) requiring use and development to be of a type, scale and intensity that will maintain the natural character values of the area, and*
- (c) requiring built elements to be subservient to the dominance of the characteristics and qualities that make up the natural character values of the area, and*
- (d) maintaining the high levels of naturalness of these areas, and*
- (e) avoiding the adverse effects of activities, including those located outside the area, that individually or cumulatively detract from the natural character values of the outstanding natural character area.*

Policy P25: Natural character

Use and development shall avoid significant adverse effects on natural character in the coastal marine area (including high natural character in the coastal marine

area) and in the beds of lakes and rivers, and avoid, remedy or mitigate other adverse effects of activities, taking into account:

(a) the extent of human-made changes to landforms, vegetation, biophysical elements, natural processes and patterns, and the movement of water, and

(b) the presence or absence of structures and buildings, and

(c) the particular elements, features and experiential values that contribute significantly to the natural character value of the area, and the extent to which they are affected, and

(d) whether it is practicable to protect natural character from inappropriate use and development through:

(i) using an alternative location, or form of development that would be more appropriate to that location, and

(ii) considering the extent to which functional need or existing use limits location and development options.

- 24 FANZ (S302/033) sought to delete sub-clause P24(e) which manages cumulative effects and effects on areas of outstanding natural character from adjacent activities, as the sub-clause is too stringent and goes beyond the NZCPS. The Officer recommends retaining sub-clause (e) because it addresses the effects of activities in the CMA that have effects on areas of outstanding natural character also located in the CMA.
- 25 FANZ S302/034 sought to delete the reference to 'high natural character in the CMA' in Policy P25. The Officer states that Policy P24 deals with 'avoiding effects' and 'outstanding natural character'; and Policy P25 deals with 'significant adverse effects' and 'avoiding, remedying and mitigating' effects on other natural character values. The policies do not duplicate each other and are necessary to implement Objective O17 which addresses the natural character of the CMA, rivers, lakes, natural wetlands and their margins.
- 26 I agree with the opinion of the Officer on the intent of policies: Policy P24 seeks to preserve areas of outstanding natural character and avoid all adverse effects on natural character in these areas. Policy P25 seeks to avoid significant adverse effects on natural character and avoid, remedy or mitigate any other effects. I consider that Policy P25 refers to areas of natural character that are not outstanding. Otherwise Policy P24 (to avoid all adverse effects of activities on

areas of outstanding natural character) could be viewed as contrary to P25(a) (only avoid significant adverse effects). Consequently, the reference to high natural character is not required as Policy P25 applies to all areas of natural character that are not outstanding, noting that areas of high natural character are not the same as areas of outstanding natural character.

27 With regard to Policy P24, I do not consider it appropriate to refer to activities outside areas of outstanding natural character. I acknowledge that activities in adjoining areas may have an effect on the natural character values, but this is generally in relation to built development. However, buildings/structures are more appropriately dealt with in the district or city plans. If a discharge or water take is proposed, the effects are generally specific to identified areas, rivers or lakes and effects on outstanding natural character would only be considered if the activity crossed over into such an area. Potential effects on the natural character (not outstanding) of the CMA, or river or lake would be considered under Policy P25.

28 Therefore, I conclude that Policy P25 should be amended to remove the reference to 'including area of high natural character'. I also consider it appropriate to remove the wording 'including those outside the area' from Policy P24 for the reasons discussed above.

29 I therefore find that Policy P24 and P25 should be amended as follows:

Policy P24: Outstanding natural character

Areas of outstanding natural character in the coastal marine area will be preserved by: ...

(e) avoiding the adverse effects of activities, ~~including those located outside the area,~~ that individually or cumulatively detract from the natural character values of the outstanding natural character area.

Policy P25: Natural Character

Use and development shall avoid significant adverse effects on natural character in the coastal marine area ~~(including high natural character in the coastal marine area)~~ and in the beds of lakes and rivers, and avoid, remedy or mitigate other adverse effects of activities, taking into account.

Section 32

30 Section 32 of the RMA, requires that any proposed plan change must be accompanied by an evaluation that assesses both:

- i. The extent to which each objective is the most appropriate way to achieve the purpose of the RMA; and
- ii. Whether the proposed policies are the most appropriate way in which to achieve the objectives in terms of their efficiency and effectiveness, taking into account the benefits and costs.

Objectives

- 31 FANZ sought to delete and reword one objective in the Proposed WNRP to provide for use and development while recognising this may impact on the integrity and functioning of natural processes. I consider this objective is the most appropriate way to achieve the purpose of the Act as it will ensure that people's economic, social and cultural well-being is provided for by enabling development that must consider its impact on natural processes.

Policies and methods

- 32 In assessing the policies in accordance with the requirements under section 32, it is necessary to have regard to their efficiency and effectiveness, taking into account their costs and benefits, and whether they are the most appropriate method for achieving the objectives.
- 33 With its submissions, FANZ sought amendment to existing policies, specifically to:
- a) amend Policy P24 to remove the ability to consider the effects of activities on an area of outstanding natural character even if the activity is outside the identified area.
 - b) amend Policy P25 to remove the reference to high natural character as it is unnecessary.
- 34 I consider that the policy changes outlined within this evidence would still enable the objectives of the Proposed WNRP to be achieved, and would not undermine their effectiveness. The intent of Policy P24 would meet the purpose of the NZCPS. The wording of Policy 25 would be concise and not cause confusion by introducing reference to high natural character when this term is not used elsewhere in the objectives, policies or rules.

Costs and Benefits

- 35 In considering the provisions, it is also important to determine the costs and benefits.

- 36 There are always costs associated with consenting activities but clear objectives and policies assist the Council and applicants to understand the intent of the Plan and the anticipated outcomes. The suggested changes minimise uncertainty and the need to undertake unnecessary assessment. However, they also provide for use and development that must consider its impact on natural character and natural processes.
- 37 Overall, it is considered that the benefits of clear and certain objectives and policies outweigh the costs.

Conclusion

- 38 For the reasons outlined in my evidence, I support the deletion and inclusion of new Objective 019 and the amendment of Policies P24 and P25 as well as amending the definition of 'health needs of people'.

Claire Kelly

17th August 2017

Appendix A – FANZ Submissions

SUBMISSIONS

Provision	Submitter Number	Position	Decision Requested	Officer's recommendation	Comment
2.2 Definitions Health needs of people	S302/006	Oppose	Delete the definition of 'Health needs of people'.	No change.	Addressed in Paras 10-13.
3.4 Natural Character, form and function Objective O19	S302/015		Delete the Objective.	In the Officer's opinion, the specificity in Objective O19 and Policy P26 addresses the potential effects of activities on natural processes that may not be so significant as to diminish natural character as a whole. The Officer considers that including specific provisions that address natural processes in Objective O19 and Policy P26 will assist the Council in carrying out its coastal and freshwater management functions. Use and development may be appropriate and Objective O19 and Policy P26 recognise that this may have adverse effects on the integrity of natural processes that need to be managed.	Addressed in Paras 14-23.
4.4.2 Natural Character. Policy P26: Natural processes	S302/035		Delete Policy P26.		
4.4.2 Natural character Policy P24: Outstanding natural character	S302/033		Amend Policy P24 as follows: Areas of outstanding natural character in the coastal marine area will be preserved by: (a) avoiding adverse effects of activities on natural character in	The Officer recommends retaining sub-clause (e) because it addresses the effects of activities in the CMA that have effects on areas of outstanding natural character also located in the CMA.	Addressed in Paras 24-29.

			<p>areas of the coastal marine area with outstanding natural character, and</p> <p>(b) requiring use and development to be of a type, scale and intensity that will maintain the natural character values of the area, and</p> <p>(c) requiring built elements to be subservient to the dominance of the characteristics and qualities that make up the natural character values of the area, and</p> <p>(d) maintaining the high levels of naturalness of these areas, and</p> <p>(e) avoiding the adverse effects of activities, including those located outside the area, that individually or cumulatively detract from the natural character values of the outstanding natural character area.</p>	<p>The Officer states that Policy P24 deals with ‘avoiding effects’ and ‘outstanding natural character’; and Policy P25 deals with ‘significant adverse effects’ and ‘avoiding, remedying and mitigating’ effects on other natural character values. The policies do not duplicate each other and are necessary to implement Objective O17 which addresses the natural character of the CMA, rivers, lakes, natural wetlands and their margins.</p>	
<p>4.4.2 Natural Character.</p> <p>Policy P25: Natural character</p>	S302/034		<p>Amend Policy P25 as follows:</p> <p>Use and development shall avoid significant adverse effects on natural character in the coastal marine area (including high natural character in the coastal marine area) and in the beds of lakes and rivers, and avoid, remedy or mitigate other adverse effects of activities, taking into account:....</p>		