Extraordinary Meeting of the Regional Planning Committee

Date: Wednesday 18 March 2020

Time: 1.00pm

Venue: Council Chamber
Hawke's Bay Regional Council
159 Dalton Street
NAPIER

Agenda

Parking

There will be named parking spaces for Tangata Whenua Members in the HBRC car park – entry off Vautier Street.

Regional Planning Committee Members

Name	Represents
Karauna Brown	Te Kopere o te Iwi Hineuru
Tania Hopmans	Maungaharuru-Tangitu Trust
Nicky Kirikiri	Te Toi Kura o Waikaremoana
Joinella Maihi-Carroll	Mana Ahuriri Trust
Mike Mohi	Ngati Tuwharetoa Hapu Forum
Liz Munroe	Heretaunga Tamatea Settlement Trust
Peter Paku	Heretaunga Tamatea Settlement Trust
Apiata Tapine	Tātau Tātau o Te Wairoa
Toro Waaka	Ngati Pahauwera Development and Tiaki Trusts
Rick Barker	Hawke's Bay Regional Council
Will Foley	Hawke's Bay Regional Council
Craig Foss	Hawke's Bay Regional Council
Rex Graham	Hawke's Bay Regional Council
Neil Kirton	Hawke's Bay Regional Council
Charles Lambert	Hawke's Bay Regional Council
Hinewai Ormsby	Hawke's Bay Regional Council
Martin Williams	Hawke's Bay Regional Council
Jerf van Beek	Hawke's Bay Regional Council

Total number of members = 18

Quorum and Voting Entitlements Under the Current Terms of Reference

Quorum (clause (i))
The Quorum for the Regional Planning Committee is 75% of the members of the Committee

At the present time, the quorum is 14 members (physically present in the room).

Voting Entitlement (clause (j))
Best endeavours will be made to achieve decisions on a consensus basis, or failing consensus, the agreement of 80% of the Committee members present and voting will be required. Where voting is required all members of the Committee have full speaking rights and voting entitlements.

Number of Committee members present	Number required for 80% support
18	14
17	14
16	13
15	12
14	11

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 18 March 2020

Subject: TANK PLAN CHANGE NOTIFICATION

Reason for Report

1. This report seeks a decision from the RPC to amend Policy 37 of the Proposed TANK Plan Change (PC9) to include an allocation limit for the Heretaunga Plains groundwater.

2. This report also seeks the RPC recommendation for a process pathway for the notification of the Proposed TANK Plan Change.

Officers' Recommendation(s)

3. Council officers recommend that the RPC agrees to amend Policy 37 of the Proposed TANK Plan Change to insert reference to 90 million cubic meters as the interim allocation limit for the Heretaunga Plains groundwater and amends the section 32 report accordingly.

4. Further, officers are recommending that the Proposed TANK Plan Change, as amended, is notified for public submissions on 28 March 2020, for a period of 27 working days ending 8 May 2020.

Executive Summary

5. The RPC agreed to publicly notify the TANK Plan Change and its supporting Section 32 report at their meeting in September 2019. At this meeting, although tangata whenua members agreed to notify the Plan, they indicated on-going concern with some of the plan content. No resolution was made in respect of the notification pathway and this decision was left until December as the first available opportunity for the new council following the 2019 elections.

6. The RPC agreed at the December meeting to further workshop TANK Plan Change content to discuss outstanding issues and notification options and this was undertaken 26 February 2020. The workshop provided the opportunity to revisit issues of particular concern for tangata whenua, and to explore options for resolving them.

7. One of the significant ongoing issues for tangata whenua has centred on management of groundwater abstraction from the Heretaunga Plains and the management of the consequential stream flow depletion impact on lowland streams.

8. This report revisits the allocation limit and a recommendation is made to re-insert an allocation limit of 90Million cubic metres per year.

9. This report also re-presents the options for an RPC recommendation to the Council in relation to the notification pathway.

Background/Discussion

10. The RPC received a draft Plan change from the TANK collaborative group in August 2018. It made decisions on non-consensus items and completed provisions relating to a number of uncompleted items including stormwater management, land use change and management of drinking water quality.

11. The RPC then provided a copy of the Proposed Plan Change to iwi authorities and territorial authorities and Department of Conservation early in 2019 as part of pre-notification requirements.

12. It considered feedback received at its meeting in May 2019 and a number of issues were subsequently debated by the RPC at the following meetings, including through establishment of an RPC sub-group to consider management options.

13. The RPC had determined the remaining areas of concern to be related to the allocation limit for groundwater abstraction from the Heretaunga Plains and how the resulting

stream depletion impact on lowland stream flow would be managed. It also noted concerns with how Māori values were reflected in the Proposed Plan Change.

Water Management in the Heretaunga Plains

14. The Proposed Plan Change contains a number of provisions relating to water allocation and use in the Heretaunga Plains. It includes policies and rules that set out to:

    14.1. Prevent any further allocation of water from the Heretaunga Plains

    14.2. Reduce allocations to reflect actual and reasonable levels of use (in the ten years to 2017)

    14.3. Adopt a sinking lid approach so that any water returned or relinquished would not be re-allocated.

    14.4. Impose consistent water allocation modelling requirements and a new water use efficiency standard.

    14.5. Apply additional restrictions on the site to site transfer of water

    14.6. Adopt a prohibited activity status for new applications where there is not an existing permit

    14.7. Calculate requirements for the stream depletion effect of each water permit and for the permit holder to contribute to or develop a stream flow maintenance scheme on an equitable basis with all permit holders.

15. The Proposed Plan recognises some of the uncertainties and data gaps in relation to the management of Heretaunga Plains groundwater and includes a specific review policy (Policy 42) that:

    15.1. Seeks further water allocation and water use information (including both the allocated amount and used through water meter data)

    15.2. Considers any new monitoring data about groundwater abstraction, water flows and groundwater levels

    15.3. Assesses the effectiveness of mitigation measures including extent of streams affected by flow maintenance and extent of habitat enhancement and water quality trends.

16. As part of the review, the Council will examine the appropriateness of the allocation limit in view of this assessment and develop a plan change to ensure any identified over-allocation is further phased out.

17. The RPC considered 90 million cubic meters as the annual allocation limit in previous drafts of the Plan Change. The 90 million cubic meters is a modelled assessment of the amount of water used during the 2012-13 drought season. It doesn't reflect the new allocation regime that establishes annual allocations for permit holders.

18. There was debate as to whether 80 million cubic meters might be a more appropriate allocation limit as it more closely represented average use. The RPC then considered having a non-numerical limit as a means of providing for the adaptive management signalled by policy 36.

19. The allocation limit (whether it was the numerical or non-numerical amount) is to be reviewed according to the policy direction provided in both policies 36 and 42.

20. At the February 26 workshop, the RPC suggested the 90Million cubic meter limit should be re-instated.

21. The benefit of a numerical limit is that it shows the extent of the over-allocation from what has been allocated. It does not impact on current water permit holders as replacement permits are provided for on an "actual and reasonable" basis. It remains subject to the review policies and future assessment as to its appropriateness given the more robust water use data that will be available at that time, and there will be information about the success of the specified mitigation measures.

Notification Pathway

22. The RPC has previously debated the merits of a fast track process (SPP) compared to the more traditional process that includes an appeal opportunity for all parties. The choice between these pathways is currently a discretionary matter for councils.

23. The government has signalled a change to the RMA that will introduce a mandatory fast track process for freshwater related plans to remove some of the delay associated with these freshwater planning processes. This change is anticipated to be made from April 2020.

24. Environment Court processes can add years to a plan development process, as well as result in significant costs for all parties, including for ratepayers.

25. A fast track process (whether it is as provided as a discretion by the current RMA or as mandatory by amendments to the RMA) presents both a challenge and an opportunity to the Council, its ratepayer and stakeholder communities and iwi. A fast track process requires the submissions and hearing process to be done once and done well, it also enables the limits to be set in place and actions necessary to meet environmental objectives to be commenced sooner. Quicker resolution of the process potentially enables cost savings that can then be directed into the required actions and mitigations.

26. The Council's community and stakeholders are consequentially likely to have a greater interest in the timing and scope of plan reviews, especially where submissions express widely different views about Plan content and policy direction.

27. Staff still consider the advantages delivered by a fast track process outweigh the disadvantages of not having an appeal process. We are aware that not all stakeholders are in agreement with this, but note that the government's own direction is to adopt a more speedy and nimble approach to plan development (and review) as evidenced by the proposed RMA amendments.

28. However, given the delays in notifying the Plan there is now a risk in seeking the Minister's direction for an SPP as it runs into the possible introduction of the new National Policy Statement for Freshwater. If the plan is not notified before a new NPSFM, it would be subject to further delay as it will need to be further reviewed to ensure it gives effect to any new provisions of the NPS.

29. We consider that should any application to the Minister for a streamlined planning process be made, it should be on the condition that notification is made before any new NPSFM is introduced.

30. A second possibility is that the RMA amendment to introduce a mandatory fast track process is introduced before an SPP application is finalised. In that case, the mandatory process is likely to apply (depending on how the amendment is worded) and no other option will be able to be considered by the RPC or the Regional Council.

31. Despite earlier recommendations by staff for a fast track process to be adopted, the convergence of several national processes and the Minister's support for and promotion of the new NPSFM, staff consider the risk of delays now likely with seeking an application from the Minister will mean there is a higher chance of the Proposed Plan Change being caught up with the new NPSFM policy direction.

32. We do not see (early) notification as a means to avoid giving effect to the NPSFM, but consider it to be a more efficient use of the Council's and its communities time and resources. This is particularly so given the years of work already done on the plan and the work still to do in other parts of the region. The new NPS will still have to be given effect to, but in a more staged manner.

33. We also note that should the RMA be amended in advance of the NPSFM taking effect, the Council might consider withdrawing the Plan Change and re-notifying it under the new provisions (with all submissions and further submissions being transferred to the new process). Staff would provide further advice and seek agreement from the RPC on this when necessary.

Options Assessment

Allocation Limit

34. The RPC sought to reconsider its options for the allocation limit. The options include:

    34.1. Retain non-numerical limit

    34.2. Re-insert interim allocation limit of 90 million cubic meters into policy 37.

35. Both options support and are supported by the suite of management measures that aim to limit water allocation to actual and reasonable use (up to 2017). These measures include schedules and rules that prohibit new allocations and reduce existing allocations.

36. A numerical limit is provides more clarity about the level of over-allocation as demonstrated by the allocated amount compared to the (modelled) actual and reasonable use.

37. It is recommended that the interim limit of 90 million cubic meters be re-inserted into policy 37 to provide additional guidance and direction about the nature of water allocation in the Heretaunga Plains and that the section 32 report be amended accordingly.

Notification pathway

38. The RPC is considering two notification pathways available to it under Schedule 1 of the RMA being:

    38.1. The traditional plan change process which includes ability for submitters to appeal decisions to the Environment Court

    38.2. A streamlined process (SPP) which follows the same pathway except does not include the ability to appeal decisions to the Environment Court.

39. The traditional process is recommended by staff for the reasons outlined above.

Strategic Fit

40. The Proposed TANK Plan Change delivers on several of the Council's strategic goals especially in relation to sustainable land and water use and efficient infrastructure.

41. The Plan Change also reflects Māori values, establishes objectives and limits for water quality and quantity and adopts policies and methods to improve ecosystem health in TANK water bodies.

Climate Change Considerations

42. The Proposed TANK Plan Change takes into account impacts of climate change by establishing limits for water and adopts provisions for supporting or building community resilience where water supply and demand might change over time.

43. The Plan Change contains a specific objective that any decisions made in respect of activities and actions in the TANK catchment about land and water use take into account effects of climate change. The Plan considers long term impacts of decision making and incorporates the need for developing community resilience by making land use decisions that address multiple objectives and provides for the development of longer term water supply and demand strategies

Considerations of Tangata Whenua

44. The TANK Plan Change, when it is notified, will have considerable potential impact on tangata whenua and the values they hold for water. This report arises in relation to their concerns about the Proposed Plan Change and demonstrates that particular regard is being given to tangata whenua.

45. The section 32 report describes how the TANK Plan change and the process of its development involved iwi and reflects iwi values.

Financial and Resource Implications

46. The notification of the Proposed TANK Plan Change is a budgeted item already incorporated in existing Council budgets. The implementation of the Plan will have significant impact on Council staff and other resources that have yet to be fully assessed.

Decision Making Process

47. Council and its committees are required to make every decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements in relation to this item and have concluded:

    47.1. The decision does not significantly alter the service provision or affect a strategic asset.

    47.2. The use of the special consultative procedure is not prescribed by legislation.

    47.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.

    47.4. The persons affected by this decision are any person with an interest in management of the region's land and water resources. In any event, those persons will have an opportunity to make a submission on the proposed TANK Plan Change after it is publicly notified.

    47.5. The decision is not inconsistent with an existing policy or plan.

48. Given the nature and significance of the issue to be considered and decided, and also the persons likely to be affected by, or have an interest in the decisions made, Council can exercise its discretion and make a decision without consulting directly with the community or others having an interest in the decision.

Recommendations

1. That the Regional Planning Committee:

    1.1. Receives and considers the "TANK Plan Change Notification" staff report.

    1.2. Agrees to amend Policy 37 of the Proposed TANK Plan Change to insert reference to 90 million cubic meters as the interim allocation limit for the Heretaunga Plains groundwater and amends the section 32 report accordingly.

2. The Regional Planning Committee recommends that Hawke's Bay Regional Council:

    2.1. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted Significance and Engagement Policy, and that Council can exercise its discretion and make the decisions on this issue without conferring directly with the community.

    2.2. Notifies the Proposed TANK Plan Change for public submissions on 28 March 2020 for a period of 28 working days ending 8 May 2020

    2.3. Requests that staff identify a shortlist of suitable qualified and experienced Resource Management Act accredited Hearing Commissioners for consideration by the Regional Planning Committee for appointment to the Hearing Panel to hear and make recommendations on the proposed Plan Change 9 in response to submissions and further submissions received.

Authored by:	**Approved by:**
Mary-Anne Baker **SENIOR PLANNER**	**Tom Skerman** **GROUP MANAGER** **STRATEGIC PLANNING**

Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL

REGIONAL PLANNING COMMITTEE

Wednesday 18 March 2020

Subject: TUKITUKI: REQUEST FOR PLAN CHANGE

Reason for Report

1. This report discusses a request received from the Federated Farmers to initiate a streamlined planning process (SPP) to change the Hawke's Bay Regional Resource Management Plan (RRMP) for the Tukituki Catchment to recalibrate nitrogen leaching rates in Table 5.9.1D using the current version of Overseer FM.

Executive Summary

2. It is important for the RPC to consider this request from Federated Farmer to maintain the trust and confidence of the Tukituki farming community users who have acknowledged the need for the change. This will ensure that the Plan prescribes the right 'tools' for them to apply for resource consents, knowing that this will be appropriate and enable them to adhere to the rules within the Plan.

Background

3. Federated Farmers has highlighted a concern that as Overseer has been further developed and refined the information on which Table 5.9.1D is based is well out-dated. The information has been superseded and the earlier versions are no longer accessible to farmers, consultants or to consent planners.

4. It would be sensible, more acceptable and practical to be comparing the numbers generated by farmers who are required to use Overseer FM with numbers in the plan that are generated using the same and most recent version of Overseer.

5. The Tukituki Catchment plan change (Plan Change 6) was developed using a Board of Inquiry process between 2012 and 2014. The rules controlling nitrogen leaching within the Tukituki Catchment come into full effect on 1 June 2020. One of the core features of the nitrogen leaching rules is the use of Overseer to identify the activity status of a range of farming land use activities (as permitted, restricted discretionary, or non-complying activities).

6. Overseer estimates nitrogen leaching under different situations and was originally designed to support farm decision-making on fertilizer use. In recent years Overseer estimates have been used in water quality regulation in the absence of a tool to measure cumulative discharges of nitrogen from farming activities.

7. There have been numerous version changes to Overseer since 2012, when Table 5.9.1D was developed using Overseer V5.4.3. Each new version incorporates latest available science on nitrogen leaching. Typically, a higher leaching rate is now estimated from exactly the same farm inputs to the model. While the amount of nitrogen discharging below the root zone is better understood, not all of this nitrogen discharges into receiving water. Some nitrogen is also attenuated/assimilated (i.e. 'removed') between the root zone and the receiving water.

8. Changes to the Overseer model do not affect conditions in the water, as measured by actual monitoring of water quality. There is no direct link between the numbers in Table 5.9.1D and the limits and targets set for nitrogen in the receiving water in Table 5.9.1B.

9. Federated Farmers have been working with farmers within the Tukituki catchment, and have identified Overseer versioning as being a critical issue for consenting. Federated Farmer representatives met with staff involved in implementing the Tukituki plan change late last year and again in January 2020. Chief Executive James Palmer agreed to scope a plan change using the streamlined planning process (Schedule 1, Part 5 of the RMA) to update the nitrogen leaching rates in Table 5.9.1D, while noting the necessity of the Regional Planning Committee's agreement to initiate any such plan change.

Discussion

Issue summary

10. Table 5.1.9D presents an issue for farmers within the Tukituki Catchment as it utilises an out-dated version of Overseer which is also unavailable for use. The issue is compounded by the fact that the current version, Overseer FM (which is being used for consenting) results in different nitrogen leaching rates which have the potential to affect the land use activity status. Should Overseer FM be utilised, there is potential for more farms to require consents than originally estimated through the Board of Inquiry's plan change process. Of those farms requiring consents it is possible that more will of these will fall into the 'non-complying' activity status due to earlier versions of Overseer underestimated nitrogen leaching.

11. While there are a number of other issues with the use of Overseer in regulation, as identified in the 2018 report by the Parliamentary Commissioner for the Environment, *Overseer and regulatory oversight: Models, uncertainty and cleaning up our waterways*, Federated Farmers did not see these as being so critical for the Tukituki in the short term.

12. As outlined in earlier paragraphs a possible solution sought by Federated Farmers to rectify this issue is to amend the plan utilising a Streamlined Planning Process (being a RMA tool to achieve an expeditious planning process that is proportionate to the complexity and significance of the planning issues being considered).

13. For any such plan change request, consideration needs to be had as to how this relates to the proposed timeline for national freshwater management reforms, including the enactment of the Resource Management Bill (RM Bill) and commencement of the 2020 National Policy Statement for Freshwater Management (NPSFM). The Ministry for the Environment (MfE) anticipates that the new freshwater planning process must be used from enactment, and that all freshwater plan changes giving effect to the NPSFM 2020 will be required to be notified by 31 December 2023.

Change to the land use activity status

14. For most farms (but not all), the new Overseer FM figure will result in higher nitrogen leaching rates, potentially amending the activity status of the consents, for example permitted activities may require a consents or restricted discretionary activities may become non-complying.

15. Non-complying activities must meet the gateway requirements of S104D, in particular s104D (1)(b) which require that the application is not contrary to the objectives and policies of the regional plan in order for a consent to be granted.

16. Notwithstanding the proposed changes, the plan continues to require the Tukituki instream nitrogen limits/targets to be met by 2030.

17. In support of the relief sought, Federated Farmers have prepared a preliminary assessment of potential costs associated with the use of Overseer FM with respect to consent activity status (refer to the Attachment of this report).

18. While the Board of Inquiry may have considered it unlikely that consents would be required for the majority of farms, based on the information supplied by Federated Farmers, it would seem that approximately 64 farms would be assessed as non-complying activities, and 48 farms would be assessed as restricted discretionary activities.

19. The Federated Farmers' report notes that 'the cost of applying for a non-complying activity is likely to be significantly greater than compared with a restricted discretionary consent (paragraph 20) and that there are likely to be social and wellbeing costs (paragraphs 22 – 29).

Timeline and national freshwater reforms

20. Staff have undertaken a preliminary assessment of the planning pathways to undertake a plan change to address the relief sought by Federated Farmers to recalibrate the nitrogen leachate figures of Table 5.9.1D by adopting Overseer FM, using:

20.1. The SPP pathway (Schedule 1, Part 5)

20.2. The traditional Schedule 1 plan-making pathway (Schedule 1, Part 1), and

20.3. The proposed freshwater planning process described in the RM Bill.

21. Each of the plan-making processes require as a minimum that consultation will be undertaken with iwi, relevant government agencies and key stakeholders.

22. In addition to the draft table recalibrating nitrogen leaching, additional supporting information will be required in order to assess whether the proposed change is the most appropriate way to achieve the purpose of the Act, as required by Section 32 of the RMA.

23. Staff consider that the preparatory work and consultation could be completed, with a proposal to notify such a plan change by August 2020, at the earliest.

24. There are a number of consents that will be required as a consequence of the rules controlling nitrogen leaching coming into effect as of the 1 June 2020. It should be noted that it would not be possible to progress a plan change to affect resource activity status for the first tranche of consents. However the content of the plan change can be taken into consideration when processing the consents. The Regional Planning Committee have the opportunity to consider whether there is benefit in pursuing this plan change to update the plan prior to the second tranche of consents.

25. The following steps are involved in a plan change.

Step	Action	Time
1	Gain approval from RPC & HBRC to initiate development of a plan change	18 March & 25 March
2	Complete project plan, consultation & communication plans	31 March
3	Gain approval from Minister to use SPP	30 April
4	Prepare essential additional information in support of proposed change	15 May
5	Gain approval to consult on proposal from RPC	3 June
6	Complete consultation	30 June
7	Gain approval to notify proposal from RPC & HBRC	19 August & 26 August
8	Notify proposal	Sat 29 August

26. While this timeline could be brought forward one month by convening an additional meeting of the RPC in July (to recommend notification), this does not resolve the issue relating to the enactment of the RM Bill.

27. MfE staff have advised that the RM Bill is due to be reported back from the Select Committee process on 26 March 2020 and it is anticipated that it will be enacted mid-2020.

28. Staff have initiated discussion with MfE with regard to the use of the SPP process for recalibrating the nitrogen leaching figures in Table 5.9.1D. MfE has advised that once the RM Bill is enacted, any plan change would be required to use the new freshwater planning process. While this technical plan change could proceed as an isolated, discrete change, under the proposed Direction from Government the Council would still have to implement the remainder of the NPSFM 2020 within the prescribed timelines (currently thought to be December 2023).

29. The 2019 RM Bill proposed Freshwater Commissioners, convened by a Chief Freshwater Commissioner, would hear and recommend on the proposed freshwater planning instrument (i.e. the proposed plan change). However, this system cannot be established until the Bill is passed into legislation.

30. Staff consider that there are still a number of unknowns with the new freshwater planning process, and it is unclear how quickly the Freshwater Commissioner framework would be established and how they would operate.

Options

31. The two possible options presented are:

    31.1. Do not proceed with a technical plan change to recalibrate the nitrogen figures in Table 5.9.1D

    31.2. Undertake preliminary consultation on a possible plan change to recalibrate the nitrogen figures in Table 5.9.1D and proceed if there is clear support from all interested parties to make such a change.

32. A brief evaluation of the two options is presented in Table 1, following.

Table 1: Quick option evaluation

Issue	**Option 1: Make no change**	**Option 2: Recalibrate N in Table 5.9.1D to align with OverseerFM**
Cost of Plan change	No cost	Unbudgeted cost to council, estimate up to 9 months additional work. There are unknown costs as the freshwater planning process has not yet been enacted.
Resolve Overseer Update Inequity	No. Plan Change 6 scheduled provided for a review of provisions in 2025. Note: NPSFM 2020 may require this to be reviewed and notified by 2023.	Yes by recalibrating the cumulative nitrogen leaching maximums with the most up-to-date version
Impact on actual nitrogen leaching	None	Not expected to give rise to any increase in nitrogen leaching as it is essentially a “recalibration” or adjustment to address ‘inflation’ ion the model results
Impact on receiving environment	No change	No change
Community/stakeholder interest, including iwi	Does not apply	Acknowledges that this is a technical plan change only which does not alter environmental targets.
Council/community relationship	Current requirements have led to view that HBRC is rigid and inflexible	Upgrade to current Overseer version will enhance the HBRC/community relationship by showing willingness to consider community concerns around equity.
Certainty of consent outcomes	Arguably, makes no practical difference to whether consents are granted and the nature of conditions applied	Possibly creates a perception of greater certainty that a consent will be granted (because of fewer Non Complying consents)
Programme of Plan Changes, including to give effect to the NPSFM 2020	Tukituki provisions would be reviewed within the broader context of national reforms, with any changes notified by 31 December 2023 but inconsistency and issues would remain until that time.	Still uncertainty around final version of the NPSFM 2020 and RM Amendment legislation.

33. Whilst this is, on the face of it, a simple technical change to the plan the ability to undertake a simple plan change swiftly is challenging.

34. As noted above, initial advice from MfE staff would indicate that a Streamlined Planning Process is unlikely to be available for use within the timeframes proposed.

35. There are also a number of uncertainties and unknown factors which lie ahead in terms of the RM Bill, Essential Freshwater reform and final details within the NPS-FM 2020 which will have implications for any plan change. As a consequence there is no clear cut pathway.

Considerations of Tangata Whenua

36. The impact of a plan change to amend Table 5.1.9D on tangata whenua has not yet been assessed. Tangata whenua would be consulted should the RPC direct staff to proceed to undertake preliminary consultation.

37. Should agreement be reached at a later stage to proceed with a plan change, the accompanying Section 32 report (which would be required at the time of notifying the plan) would describe how the plan change and the process of its development has involved iwi and reflects iwi values.

Financial and Resource Implications

38. Should the RPC agree to proceed to undertake preliminary consultation on a possible plan change it should be noted that this is an unbudgeted item. As noted in Table 1 above, should the Council then determine to undertake the plan change this too is an unbudgeted cost with an estimated 9 months additional un-programmed work.

39. There are also potentially other unknown costs arising from the freshwater planning process that has yet to be enacted. More clarity of the financial and resource implications as a consequence of the enactment of the RM Bill may be available following the report back from the Select Committee process on 26 March 2020.

Decision Making Process

40. Council and its committees are required to make every decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements in relation to this item and have concluded:

    40.1. The decision does not significantly alter the service provision or affect a strategic asset.

    40.2. The use of the special consultative procedure is not prescribed by legislation.

    40.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.

    40.4. The persons affected by this decision are any person with an interest in management of the region's land and water resources, in particular within the Tukituki catchment.

    40.5. The decision is not inconsistent with an existing policy or plan.

41. Given the nature and significance of the issue to be considered and decided, and also the persons likely to be affected by, or have an interest in the decisions made, Council can exercise its discretion and make a decision without consulting directly with the community or others having an interest in the decision.

Recommendations

That the Regional Planning Committee:

1. Receives and considers the "Tukituki: Request for Plan Change" staff report.

2. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted Significance and Engagement Policy, and that Council can exercise its discretion and make decisions on this issue without conferring directly with the community and persons likely to be affected by or to have an interest in the decision.

3. Directs staff to proceed to undertake preliminary consultation on a possible Plan Change to recalibrate the nitrogen figures in Table 5.9.1D

OR

4. Agrees not to proceed with a technical plan change to recalibrate the nitrogen figures in Table 5.9.1D.

Authored by:

Dale Meredith
SENIOR POLICY PLANNER

Ceri Edmonds
MANAGER POLICY AND PLANNING

Approved by:

Liz Lambert
GROUP MANAGER REGULATION

Tom Skerman
GROUP MANAGER
STRATEGIC PLANNING

Attachment/s

⇩**1** Tukituki Assessment of Potential Costs

Assessment of potential economic and social costs associated with impact of Overseer version change on Table 5.9.1D

Overseer version change

1. The nitrogen leaching limits for each LUC class in Table 5.9.1D were set using Overseer version 5.4.3. This is the version of Overseer that was used to assess the costs and benefits of compliance with these limits at the time of the Board of Inquiry's decision on Plan Change 6.[1]

2. The Overseer model is updated reasonably frequently (with more significant changes typically happening once per year). These updates respond to improved science or address identified errors in the model. The observed in-stream nitrogen (measured in the waterways) does not change as a result of Overseer modelling updates. The updates to Overseer simply improve the reliability of the modelling.

3. So, while the modelling outputs may show greater leaching below the rootzone than prior to the Overseer update, the receiving water quality experiences no change. What these changes in modelled leaching may do is require water managers to reassess their assumptions about the rates of attenuation.[2] That is, if the measured in-stream N concentration remains the same but the level of modelled leaching increases, any pre-Overseer update assumptions about the rate that N is being attenuated between the bottom of the root zone and the receiving water must be incorrect. (For example, if leaching is modelled to be greater than previously thought the level of attenuation must be greater than previously thought).

4. In the Lake Rotorua catchment, for example, Overseer 5.4 was used to model nitrogen losses from farming activities when the ROTAN catchment model was originally developed. That model assumed an attenuation rate of zero. When Overseer version 6 was released, the model was updated and attenuation was assumed to range between 20% and 85% (depending on sub-catchment) and at a catchment level attenuation was assumed to be 42%.[3]

5. Since the LUC limits were set in Plan Change 6, there have been many updates to the Overseer model.

6. The largest update was the update from Overseer version 5.4 to 6.0 as a result of an overhaul of the drainage model (a core element of the Overseer model). This resulted in significant increases in estimated nitrogen leaching from farms, for no change to farm system (or in stream nitrogen concentration). For example, Horizons Regional Council has reported an increase of the cumulative nitrogen leaching maximums in Table 14 (the LUC table in the One Plan) of 41% to 66% because the older version of Overseer underestimated nitrogen leaching,

[1] It is noted that there was no assessment in the section 32 report because this was not in the proposal and there is very little discussion in the Board of Inquiry decision about the costs of compliance with the LUC limits (in terms of on farm actions required to reduce nitrogen). This could be because the assumption was that it was only the poorest farming practices that would not comply or those located in the least suitable location.
[2] Nitrogen that is lost at some point between the root zone and the receiving water body, so that it does not reach the receiving water body.
[3] Niwa: Predicting Nitrogen Inputs into Lake Rotorua using ROTAN-Annual, October 2016, page 26 https://cdn.boprc.govt.nz/media/588662/predicting-nitrogen-inputs-to-lake-rotorua-using-rotan-annual-october-2016.pdf; Statement of Evidence of James Christopher Rutherford for Plan Change 10 paragraph 18(f) https://cdn.boprc.govt.nz/media/588689/kit-rutherford-evidence-statement.pdf

with no increase in dissolved nitrogen in the rivers and no increase in adverse effects on waterways.[4]

7. When considering the Overseer model and version change, the consistent advice or recommendations are:[5]

a. The latest version of Overseer should used because it will incorporate the latest science (particularly providing for changes in water management science) or will have addressed identified errors. The latest version is also often the only version available because updates of Overseer result in earlier versions becoming unavailable.

b. The same version of Overseer should be used to estimate nitrogen leaching as is used to set the limits.

c. Overseer should be used to assess relative change in nitrogen leaching rather than compliance with an absolute number.

d. What is important when setting limits is the principle or underlying rationale for setting the limit at a particular level, not the number Overseer models the N loss to be (because the number is just the best estimate given current modelling capability). Where Overseer sets a benchmark based on a stable farm system, a different version of Overseer will set a different benchmark, despite there being no change in the actual nutrient losses from the farm system.

8. Table 5.9.1D of Plan Change 6 has not been updated as Overseer versions have changed. The result is that N leaching from farms is being assessed against an out of date version of Overseer. Due to more recent versions of Overseer estimating higher nitrogen leaching than older versions (for no change in farm system or change to water quality), more farms fail to comply with Table 5.9.1D than when the table was assessed by the Board of Inquiry ("BOI").

9. There are currently 64 farms that are more than 30% above the LUC table, and 48 are less than 30% above the LUC table. This is not what the BOI intended. The BOI's view was that it was unlikely that resource consent would be required for the majority of the catchment and consent would only be required by those farms that fail to adopt sustainable farm management practices or want to intensify beyond the natural capacity of the land.[6]

[4] Section 32 report in support of Plan Change 2, page 20 https://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/One%20Plan%20Reviews%20and%20Changes%20Documents/Section-32-evaluation-of-Proposed-Plan-Change-2.pdf?ext=.pdf

[5] Enfocus 2018, page 20 https://assets.ctfassets.net/bo1h2c9cbxaf/2IzYrtGftGPHn6kmLuy9qs/25347790485b44d8c485fc0925dce4fc/Using_Overseer_in_Water_Management_Planning_Enfocus_2018.pdf; PCE 2018 report on Overseer, pages 59 to 63 https://www.pce.parliament.nz/media/196493/overseer-and-regulatory-oversight-final-report-web.pdf; Freeman et al report 2016, pages 46 to 54 https://assets.ctfassets.net/bo1h2c9cbxaf/4lEgE1Oe5I223NhbDmJsit/1b2fa72385d052f06abe5126765f24ac/Using_OVERSEER_in_Regulation.pdf

[6] Final Report and Decisions of the Board of Inquiry into the Tukituki Catchment Proposal 18 June 2004 at [491] https://www.epa.govt.nz/assets/FileAPI/proposal/NSP000028/Ministers-Direction/7f5aeb17f4/FINAL-Report-and-Decisions-Volume-1-of-3-Report-18-June.pdf

Economic impacts

10. There have been some case studies, which help to understand the likely impact of the LUC limits on farmers, where their N leaching is being estimated in a different version of Overseer from Table 5.9.1D.

11. In October 2018, a report was published about four farms (two dairy and two drystock and cropping, two of which were irrigated and two were not) who could not meet their LUC limits (three were >30% above, one was <30% above).[7]

12. That assessment was based on Overseer version 6.2.2. While that version is now out of date (with that version being replaced with subsequent versions),[8] it was also significantly different from Overseer version 5.4.3, which was used to calculate the limits in Table 5.9.1D.

13. For all of the case study farms, irrespective of how intensive the system,[9] significant capital investment (including constructing composting barns and feed pads) and/or farm system change (including de-stocking, reducing irrigation area, changing stock class or type and discontinuing cropping) was required in order to achieve N limits. Such changes had significant economic cost, and it was unlikely that the existing business would remain viable. The only other option was to rely on technology advances (such as plantain) and hope that those mitigations (which are not part of the Overseer model) are accepted by HBRC.

14. The most drastic option for reducing nitrogen (short of land use change) is the construction of composting barns to house stock during autumn and winter months. The capital cost is significant ($2,700/ha), as are the operating costs ($177/ha). This would also necessitate significant changes in farm management, herd management, animal welfare and upskilling by the farmer (none of which are considered by the report). However, for one of the case studies, even this infrastructure (coupled with drastic reductions in stocking rates) would not be sufficient to achieve the reductions needed to fall within 30% of the LUC limit.

15. The report also considered the social impacts of such mitigations, including reduced spending (impacting on local businesses) and employing less staff (as a result of reduced stocking rates and a need to cut costs to meet higher operating costs). The construction of the composting barn would be a positive outcome for the construction sector, but this is a one off benefit (compared to the ongoing social costs as a result of employing less staff, for example).

16. These costs far exceed the costs assessed at the time the BOI assessed the costs, risks and benefits of Table 5.9.1D, with the BOI anticipating that it would be the "poorer performing resource users" that are impacted, and that there would not be a "major problem for the majority of farmers."[10] By contrast, currently 64 farms are more than 30% above the LUC table, and 48 are less than 30% above the LUC table.

[7] Greening Tukituki https://myfarm.co.nz/cms_files/newspdfs/greening%20tukituki%20-%20farming%20within%20limits.pdf

[8] The implication is that these farms could now exceed their limits by even more (requiring additional mitigations, farm system and/or land use change to meet the limits) and the farm that was <30% above the limit could now be >30% above.

[9] For example, there was a low intensity dairy farm but due to high rainfall and relatively free draining soil, N leaching was high.

[10] Final Report and Decisions of the Board of Inquiry into the Tukituki Catchment Proposal 18 June 2004 at [571] https://www.epa.govt.nz/assets/FileAPI/proposal/NSP000028/Ministers-Direction/7f5aeb17f4/FINAL-Report-and-Decisions-Volume-1-of-3-Report-18-June.pdf

Impact of updating LUC table

17. If the LUC table was updated, it is likely that two or three of the four case study farms referred to above would be at or below their LUC limit (compared to being non complying at present).[11] The one or two farmers that would not achieve it would be less than 30% over the LUC limit i.e. restricted discretionary activities (compared to being non complying at present).

18. The economic implications would be that:

a. Two or three of the four case study farms would not need to undertake any mitigations to reduce nitrogen.

b. One or two of the four case study farms would have to undertake some mitigations or make some farm system changes to reduce to the LUC limit, but the mitigations are unlikely to involve significant capital investment in infrastructure and are more likely to be farm management type actions.

Resource consent costs

19. In addition to the economic costs associated with mitigations to achieve the limits in Table 5.9.1D, there are the economic costs associated with applying for resource consent. This is particularly an issue for those farms that are required to obtain a non-complying consent rather than the restricted discretionary consent they would require (or the permitted activity status they would have) if the LUC table was updated (i.e. based on the same version of Overseer as is currently used to estimate their leaching).

20. The cost of applying for a non-complying activity consent is likely to be significantly greater than compared with a restricted discretionary consent:

    a. The cost of engaging consultants to prepare a non-complying activity consent application will vary depending on the particular farm, but are likely to be tens of thousands of dollars (maybe even as high as $100,000). This is due to additional work (when compared with a restricted discretionary consent application) involved in completing matters such as the planning assessment component of the application (e.g. there is a need to assess the application against a greater range of objectives and policies, including those relating to erosion and biodiversity), greater farm planning advice (e.g. assessment of actions relating to erosion and biodiversity, more detailed farm visits and assessments), a more robust and thorough FEMP would be required, and there would be a need to consider the receiving water and cumulative effects. It is difficult to estimate the cost of a restricted discretionary consent application (as it will vary depending on the particular farm and existing FEMP), but it could be closer to $10,000 to $20,000.

    b. Council processing costs will be significantly higher for non-complying activities. HBRC's current estimate of the cost of processing restricted discretionary activity consents is $1,300 to $3,000 (depending on whether they are in a DIN exceeding sub-catchment). The estimated fee for non-complying activities is exceeding $5,000. Horizons Regional Council

[11] The exact impact would depend on the impact of OverseerFM on their current estimated N leaching and on the final numbers in the LUC table.

estimated that the likely fee would be $45,500 to $55,500 for notified non-complying consent applications.[12]

c. A non-complying activity consent application is more likely to be notified than a restricted discretionary consent application (all other things being equal). If notified, an applicant would not only incur Council's hearing costs but need to engage experts and have legal representation. The applicant's own costs would again be in the high tens of thousands of dollars (in addition to the above costs).

District, catchment and regional impacts

21. In addition to the on farm implications there will be aggregated and flow on implications at a district, catchment and regional level and these will be different from what was assumed or assessed at the time of the BOI decision.

Social impacts

22. In addition to the economic costs associated with mitigations to achieve the limits in Table 5.9.1D, there are likely to be social costs (and these will be different from those considered at the time Table 5.9.1D was considered). At an individual farmer level, these are likely to relate mainly to the uncertainty about the level of mitigations required to achieve the LUC limits, the ability to continue an economically viable farm business, and the ability to employ staff (and flow on effects for things like families, schools, community groups, viability of school bus routes and other services able to be supported and sustained by the community).

23. Banks are likely to be reluctant to lend to farmers who cannot comply with their LUC limits and may re-assess risk margins or loan to valuation ratios if significant farm system changes or land use change is required to achieve the LUC limits and that impacts on the profitability or risk profile of the business, or the land value.

24. Being classified as a non-complying activity is also likely to cause more stress for farmers due to the greater uncertainty about whether the consent will be granted, the conditions imposed on the consent and the uncertainty about whether they will remain financially viable and resilient (in terms of being able to respond to unforeseeable events like drought) under the conditions of the consent.

25. The social impact assessment for Horizons (regarding farmers who need to obtain consents as non-complying activities because they exceed the LUC limits) found that many of those surveyed described the One Plan policy framework in terms of:[13]

a. Vulnerability – being "in-limbo," unable to make choices.

[12] Page 46 of section 32 report for Plan Change 2
https://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/One%20Plan%20Reviews%20and%20Changes%20Documents/Section-32-evaluation-of-Proposed-Plan-Change-2.pdf?ext=.pdf

[13] Page 25 of section 32 report for Plan Change 2
https://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/One%20Plan%20Reviews%20and%20Changes%20Documents/Section-32-evaluation-of-Proposed-Plan-Change-2.pdf?ext=.pdf

b. Uncertainty – loss of control, risk, in ability to make long term decisions. This included that banks were unwilling to lend to unconsented ventures, and uncertainty for farmers wanting to transition to retirement or sell their farms.

c. Anxiety – long term state of stress, fear of forced exit.

d. Stigma – seen as "environmentally unfriendly" and "illegal."

26. At a district, catchment or regional level, the long term social impacts will likely depend on whether alternative uses for land that cannot comply with the LUC limits (based on Table 5.9.1D and assuming it is not updated) can be found that can sustain the same size communities and the same level of prosperity. There can be short term dislocation but also long term decline and retrenchment when intensive uses are not able to be replaced by uses that are as productive or profitable.

27. Historic examples are hill country areas that were prosperous during the wool boom but are not now, or communities which were once based around pastoral farming but were converted to forestry in the 1980s. These areas now experience things like high unemployment, low median incomes, higher crime rates and lower decile schools.

28. It is always possible that an existing land use could be replaced with a higher value land use but this is not always the case, and this is less likely if nitrogen in the catchment or sub-catchment is constrained. The nitrogen constraints will affect a lot of potential land uses, not just existing dairy or irrigated sheep and beef.

29. Any large scale land use change would likely have significant impacts on the community and society as a whole, as it would likely change the local population in terms of factors such as skill sets, demographics and tenure (in terms how long people intend to live in the area e.g. seasonal workers vs permanent, temporary accommodation vs people investing and setting in for the long term).