

**Evidence Summary of Pauline Mary Whitney on Submission points by  
Masterton District Council (MDC) S367 and South Wairarapa District  
Council (SWDC)S366**

**Before Greater Wellington Regional Council**

**Proposed Natural Resource Plan Hearings Panel**

Hearing Stream Three: Water Allocation, and Natural Form and Function

- 1 My name is Pauline Mary Whitney. I am a Senior Planner: Principal of Boffa Miskell Limited. I am a Full Member of the New Zealand Planning Institute, and have over 20 years' experience as a resource management planner.
- 2 Today I wish to highlight the main points of my primary pre-circulated evidence to Hearing Three. Specific to this hearing, MDC and SWDC lodged submission points against 13 provisions of the PNRP.
- 3 In relation to natural form and function, the focus of my evidence is seeking clarity around the identification of the features given the directive nature of the related objectives and policies.
- 4 Relating to water allocation, my evidence focus on the interpretation and application issues I see with Schedule Q and Policy 118 relating to reasonable and efficient use, the metering condition within permitted Rule R136 and provisions relating to water races including the prohibited Ruamahanga Whaitua Chapter provisions.

**Officer recommendations accepted**

- 5 The officer recommendations on Objective O38 Special Amenity Landscapes, Policy P115 Authorising takes below minimum flows and lake levels, Rule R140 Dewatering and Objective O19 Natural processes, are accepted.

**Remaining outstanding relief sought**

**Natural Form and Function**

**Objective O32 Outstanding natural features and landscapes**

- 5.1 Outstanding Natural Features and Landscapes are not identified in the Regional Plan, with Method 24 providing the Regional Council will work with councils to identify a list of the features by 2017. To provide some certainty as to the area and values to be protected, in my evidence I seek amendment to the wording to O32 to

include 'identified' area and that it is the values to be protected. This would be consistent with Objective 17 and Policies 25 and 26 of the RPS which refer to identified landscapes and that the values be maintained or enhanced. If the intent was not to identify the areas (contrary to Method 24) this should have been conveyed at the time of notification so plan users were aware of that approach.

- 5.2 The concerns I have with the case by case resource consent approach proposed by the reporting officer in absence of any identified areas is the uncertainties and potential unknown costs from such an approach particularly in context of PNRP Policy P48 which uses the very directive wording 'avoid', and Policy P49 which applies to 'adjacent' sites.

### **Objective O36 Significant geological features**

- 5.3 For Objective O36, I support amendment by inserting 'identified' within the objective to provide clarity that it is the significant geological features identified in Schedule J that are to be protected. This would provide certainty to plan users given the directive nature of the policy framework (within Policy P50).

### **Objective O37 Significant surf breaks and Policy P51: Significant surf breaks**

- 5.4 Objective O37 relates to Schedule K. As with O32 and 36, I support insertion of "identified" within the objective.
- 5.5 I note objective O37 only relates to the CMA but the corresponding Policy 51 is not clear as to whether it is specific to the CMA or adjacent land. As a consequential amendment, I support an amendment to Policy 51 to clarify it relates to activities in the CMA.

### **Policy P24 Outstanding natural character [in the CMA]**

- 5.6 As with the Natural Form and Function objectives, the relief I seek to Policy P24 is that the policy refer to identified areas as proposed in Method 24. Given the very directive nature of the policy (i.e. avoiding adverse effects), clarity over the areas is important.
- 5.7 In particular Clause e) is directive in nature in that it requires to avoid adverse effects, including effects from those activities located outside the outstanding natural character area. In applying the policy, it is uncertain for plan users and the community if they trigger the policy. Given this uncertainty, the strong requirement to avoid adverse effects (regardless of scale) of activities outside Outstanding Natural Character is not supported. I note that Policy 13 of the NZCPS 2010 does not extend to activities outside the Outstanding Natural Areas. I would like to clarify that

although not shown in my evidence, I support deletion of clause (e) (as sought in original submission S146/089 which MDC and SWDC supported).

## **Water Allocation**

### **Schedule Q Reasonable and efficient use criteria**

- 5.8 Schedule Q relates to Policy P118.
- 5.9 My primary concerns with Schedule Q relate to the practical application of the schedule (it is unclear if it is a schedule/consideration or a requirement/standard to be met), and the application of the schedule to water races.
- 5.10 When reading Schedule Q, I do not consider the matters within Community Water Supplies and Water Races sections as criteria (i.e. "a principle or standard by which something may be judged or decided"), rather they are information and assessment requirements. While the provisions within the Irrigation section include two criteria, the bulk of the provision is for information in the form of an assessment.
- 5.11 Given the lack of clarity as to the exact criteria in the schedule, it is unclear how the criteria are to be 'met' in context of Policy 118 and Policy 128, or would be able to "satisfy the reasonable and efficient use criteria" within Policy 119.
- 5.12 In relation to water races, as raised in Hearing Two, Method M13 of the PNRP acknowledges the uniqueness of the water race system. In my opinion, the opening sentence to Water Races within Schedule Q ("Ahead of the implementation of Method M13") envisages Method M13 taking precedence over Schedule Q, and the 2017 timing stipulated in M13 indicates the evaluation with M13 would occur before the first water race renewal consent occurs in 2018. In others words, Schedule Q was an interim measure for water races. Given the Regional Council was aware that the first water race consent expires in late 2018 and M13 was envisaged to be 'active' by 2017, I consider it unreasonable to apply Schedule Q to water races when the comprehensive review of the water race system envisaged by the PNRP has not yet been undertaken. Any application for the take of water for an existing water race would be considered under discretionary rule R142 at which time a full assessment of effects can be made, including against Policy 118 Clause b), c) and d).

### **Policy P118 Reasonable and efficient use**

- 5.13 The concerns with Policy P118 relate to the 4 year timeframe and the relationship to Schedule Q.
- 5.14 Policy P118 seeks to achieve O3, O25 and O52. From reading the S32 report, I am unclear where the 4-year timeframe has derived from. I also have general concerns

with Schedule Q and Policy P118 in that P118 requires users 'meet the criteria' but it is unclear from Schedule Q what criteria are to be met. The only 'criteria' I can readily identify are clauses a) and b) relating to Irrigation. The other matters within Schedule Q are in my opinion not criteria, rather requirements or provisions. I am therefore unclear if P118(a) applies solely to Irrigation or is intended to also capture Group or Community Water Supplies and Water Races. I also note the policy uses conflicting wording in that the policy introduction refers to "including consideration of" while clause a) refers to "meet the criteria". As such it is unclear if the policy requires the 'criteria' in Schedule Q be met or if they are a consideration.

5.15 In my opinion P118 and Schedule Q require redrafting.

### **Rule R136 Take and use of water**

5.16 Rule R136 is a permitted activity rule for water take. I accept the officer recommendation on the water take amount. However, I do consider there to be interpretation and application questions over Clause f) in terms of on what basis metering would be required given the take is a permitted activity. Notwithstanding my concerns over the nature of the condition, it is also noted the 'Resource Management (Measurement and Reporting of Water Takes) Regulations 2010' excludes certain takes (e.g. less than 5 litres per second). While the PNRP can be more stringent, there are benefits in having consistency.

### **Rule R138 Water races (and Chapter 7 Ruamahanga Whaitua R. R3)**

5.17 The officer recommended amendments to R138<sup>1</sup> are supported as they clarify the application and intent of the rule.

5.18 Related to Rule 138 is the overall rule framework relating to water races. In submission points S367/107 and 366/107 (to Rule R58), the councils sought an appropriate framework for the management of water races. Relevant to the framework is the notified prohibited rule within the Ruamahanga Whaitua relating to takes that exceed minimum flows and core allocation.

5.19 The reporting officer has recommended an amendment to Rule R. R3 to exempt water races (for health needs of people and animal drinking water) from the prohibitive activity status. I support the assessment and recommendation in respect

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<sup>1</sup> Rule R138: Water races – permitted activity

The take and use of water from a water race by a single property (that is not already permitted by Rule R136 or Rule R137) shown on Map 28 is a permitted activity, provided the take and use is authorised within the by a resource consent held by the territorial authority controlling the water race.

Note

Water races shown on Map 28 are under territorial authority control and the approval of the relevant territorial authority is required to take water from a water race.

of R. R3 and the consequential changes. The clarification as to the relationship between the Whaitua rules and other rules is also supported as it will assist in plan interpretation.

- 5.20 However, in reviewing the prohibited rule within Chapter 7 Ruamahanga Whatitua relating to takes that exceed minimum flows and core allocation, I do question the appropriateness of the recommended retention of the prohibitive rule overall given the interim nature of the Ruamahanga Whaitua provisions.
- 5.21 The concept of a prohibited activity is dealt with under Section 77B of the RMA, with the effect being that a plan change is required to occur in order to enable a particular activity to occur. The prohibited activity status is the most restrictive of any activity status and therefore must be used with care, after a robust and well considered evaluation. In my experience, the decision to use this activity status should be backed with strong evidence of its necessity, including justification through objectives and policies.
- 5.22 In my opinion the PNRP objective framework (O2, O6, O7, O8, O25 and O52) does not set the policy framework for a prohibited activity status, and in particular does not give effect to PNRP O8. I also do not consider the S323 or S42A reports have adequately demonstrated the need for a prohibited activity status above non-complying or discretionary. Reference in the S32 Report to the Land and Water Forum, and the allowing applications to be made implies they will be granted, in my opinion are not sufficient reasons to impose such a restrictive activity status.
- 5.23 In regard to the interim nature of the PNRP Ruamahanga Whaitua provisions, I understand the Ruamahanga Whaitua provisions were envisaged to be released in 2017 and a plan change/variation initiated in 2018. This would co-relate to the PNRP plan process. I understand this timing is now not likely. Given the undefined timetable for the Whaitua process, there is the potential that the interim Ruamahanga Whaitua provisions are likely to be in force for the foreseeable future. While a discretionary activity status is currently in effect (under section 87B.1(c) RMA), the reality is that by the end of 2018 if/when decisions are released on the PNRP and if there are no appeals on the provision, the prohibited provision could become operative prior to the Whaitua process. Alternately, if an appeal is lodged, resource users face even greater uncertainty. In my opinion such an outcome would be contrary to the intended interim nature of the PNRP Whaitua provisions.
- 5.24 As an example of the implications of the interim provisions, were they to become operative, the take of water for Henley Lake would be a prohibited activity. Henley Lake is a recreational artificial lake that is supplied from a water take from the Ruamahanga River as well as a discharge from the lake back into the river via a

wetland. Another example is Queen Elizabeth Park Lake (created in 1907) which takes water from the Waipoua River via a pump, which is then discharged back into the Waipoua River. MDC is presently in the process of obtaining resource consents and facing great uncertainty and costs associated the process.

- 5.25 Another aspect of the interim rules is Rule R. R1 relating to water used by industry from a community drinking supply for a period of seven years from the date of public notification of the PNRP. For the above reasons relating to the uncertainty associated with the Whaitua process and the nature of potential changes to the Whaitua rules, I consider a seven-year date from the Whaitua process provisions more appropriate as the current provisions are only interim and therefore subject to changes.
- 5.26 In my opinion the provisions proposed under Chapter 7 Ruamahanga Whaitua are best addressed at part of the ongoing Whaitua process as opposed to an interim prohibitive rule.

Pauline Whitney

6 September 2017